

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
SYRACUSE DIVISION**

THE UNITED STATES OF AMERICA,

No. 1:25-CV-1338 (MAD/PJE)

Plaintiff,

v.

BOARD OF ELECTIONS OF THE STATE OF
NEW YORK, KRISTEN ZEBROWSKI
STAVISKY, in her official capacity as Co-
Executive Director of the Board of Elections of
the State of New York, RAYMOND RILEY, III,
in his official capacity as Co-Executive Director
of the Board of Elections of the State of New
York, PETER KOSINSKI, in his official
capacity as Commissioner of the Board of
Elections of the State of New York, HENRY
BERGER, in his official capacity as
Commissioner of the Board of Elections of the
State of New York, ANTHONY CASALE, in his
official capacity as Commissioner of the Board
of Elections of the State of New York, ESSMA
BAGNUOLA, in her official capacity as
Commissioner of the Board of Elections of the
State of New York, and the STATE OF NEW
YORK,

Defendants.

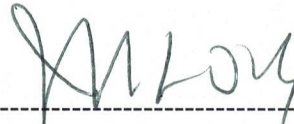
NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

PLEASE TAKE NOTICE that the undersigned attorney for proposed Amicus Curiae NY
Citizens Audit Civic Fund, Inc. (NYCA), dba RealAmerica.Vote (RAV) moves pursuant to Local
Rule 7.2 for an Order granting NYCA dba RAV leave to appear and file the annexed amicus brief
with exhibits submitted herewith in the above captioned action and to participate in any oral

argument regarding same.

All parties received timely notice of the filing of the annexed brief via the PACER filing system and counsel affirms that no counsel for any party authored this brief in whole or part and that no person or entity other than amicus curiae made a monetary contribution to fund the preparation and submission of the annexed brief,

Dated: Nassau County, New York
November 3, 2025

A handwritten signature in dark ink, appearing to read "JOHNO'KELLY", is written over a horizontal dashed line.

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Defendants.

**BRIEF OF AMICUS CURIAE REALAMERICA.VOTE IN
SUPPORT OF THE UNITED STATES OF AMERICA**

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Defendants.

**MEMORANDUM OF LAW SUBMITTED
ON BEHALF OF REALAMERICA.VOTE, *AMICUS CURIAE***

This memorandum of law is submitted on behalf of non-party RealAmerica.Vote (RAV) in support of RAV's motion for leave to appear and argue *amicus curiae*.

RAV is a New York 501(c)(3) corporation whose mission is to secure legitimate representative government through research, education and litigation. RAV is a DBA of NY

Citizens Audit Civic Fund, Inc. (NYCA), which conducted numerous audits of New York’s statewide voter list from 2021 through the present. NYCA has had thousands of citizen volunteers who function as members, auditing New York elections and bringing their findings to representatives statewide. RAV’s interest is in sharing with the court the results of those audits, and the countless material questions about the eligibility of voters within NYSVoter—questions that can only be resolved using the comprehensive records of each improperly registered voter including Social Security numbers, Driver License numbers, and other personal identifying information (PII).

RAV has requested leave to file this Memorandum of Law *amicus curiae* as the Petitioner has not raised the known violations in NYSVoter from the RAV audit reports. Certain of these audit reports are annexed herein as exhibits while a more complete rendition is to be found in the case titled: *NY Citizens Audit Civic Fund, Inc., et al. v. Letitia James in her capacity as New York State Attorney General (NYSAG) and individually, et al. (1:25-cv-01477)*, which case is pending before this Court.

Also, only RAV, a *citizen* organization, can speak to the willful deafness and blindness of Defendants to the violations reported within their records by their constituents. Only RAV can beg this court to honor the purpose of dual-government, that “the power surrendered by the people is first divided between two distinct governments...Hence a double security arises to the rights of the people.”¹ New York’s first Senator Rufus King noted that if elections were not fair, “the Union might be dismembered and dissolved without a constitutional power to prevent it.”² Because the Constitution “is an act of the people, and not of the states in their political

¹ Madison, James. Federalist 51

² Massachusetts Ratifying Convention, Jan. 1788, remarks of Rufus King regarding the necessity of dual authority over federal elections ratified in Article 1 § 4.

capacities,”³ and Defendant New York State has denied, ignored and attacked citizen petitions seeking redress of election violations, there is no one left citizens can turn to but Plaintiffs to seek enforcement of their “first, grand right...that of the people having a share in their own government by their representatives chosen by themselves, and...being ruled by laws, which they themselves approve, not by edicts of men over whom they have no control.”⁴

As set forth below and in our exhibits, New York’s statewide voter list is not compliant with the Composition Clause of the US Constitution, federal and state election laws, critical infrastructure requirements, and national security standards while in the custody of Defendants. One of the two governments citizens must rely on for the security of natural rights has failed; this court must allow Plaintiff access to the records it needs to protect the people.

Background/Chronology

In October of 2021, volunteers with RAV, including experienced, professional data analysts and programmers, audited a copy of NYSVoter obtained from Defendant New York State Board of Elections (NYSBOE) through a Freedom of Information Law (FOIL) request.

NYSVoter is the official list of “legally registered voters”⁵ and voter participation history for New York regarding all federal elections. NYSVoter is part of critical national security infrastructure, and therefore subject to federal data integrity and security standards established by the Federal Information Security Modernization Act of 2014 (FISMA).

³ Story, Joseph, Commentaries on the Constitution § 463 (1833)

⁴ “Letter to the Inhabitants of Quebec,” October 1774. Retrieved on October 18, 2025 from <https://www.americanhistorycentral.com/entries/first-continental-congress-letter-to-the-inhabitants-of-the-province-of-quebec/>

⁵ Help America Vote Act, 52 U.S.C. § 21083(a)(1)(A)

Among the numerous, well-documented findings in NYSVoter by RAV that were dismissed, ignored, attacked and/or suppressed by the Defendants from May 9, 2022 to the present were:

- The presence in NYSVoter of multiple algorithmic programs clandestinely controlling the assignment and structure of NYSVoter ID numbers for the purpose of data injection and manipulation, evidencing a Level 4 “Severe”⁶, “Total Loss of Control” cyber incident⁷ of NYSVoter by actors unknown, in violation of critical infrastructure information security⁸ controls described within the Federal Information Security Modernization Act of 2014 (FISMA, 44 U.S.C. § 3551, *et seq*). This research was peer-reviewed by cyber-intelligence experts in a double-blind study, and published in the May, 2023 Journal of Information Warfare (JIW). The article is titled: ‘The Caesar Cipher and Stacking the Deck in New York State Voter Rolls.’⁹ (Copy of article annexed as **Ex. 1**)
- The assignment by NYSBOE of 2,427,827 unique state voter ID numbers to 1,170,790¹⁰ NYS voters despite law mandating one unique state ID per voter, which follows the voter for life.¹¹ RAV documented forged registrations and fraudulent votes associated with many of these excess ID numbers. (Copy of report titled: “Identity Theft at the New York State Board of Elections” annexed as **Ex. 2**)

⁶ https://www.cisa.gov/sites/default/files/2023-01/cisa_national_cyber_incident_scoring_system_s508c.pdf

⁷ 44 U.S.C. § 3552(b)(2)(A) “The term “incident” means an occurrence that actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system.”

⁸ 44 U.S.C. § 3552(b)(3)(A) “The term “information security” means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity.”

⁹ <https://www.jinfowar.com/journal/volume-22-issue-2/caesar-cipher-stacking-deck-new-york-state-voter-rolls>

¹⁰ Based on a copy of NYSVoter dated October 21, 2021. This number continues to increase and stood at 1,558,302 according to a copy of NYSVoter dated December 10, 2025.

¹¹ N.Y. Comp. Codes R. & Regs. Tit. 9 § 6217.5(e) “NYSVoter shall assign a unique identifier to every voter that will remain with the voter for their voting life.”

- Large discrepancies between the number of votes certified by NYSBOE, and the number of voters who voted in 2020, 2022 and 2024 as evidenced by NYSVoter voting history records. The excess votes totaled 272,435 in 2020, 35,235 in 2022 and 129,194 in 2024, for an aggregate excess total of 436,864 votes counted with no corresponding voter history record in NYSVoter. (Copy of report titled: New York's 2020, 2022 & 2024 Election Validity Scorecards Annexed as **Ex. 3**)
- 254,713 votes cast in 2020, as documented by NYC Board of Elections, that are missing from NYSVoter, disenfranchising a quarter of a million NYC voters. (Copy of report titled: "New York's 2022 General Election & The Reign of Error: Apathy, Incompetence or Malfeasance?", annexed as **Ex. 4**)
- The illegal overwriting of election records from the November 3, 2020 General Election in violation of 52 USC §20701, which requires the preservation of all election records for 22 months, admitted by Michael Chin, an IT professional with the NYSBOE in response to a RAV FOIL request. (Copy of report titled: "Response to NYS Board of Elections 'False Claims Explained' annexed as **Ex. 5**- see page 2)
- Over 223,000 *double votes* added to the 2020 vote history records of voters who had previously voted only once, between December 19, 2022 and July 3, 2023. (Copy of report titled: "Inexplicable Changes to the Voter Rolls" annexed as **Ex. 6**)
- Numerous victims of campaign finance law violations via smurfing,¹² involving tens of thousands of transactions resulting in millions of dollars' worth of fraudulent transactions. (Copy of NYCA's summary Smurf report annexed as **Ex. 7**)

¹² "Smurfing is a money-laundering technique involving the structuring of large amounts of cash into multiple small transactions. Smurfs often spread these small transactions over many different accounts, to keep them under regulatory reporting limits and avoid detection. Smurfing is a form of structuring, in which criminals use small, cumulative transactions to remain below financial reporting requirements." Extracted on September 29, 2025 from <https://www.investopedia.com/terms/s/smurf.asp>

- One in four registrations in NYSVoter lacks data required to properly assess eligibility under state law,¹³ and/or contains invalid or false data.¹⁴ This included 2,783,369 records with plainly false dates of registration at the time the 2024 election was certified due to the voter not being born yet, the date not having happened yet, registration coinciding with birth, the voter being over the age of 114, the voter having no address, and registration occurring on January 1st, Christmas, Thanksgiving and the like. Votes counted from registrations with material errors contributed 10% of the certified votes in the general election of 2024. Justin Levitt, the top attorney in the US Department of Justice Voting Rights Division under Biden, says, “by definition, the only votes to be counted are those for which no reasonable decision maker would have a substantial question about the voter’s eligibility... A tiny slip of the finger during data entry, changing a birth year from 1987 to 1997, makes a twenty-five-year old look fifteen—and ineligible to vote. A big mistake, such as leaving the date of birth entirely blank, yields a similar question about eligibility.”¹⁵ (Copy of report titled: “New York’s 2022 General Election Reconciliation” annexed as Ex. 8)

Notably, a number of RAV’s contentions were, and remain, undisputed by the Defendants, effectively conceding them. Now Defendants seek to evade not merely citizens validating Defendants’ work product, but the United States itself.

Argument

¹³ 52 U.S.C. § 10101(a)(2)(B) “No person acting under color of law shall deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, *if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.*” (emphasis added)

¹⁴ See footnotes 7 & 8, *supra*.

¹⁵ Levitt, Justin, Resolving Election Error: The Dynamic Assessment of Materiality (February 19, 2012). 54 William & Mary Law Review 83 (2012), Loyola-LA Legal Studies Paper No. 2011-27, Available at SSRN: <https://ssrn.com/abstract=1477663> or <http://dx.doi.org/10.2139/ssrn.1477663>

I. DEFENDANTS ARE OFFICERS OF CONGRESS WHEN THEY ADMINISTER CONGRESSIONAL ELECTIONS, AND CANNOT WITHHOLD FEDERAL RECORDS FROM FEDERAL SCRUTINY

The ratification debates were impassioned regarding how to elect Congress. The framework of the new government having been designed for “ambition to counter ambition,”¹⁶ states were wary of encroachments on their sovereignty. While it was agreed that states would run the elections, Madison added they must be, “subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution.”¹⁷

That was the end of the matter until the Reconstruction Era. The cost of attempted dissolution in the Civil War was enormous, and devastating; preventing future disloyalty via election misconduct became federally enforceable. Detailed passages of law left no question about the federal accountability of election officers in registering voters:

“It shall be the duty of the supervisors of election...to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a representative or delegate in Congress, and to challenge any person offering to register...and verify the same; and...to personally inspect and scrutinize such registry, and for purposes of identification to affix their or his signature to each and every page of the official list, and of each and every copy of any such list of registered voters, at such times, when any such name may or shall be received, entered, or registered, and in such manner as will, in their or his judgment, detect or expose the improper or wrongful removal therefrom, or addition thereto, of any name or names.”¹⁸

A case from Indiana settled any remaining doubt about whether state election officials operated independent of federal scrutiny. Election officials had conspired to steal a local race which shared the ballot with a congressional election. Conceding their guilt, the officials tried to

¹⁶ Hamilton, Alexander or Madison, James. (1788). *Federalist No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*. Washington, D.C.: Library of Congress. Retrieved February 17, 2025 from <https://guides.loc.gov/federalist-papers/text-51-60>.

¹⁷ Elliot, Jonathan, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*. . . . 5 vols. 2d ed. 1888. Reprint. New York: Burt Franklin, n.d.

¹⁸ Second Enforcement Act (1871), Statutes at Large, ch. 22, 17 stat. 13 § 20.

avoid federal charges by arguing that they had committed no crime against Congress. The Supreme Court disagreed, stating:

"It is, perhaps, since the decision in *Ex Parte Clarke*, 100 U. S. 399, past debate that **Congress has the power under the Constitution to adopt the laws of the several states respecting the mode of electing members of Congress**, and, as resulting from that power, the right to prescribe punishment for infractions of the laws so adopted. This Court has held more than once that Congress...has adopted these laws, and, with them, the officers created under them, **making them for the purposes of the election of representatives in Congress its officers.**" *In re Coy*, 127 U.S. 731 (1888) (emphasis added)

The election officials went to federal prison, and the election laws of each state deemed adopted by Congress, enforceable in federal court. The current edition of the Department of Justice publication, *Federal Prosecution of Election Offenses*, says, "Coy is still good law."¹⁹ Defendants maintain NYSVoter behalf of the federal government.²⁰

The Court in *U.S. v. Classic*, 313 U.S. 299 (1941) confirmed that state election officials have a constitutional obligation to ensure that elections are conducted honestly and lawfully. In *Anderson v. United States*, 417 U.S. 211, 227 (1974), the Court found that election law infractions erode public confidence and violate federal law, necessitating stringent enforcement.

The statewide voter list Plaintiffs request from Defendants is *already the property of Plaintiffs*; to claim otherwise is to make all federal power, and the concept of Natural Rights itself, subject to the whim of six state election officials who may have a political axe to grind. We are here reminded of Hamilton's sage observation, "If men were angels, no government would be necessary."²¹

¹⁹ *Federal Prosecution of Election Offenses*, Eighth Edition (2017). Washington, D.C.: Department of Justice, Public Integrity Division. Retrieved on February 17, 2025 from <https://www.justice.gov/criminal/file/1029066/dl>

²⁰ 52 U.S.C. § 21083(a)(1)(A)(viii)

²¹ Hamilton, Alexander or Madison, James. (1788). *Federalist No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*. Washington, D.C.: Library of Congress. Retrieved February 17, 2025 from <https://guides.loc.gov/federalist-papers/text-51-60>.

**II. BOTH PARTIES ARE SUBJECT TO THE GUARANTEE CLAUSE;
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Article 4 § 4 grants that, “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion.” Madison addressed this in Federalist 43, “The only restriction imposed on (States) is, that they shall not exchange republican for anti-republican Constitutions.” His added concern about election misconduct was added to the 14th Amendment debates nearly 100 years later, “by this amendment a remedy might be given directly for a case supposed by Madison, where treason might change a State government from a republican to a despotic government, and thereby deny suffrage to the people.”²² When Defendants withhold federal election records from federal oversight, they deny suffrage to all in demanding that New York and the nation take their word for it. And yet, “the right of suffrage is very justly regarded as a fundamental article of republican government.”²³ Defendants are federalized and answerable to the Guarantee Clause, as is Plaintiff. The Guarantee Clause is not optional. While Plaintiff strives to uphold the promise, Defendants defy it, but champion themselves as defenders against federal “overreach.”

When protection against invasion was promised, no Framer conceived of electronic databases storing voter registration lists, protected as critical national security infrastructure. Cyber breaches, electronic voting systems and synthetic identity theft were so far in the future as to be unimaginable. And yet, today NYSVoter is a digital record inside of what is required to be an impenetrable cybersecurity fortress defending national sovereignty, because NYSVoter

²² *Oregon v Mitchell*, 400 U.S. 112 (1970).

²³ Madison, James. (1788). *Federalist No. 52: The House of Representatives*. Washington, D.C.: Library of Congress. Retrieved February 17, 2025 from <https://guides.loc.gov/federalist-papers/text-51-60>.

controls access to Congress. Among RAV's findings is the discovery of multiple hidden algorithms embedded in NYSVoter, confirmed by three scientific peer-reviewers in a double-blind study for the cyber-intelligence *Journal of Information Warfare*, which published the research in May of 2023. In other words, cyber experts agree that NYSVoter is not a regular list ordered alphabetically, or by date, voting district, or county. NYSVoter is ordered cryptographically, with a hidden meaning that reveals itself to keyholders. In a voter roll database, this hidden meaning can only serve the purpose of enabling election fraud or other crimes. Otherwise, why hide it? Whom the keyholders are is currently unknown, constituting a Total Loss of Control *digital invasion*²⁴ that directly imperils the Guarantee of republican government in New York. Plaintiff seeks access to NYSVoter in order to scrutinize it and right this egregious wrong; Defendants' purpose in obstructing Plaintiff's access can only be surmised.

III. DEFENDANTS HAVE DENIED, IGNORED, EXCUSED AND ATTACKED MASSIVE *PRIMA FACIE* VIOLATIONS OF LAW EVIDENCED WITHIN NYSVOTER, LEAVING PLAINTIFFS AS THE ONLY REMAINING BULWARK AGAINST TYRANNY FOR NEW YORK'S 19.6 MILLION CITIZENS

It is an unfortunate truism of government that "enlightened statesmen will not always be at the helm."²⁵ In order to secure the rights of the people, the federal government must simultaneously protect, and protect against, the States. "There were two separate and independent governments established over our Union, one for local purposes over each State by the people of the State, the other for national purposes over all the States by the people of the United States. The whole power of the people, on the representative principle, is divided between

²⁴ See footnotes 7 & 8, *supra*.

²⁵ Madison, James. (1788). *Federalist No. 10: The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection*. Washington, D.C.: Library of Congress. Retrieved February 17, 2025 from <https://guides.loc.gov/federalist-papers/text-1-10>

them.”²⁶ In our unique system of ordered liberty, citizens belong equally to America itself as they do to any State, and have the right to be protected by the federal government should their state government err.

As demonstrated by Defendants’ current and prior behavior, such is the case before this court. It is for this reason that RAV, a citizen organization, has a vested interest in seeing Plaintiff’s necessary and proper request for the comprehensive voter registration records in New York’s statewide voter list granted. Defendants refuse to acknowledge or repair their failures in maintaining a legally compliant list of qualified, verified citizen voters on behalf of U.S. Congress, the people of New York, and the country. “Should the people of any state by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government.”²⁷ Defendants’ records are not compliant with the Composition Clause, and the principle therein of government by consent. Defendants’ obstructionist behavior in refusing to provide federal election records to federal law enforcement demonstrates their intention to continue illegal election practices they have been advised of by RAV since May 9, 2022, usurping the right of the people to choose their representatives.

If Defendants are not ordered by this court to provide the requested federal election records to Plaintiff, ordered liberty will become a quaint memory. Courts nationwide have consistently ruled that citizens lack standing to petition for a fairly counted vote. In an insurmountable catch-22, arguments that votes are being diluted by fraud are always flawed: a single voter may be able to prove an injury, which is sad but in the past; if everyone’s votes were diluted, then the violation was “uniform.” Apparently, if everyone is murdered, no one is really

²⁶ Monroe, James. (1822). *Views of the President of the United States on the Subject of Internal Improvements*. Retrieved February 17, 2025 from <https://press-pubs.uchicago.edu/founders/documents/preambles20.html>.

²⁷ See footnote 18, *supra*.

dead, leaving Plaintiff as the only party left in the nation with the right to enjoin election administrators in defense of fair elections.

CONCLUSION

The evidence is clear: New York's denial of comprehensive federal access to its cyber-breached, error-ridden, noncompliant voter roll has created an impermissible barrier to federal oversight, and directly contravenes the constitutional framework governing election integrity. The State of New York demands that citizens, and Plaintiff United States of America, accept their absolute godly authority in a faith-based election process, not a transparent or accountable one. Congress has federalized Defendants, adopted New York's election laws as its own, and authorized Plaintiff to uphold them. New York's statewide voter list is a federal record. The Composition, Elections and Guarantee Clauses leave no room for state policies that conflict with federal requirements, and federal courts have consistently upheld the fundamental principle that states administer elections as a matter of federal law to preserve the integrity of democratic participation.

For the foregoing reasons, this Court should find that the State of New York is in violation of the Composition Clause, the VRA, NVRA, HAVA, the Elections and Guarantee Clauses, critical infrastructure requirements and national security standards, and order Defendants to provide Plaintiff access to the complete statewide voter registration list, and any further federal election records it may request.

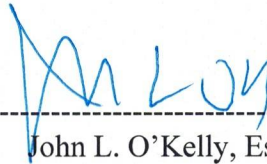
Dated October 29, 2025
Orange County, New York

Respectfully submitted,



Marly Hornik
Executive Director

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
SYRACUSE DIVISION**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:25-CV-1338 (MAD/PJE)
PROPOSED ORDER

BOARD OF ELECTIONS OF THE STATE OF
NEW YORK, KRISTEN ZEBROWSKI
STAVISKY, in her official capacity as Co-
Executive Director of the Board of Elections of
the State of New York, RAYMOND RILEY, III,
in his official capacity as Co-Executive Director
of the Board of Elections of the State of New
York, PETER KOSINSKI, in his official
capacity as Commissioner of the Board of
Elections of the State of New York, HENRY
BERGER, in his official capacity as
Commissioner of the Board of Elections of the
State of New York, ANTHONY CASALE, in his
official capacity as Commissioner of the Board
of Elections of the State of New York, ESSMA
BAGNUOLA, in her official capacity as
Commissioner of the Board of Elections of the
State of New York, and the STATE OF NEW
YORK,

Defendants.

The matter having come before the Court by motion of proposed Amicus Curiae New York
Citizens Audit Civic Fund Inc., dba RealAmerica.Vote seeking leave to file a brief as Amici
Curiae in the above captioned matter, and the Court having considered the motion, the
supporting brief with exhibits and any opposition filed by the parties, and good cause having
been found:

IT IS HEREBY ORDERED ON THIS _____ DAY OF NOVEMBER. 2025

The Motion to file an Amicus Curiae Brief on behalf of appearing Amici is granted, the brief shall be deemed filed, and counsel may appear and participate at oral argument.

HON.