

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 20-3047 Caption [use short title]

Motion for: Expedited Appeal SAM Party of New York

v.

Cuomo

Set forth below precise, complete statement of relief sought:

Expedited Appeal Schedule under FRAP 2:

Appellants' Brief due on or before October 2, 2020;

Appellees' Brief due on or before October 30, 2020;

Appellants' Reply Brief due on or before November 13, 2020;

Argument scheduled as soon thereafter as possible.

MOVING PARTY: SAM Party of New York and Michael J. Volpe OPPOSING PARTY: See Addendum A

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Eric Alan Stone OPPOSING ATTORNEY: Elliot Hallak

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Court-Judge/Agency appealed from: United States District Court for the Southern District of New York (Koeltl, J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney: /s/ Eric Alan Stone Date: September 11, 2020 Service by: CM/ECF Other [Attach proof of service]

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No

Has this relief been previously sought in this Court? Yes No

Requested return date and explanation of emergency:

The requested return date is September 15, 2020 because the appealed-from denial of a preliminary injunction will cause Appellants irreparable harm, through loss of their status as a political "party," without expedition of this appeal.

ADDENDUM A

Opposing Parties:

PETER S. KOSINSKI, as the Co-Chair of the New York State Board of Elections;
DOUGLAS A. KELLNER, as the Co-Chair of the New York State Board of Elections;
ANDREW J. SPANO, as a Commissioner of the New York State Board of Elections;
TODD D. VALENTINE, as Co-Executive Director of the New York State Board of
Elections; and ROBERT A. BREHM, as Co-Executive Director of the New York State
Board of Elections.

No. 20-3047

United States Court Of Appeals
for the
Second Circuit

SAM PARTY OF NEW YORK and MICHAEL J. VOLPE,

Plaintiffs-Appellants,

– v. –

PETER KOSINSKI, as the Co-Chair of the New York State Board of Elections;
DOUGLAS A. KELLNER, as the Co-Chair of the New York State Board of Elections;
ANDREW J. SPANO, as a Commissioner of the New York State Board of Elections;
TODD D. VALENTINE, as Co-Executive Director of the New York State Board of Elections;
and ROBERT A. BREHM, as Co-Executive Director of the New York State Board of Elections,

Defendants-Appellees,

ANDREW CUOMO, as the Governor of the State of New York;
ANDREA STEWART-COUSINS, as the Temporary President and
Majority Leader of the New York State Senate;
JOHN J. FLANAGAN, as the Minority Leader of the New York State Senate;
CARL E. HEASTIE, as the Speaker of the New York State Assembly;
and BRIAN M. KOLB, as the Minority Leader of the New York State Assembly,

Defendants.

Appeal from the United States District Court
for the Southern District of New York
No. 1:20-cv-00323-JGK

**Plaintiffs-Appellants’
Unopposed Emergency Motion for an Expedited Appeal**

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INTRODUCTION

Appellants SAM Party of New York and Michael J. Volpe appeal from the September 1 order of the District Court for the Southern District of New York (Koeltl, J.) denying their Motion for a Preliminary Injunction (attached as Exhibit A). Pursuant to Federal Rules of Appellate Procedure 2, 27, and 31(a)(2) and Local Rule 27.1, and for the reasons set forth herein, Appellants respectfully request that this Court expedite briefing and grant expedited consideration to this appeal.

Political “parties” are a core feature of New York politics. Along with Republicans and Democrats we have also had Independent, Green, Right to Life, Working Families, Conservative, and Libertarian parties. The benefits of recognized “party” status under state law are significant: parties are exempt from campaign-finance limitations, can attract members by appearing on the voter-registration form, can hold primaries, and can run candidates statewide without meeting the onerous signature requirements imposed on independent candidates.

Before the events giving rise to this lawsuit, it was already hard to become a recognized “party” in New York. An organization needed to go door to door to get sufficient signatures to put a Gubernatorial candidate on the ballot, and then obtain 50,000 votes for that candidate. Most fell short. Success bestowed “party” status for four years, and the ability to re-qualify in the next Gubernatorial election with the fundraising, name-recognition, and ballot-access advantages of being a “party.”

Earlier this year, New York made becoming a “party” insurmountably harder. The Governor and Legislature increased the vote requirement to the greater of 130,000 or 2% of the votes cast, and required an organization to meet that threshold not only in every Gubernatorial election, but in every Presidential election as well.

SAM qualified as a party in the 2018 Gubernatorial election. SAM—which derives from the “Serve America Movement”—represents a different, candidate-oriented model for a political party. Instead of taking positions on the substantive issues that have historically divided the country and characterized Americans as either liberal or conservative, Democrat or Republican, SAM seeks to identify, back, and elect candidates who endorse or exemplify its four pillars of good government: accountability, transparency, electoral reform, and problem solving. Volpe Decl. ¶¶ 2, 5-7. Because these are its organizational first principles, SAM chose—before the current change in New York’s election laws—not to speak to the issues of, and become embroiled in the politics of, a Presidential election. *Id.* ¶¶ 10, 14. Consistent with its principles, SAM will not run a Presidential candidate in 2020.

SAM brought an as-applied challenge to the new party-qualification standards, and sought a preliminary injunction. The District Court denied that motion. SAM has appealed from the District Court’s order, seeking to preserve its “party” status until a trial on the merits. To minimize the disruption from any loss of “party” status after the November Presidential election, here SAM seeks to expedite its appeal.

Defendants-Appellees consent to the expediting of this appeal and to the briefing schedule proposed herein, without waiving any rights or conceding that Appellants face irreparable harm or are likely to succeed on this appeal.

STATEMENT OF THE CASE

SAM was founded to offer voters an alternative to the two major political parties, and espouses a vision for a new kind of party focused on process rather than ideology. *See* Volpe Decl. ¶¶ 2, 7. SAM is a recognized “party” only in New York; to achieve its goal, SAM has determined that it needs to build brand recognition from the ground up, to avoid becoming embroiled in partisan ideological battles, and to concentrate on New York village, town, county, regional, and statewide races. Volpe Decl. ¶¶ 9-10, 14. SAM has no intention of nominating or supporting a candidate for President, now or in the foreseeable future. *Id.* ¶ 14.

The believers in SAM’s mission and strategy have been wildly successful in a short time. In June 2018, they identified Stephanie Miner to run for Governor and Appellant Volpe to run for Lieutenant Governor. Volpe Decl. ¶ 8. On Election Day, the Miner/Volpe ticket received 55,441 votes, entitling SAM to “party” status through the November 2022 Gubernatorial election. *See* N.Y. Elec. Law § 1-104(3) (McKinney 2019); Volpe Decl. ¶ 8.

As a “party,” SAM can place candidates on ballots across the State without the candidates having to meet the onerous independent-candidate signature requirements.

N.Y. Elec. Law §§ 6-104, 6-138(1). It can hold a closed primary election to choose a statewide candidate. N.Y. Elec. Law § 1-104(9). It is listed on New York’s voter-registration form, allowing new voters easily to affiliate with the party. N.Y. Elec. Law § 5-300. And, importantly, it can raise and spend money without limitation in support of its candidates. N.Y. Elec. Law § 14-114.

SAM capitalized on its “party” status, nominating more than 100 candidates for local office in 2019, a majority of whom won their races, and nominating more than 35 candidates for office in 2020. Volpe Decl. ¶¶ 9-13. Consistent with its desire to avoid ideological associations, SAM planned to use its “party” status to continue its focus on New York elections, to build recognition of its brand and its new, behavior-based approach, and to avoid participating in nationwide races or debates, in which ideological divides are in heightened focus. *Id.* at ¶¶ 9-10, 14.

But then, on April 3, 2020, with essentially no Legislative debate, New York changed its Election Law to require that a political organization receive at least 2% of the total votes cast or 130,000 votes, whichever is greater, in each Presidential election and each Gubernatorial election to retain its status as a “party,” with those requirements taking effect immediately.

Consistent with its organizational principles, SAM will not run a candidate for President in November 2020. Volpe Decl. ¶¶ 14. As a result, SAM will now lose its “party” status, and the attendant benefits, after the 2020 Presidential election.

Because competing for the Presidency would be inimical to SAM’s mission and goals, and because requiring it to do so infringes Plaintiffs’ freedoms of association and speech and its right to equal protection, Plaintiffs sought a preliminary injunction to prevent Defendants from stripping SAM of its party status following the election. On September 1, 2020, the District Court denied that preliminary injunction, holding that Plaintiffs were unlikely to succeed on the merits and that the equities favored Defendants. On September 8, 2020, Plaintiffs filed a Notice of Interlocutory Appeal.

ARGUMENT

This Court is “generous in granting motions to expedite.” *In re Iceland Inc.*, 112 F.3d 504, at *1 (2d Cir. 1997) (summary order). It routinely grants such motions where—as here—an appeal is taken from the denial of a preliminary injunction. *See e.g., WNET, Thirteen v. Aereo, Inc.*, 712 F.3d 676, 684 (2d Cir. 2013) (noting expedited schedule); *Pope v. County of Albany*, 687 F.3d 565, 568–69 (2d Cir. 2012) (same).

Expedited consideration is warranted here. SAM is not running a candidate in the November 3, 2020 Presidential election. Volpe Decl. ¶ 14. On December 7, 2020, the State Board of Canvassers will certify the results of that election; SAM will obviously fail to obtain 2% of the vote. Within a few days, therefore, Defendants-Appellees will strip SAM of its “party” status.

The first official act for parties in which SAM will be unable to participate will be the filing of a statement of party positions for the 2021 elections, the deadline for which will be sometime in early February 2021. (The Board of Elections has not yet posted the official political calendar for 2021, but that deadline is traditionally in early February.) Volpe Decl. ¶¶ 15-16. Thereafter, SAM will be unable to participate in the primaries for the 2021 electoral races—including New York City’s mayoral and City Council elections—and will not be able to recruit candidates by offering them the financial support and ballot access that only “party” status permits. *Id.* SAM will be irreparably harmed even if it prevails at a trial on the merits later in 2021 and has its “party” status restored, as the opportunities of the primary season in 2021 will be lost forever. *Id.* ¶ 16.

Appellants therefore request a briefing schedule that would permit this Court to decide this appeal before that early February deadline. Without expedition, briefing would not be complete until April, and argument and a decision would come too late. Appellants respectfully request the following briefing schedule:

- SAM’s Opening Brief: October 2, 2020
- Board of Elections’ Appellees Brief: October 30, 2020
- SAM’s Reply Brief: November 13, 2020

That schedule will not prejudice the parties. The parties are already very familiar with the issues on appeal, given the extensive briefing and oral argument

below, and there is a limited factual record. And any burden counsel may bear from expedition is insignificant when weighed against the harm to Appellants from SAM's being stripped of party status in the wake of the 2020 Presidential election. The opportunities to participate as a party in the 2021 electoral cycle cannot be restored even if SAM ultimately prevails in the underlying litigation, and the ability to continue building name recognition for a party that has succeeded wildly in its short lifetime cannot be replaced.

This appeal presents substantial issues about constitutionality of New York's Presidential-election requirement as applied to a party that, as a matter of its core speech rights, chooses not to participate in the Presidential election. Among the issues presented are whether the loss of "party" status constitutes a "severe" burden under the controlling case law, and whether the Defendants-Appellants' reliance on "voter confusion" and "ballot clutter," when there is no evidence of either, constitutes mere pretext or a sufficient basis to justify depriving SAM of its "party" status. Given the irreparable harm SAM faces and the substantial nature of SAM's constitutional claims, and in light of this Court's routine practice of expediting appeals from denials of preliminary injunctions, there is good cause for expedition here.

CONCLUSION

For the foregoing reasons, SAM respectfully requests that that this Court order expedited briefing and consideration of this appeal, including setting an expedited briefing schedule requiring that:

- Appellants file their opening brief on or before October 2, 2020;
- Appellees file their response brief on or before October 30, 2020;
- Appellants file their reply brief on or before November 13, 2020.

Plaintiffs-Appellants further respectfully request that this Court schedule oral argument in this appeal to take place at the Court's earliest opportunity, preferably before the end of 2020.

Dated: September 11, 2020

Respectfully submitted,

**PAUL, WEISS, RIFKIND,
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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 1740 words, exclusive of captions, tables, and certificates.

2. This document complies with the typeface and typestyle requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: September 11, 2020

/s/ Eric Alan Stone

Eric Alan Stone

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I, Eric Alan Stone, certify that on September 11, 2020, I caused a true and correct copy of the foregoing document to be filed and served electronically via the ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

Dated: September 11, 2020

/s/ Eric Alan Stone

Eric Alan Stone

Counsel for Plaintiffs-Appellants

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SAM PARTY OF NEW YORK
and MICHAEL J. VOLPE,

Plaintiffs-Appellants,

v.

PETER S. KOSINSKI, as the Co-Chair of the New York State Board of Elections; DOUGLAS A. KELLNER, as the Co-Chair of the New York State Board of Elections; ANDREW J. SPANO, as a Commissioner of the New York State Board of Elections; TODD D. VALENTINE, as Co-Executive Director of the New York State Board of Elections; and ROBERT A. BREHM, as Co-Executive Director of the New York State Board of Elections,

Defendants-Appellees,

ANDREW CUOMO, as the Governor of the State of New York, ANDREA STEWART-COUSINS, as the Temporary President and Majority Leader of the New York State Senate, JOHN J. FLANAGAN, as the Minority Leader of the New York State Senate, CARL E. HEASTIE, as the Speaker of the New York State Assembly, BRIAN M. KOLB, as the Minority Leader of the New York State Assembly,

Defendants.

No. 20-3047

**DECLARATION OF MICHAEL J. VOLPE IN SUPPORT OF
PLAINTIFFS-APPELLANTS' UNOPPOSED EMERGENCY MOTION
FOR AN EXPEDITED APPEAL**

I, Michael J. Volpe, declare as follows:

1. I am a Plaintiff-Appellant in this action and the Chairman of Plaintiff SAM Party of New York ("SAM"). I submit this Declaration in support of Plaintiffs-Appellants' Emergency Motion for an Expedited Appeal.

2. SAM is building a new kind of candidate-focused, process-driven political party, rather than one predicated on shared substantive policy positions or ideologies. SAM earned its “party” status through hard work and perseverance under the prior electoral system. As a party focused on village, town, local, regional, and statewide offices, SAM does not speak to the issues at stake in, and chooses not to participate in, the Presidential election. Because SAM will not run a candidate for President in November 2020, SAM will lose its “party” status. If SAM’s status is not restored by February 2021, SAM will be denied the opportunity to participate in primary races, including for New York City Mayor and City Council, which will irreparably harm the party and its future. Thus, I ask this Court to grant Plaintiffs-Appellants’ request for an expedited appeal and decision to allow SAM’s appeal to be resolved prior to February 2021.

My Background

3. I am a partner in the law firm Venable, LLP where I currently serve as the Co-Chairman of the Labor and Employment Practice Group. I received my J.D. from New York Law School in 1990, a Master’s degree from Cornell University in 1986, and a Bachelor of Arts from Hofstra University in 1983.

4. I have been active in politics and public service for many years, including by serving as an elected official. I was elected twice as Mayor of the Village of Pelham, served as Deputy Mayor, and was previously elected a Councilman on the Town of Pelham Board. In addition to Chairing SAM, I successfully petitioned to become a candidate for Lieutenant Governor of New York in 2018, running alongside Stephanie

Miner for Governor. As a result of the success of our ticket, SAM became an official “party” in New York.

SAM’s History and Platform

5. SAM draws its name from the Serve America Movement. While there are supporters of that movement across the country, the SAM Party of New York is the only political “party” associated with the movement. When I refer to “SAM” in this declaration, I refer to only the Plaintiff-Appellant, the SAM Party of New York.

6. I have served as SAM’s Chairman since early 2019. I have been intimately involved in all aspects of SAM’s work. I was directly involved in gathering signatures for nominating petitions in order to appear on the ballot as part of a ticket for Governor and Lieutenant Governor in 2018. And since SAM came into existence I have been directly involved in SAM’s recruiting and support of candidates and the development of SAM’s unique, process-oriented platform. I also speak publicly on behalf of SAM.

7. SAM focuses on process, empowering leaders to solve problems and achieve results without regard to ideology. Rather than taking a stance on particular partisan issues as a matter of ideology, SAM envisions a “new kind of party” unified around candidates committed to SAM’s vision for political process. To that end, SAM’s platform is currently based on four pillars: transparency, accountability, electoral reform, and problem solving. SAM assesses all candidates across these four areas and has created a SAM “scorecard” against which it can track performance and hold elected officials and candidates accountable.

8. In 2018, SAM undertook the arduous process to become a “party” under the then-existing New York law. SAM collected the required signatures to place Stephanie Mine and myself on the ballot as Governor and Lieutenant Governor. Ms. Miner and I knew that with the history in New York of campaigns scrutinizing competitors’ petitions for technical flaws, and consistent with the advice of ballot-access and nominating-petition experts in New York, we would need a multiple of the 15,000 signatures required by law to obtain ballot access. Ultimately we gathered 45,000 signatures on our nominating petitions, three times the legally required number. Obtaining those signatures was a significant undertaking. Together with our supporters, we spent approximately \$300,000 and hundreds of hours to satisfy the signature collection and filing requirements for ballot access and to defend our filings against challenges that were filed in Nassau and Albany Counties (and ultimately withdrawn). We designated SAM as our proposed “party,” and appeared on the 2018 ballot as SAM candidates. On election day, Ms. Miner and I received 55,441 votes on the SAM line, allowing us to secure SAM recognized “party” status until and including the 2022 Gubernatorial election.

9. Since becoming a “party” after the 2018 election, SAM has vetted and nominated—and will continue to vet and nominate—candidates for village, town, county, regional, and statewide political office who endorse or exemplify these four pillars. To have a chance to establish name and brand recognition as a “new kind of party” and avoid getting prematurely embroiled in, or associated with, one side or the other of the ideological divide, SAM intends to continue to forego espousing substantive positions and nominating candidates for President.

10. In fact, to avoid becoming involved in the ideological divide of the Presidential election, SAM has declined overtures from candidates to be “SAM” candidates—even candidates aligned with SAM’s pillars of good government—where the race in which they are running is one that is likely to be seen and presented by the media as a proxy for the Presidential contest between President Trump and Vice President Biden.

SAM Has Capitalized on its “Party” Status by Expanding the Party and its Reach

11. Achieving and maintaining “party” status was crucial to the ability of SAM’s supporters to spread what has become the SAM message, to broaden SAM’s reach, and to attract members. Following the 2018 Gubernatorial election, SAM immediately took steps to use its “party” status and the associated benefits to expand SAM’s influence in New York.

12. With the ability to place candidates on the ballot for local and statewide office without the need to obtain signatures, and with the significant campaign-finance and potential brand-recognition advantages of official “party” status, SAM was able to attract candidates that shared its values. SAM nominated more than 100 candidates for village, town, county, and judicial offices in New York’s March and November 2019 elections. Some of these candidates were also nominated by the Democratic or Republican parties, but all shared SAM’s commitment to fundamental principles of transparency, accountability, electoral reform, and non-ideological problem solving.

13. SAM achieved significant success in its first elections as a “party.” More than 50 of SAM’s candidates won their elections for offices in 21 counties across New

York State. In 14 of those races, SAM represented the alternative party of choice, and in seven races it received more votes than at least one of the two traditional parties.

**If SAM's Party Status Is Not Restored By
February 2021 SAM Will Be Irreparably Harmed**

14. SAM decided, before any proposed change in New York's election law, that running a candidate for President would be contrary to its mission. Instead, SAM would focus on running candidates for village, town, local, regional, and statewide offices, including in races for village trustee, assembly and state senate seats, district attorney, county executives, and key mayoral and city council seats including in New York City. Thus, SAM has no intention to run—and will not run—a candidate for President in November 2020. Doing so would threaten SAM's structure and beliefs. As a result, under New York's new Presidential-election requirement, SAM will lose its "party" status after the November 2020 election. While SAM earned four years of "party" status through the 2018 Gubernatorial election, SAM will now be stripped of its last two years of status solely because SAM believes that running a Presidential candidate, becoming embroiled in the Presidential race, and being effectively forced to take positions on the core ideological issues of our time, is inimical to SAM's chosen strategy and will irredeemably taint its identity.

15. Losing "party" status will irreparably harm SAM and its members, and threaten SAM's existence. SAM will no longer be able to offer a ballot line to prospective candidates, who will instead have to raise and expend the resources necessary to petition for access to the ballot. And both SAM and its candidates will lose the significant campaign-finance and support advantages that come with SAM's official

“party” status. There will be severe restrictions on the ability of SAM supporters to assist in candidates’ efforts or coordinate with them, with the inevitable result of far, far fewer SAM-identified candidates.

16. The first official act for parties in which SAM will be unable to participate will be the filing of a statement of party positions for the 2021 elections. While the Board of Elections has not yet posted the official political calendar for 2021, that will be in early February. Thereafter, SAM will be unable to participate in the primaries for the 2021 electoral races—including New York City’s mayoral and city council elections which are a key focus for SAM—and will not be able to recruit candidates by offering them the financial support and ballot access that only “party” status permits. SAM will thus be irreparably harmed even if it prevails at a trial on the merits later in 2021 and has its “party” status restored, as the opportunities of the primary season in 2021 will be lost forever.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 11th day of September 2020.



Michael J. Volpe

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAM PARTY ET AL.,
Plaintiffs,

- against -

20-cv-323 (JGK)

KOSINSKI ET AL.,
Defendants.

OPINION AND ORDER

HURLEY ET AL.,
Plaintiffs,

- against -

20-cv-4148 (JGK)

KOSINSKI ET AL.,
Defendants.

JOHN G. KOELTL, District Judge:

The plaintiffs, recognized New York State political parties and their supporters, challenge recent amendments to the requirements to be recognized as a "party" under the New York Election Law. The plaintiffs allege that these amendments violate their First Amendment and Fourteenth Amendment rights. The New York Election Law provision at issue was amended by the New York State Legislature to increase the overall number of votes required for a political organization to qualify as a "party" (hereafter, "Party Qualification Threshold") and the frequency with which parties must requalify ("Party Qualification Method"). As amended, a political organization

must receive the greater of 130,000 votes or 2 percent of votes cast in the previous presidential or gubernatorial election, whichever is more recent. As a result, party status is now to be reviewed biennially, based on the votes received by a political organization's candidate in the previous gubernatorial or presidential election, beginning with the presidential election in November 2020.

The SAM Party of New York, an abbreviation for the "Serve America Movement" Party, and its Chairman, Michael A. Volpe, (together, the "SAM Party" or "SAM Party plaintiffs") challenge the inclusion of a political organization's performance in presidential elections as part of the Party Qualification Method, arguing that such a requirement, as applied to the SAM Party, violates the First Amendment rights to freedom of speech and association, and the equal protection and due process protections of the Fourteenth Amendment of the SAM Party and its supporters.

Linda Hurley, Rev. Rex Stewart, Robert Jackson, Richard N. Gottfried, Yuh-line Niou, Anita Thayer, Jonathan Westin, the New York State Committee of the Working Families Party, the Executive Board of the New York State Committee of the Working Families Party, and the Working Families Party of New York State, (together, the "WFP" or "WFP plaintiffs") challenge both the Party Qualification Method and Party Qualification

Threshold, both facially and as applied to the WFP, as a violation of their right to freedom of association and the equal protection and due process protections of the Fourteenth Amendment.¹

Both the SAM Party and the WFP have brought suit, pursuant to 42 U.S.C. § 1983, against Todd D. Valentine and Robert A. Brehm, the Co-Execute Directors of the New York State Board of Elections, and Peter S. Kosinski, Douglas A. Kellner, and Andrew J. Spano, the Commissioners of the New York State Board of Elections (the "Board"), each in their official capacities. Both the SAM Party and the WFP have moved for a preliminary injunction to enjoin the application of the party qualification requirements.

Because the SAM Party and the WFP plaintiffs have failed to demonstrate that allowing the amended party qualification

¹ At oral argument, counsel for the WFP claimed their challenge to the New York Election Law amendments included a challenge to the increase in the number of votes required for independent nominating petitions. See Tr. at 44-50. Such a challenge was not raised in their complaint or motion for a preliminary injunction and would not be a basis for a preliminary injunction because, as a recognized party, the WFP does not need to pursue independent nominating petitions as a means of ballot access for the 2020 election. Cf. Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548 (2016) (noting that to support standing a plaintiff must show that he or she suffered an injury that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical") (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992)).

requirements to take effect would violate their Constitutional rights, otherwise cause irreparable harm to the plaintiffs, or be against the public interest, their motions are **denied**.

I.

a.

Under the New York Election Law, a political organization that supports candidates for public office can be designated either as a "party" or an "independent body." N.Y. Elec. Law §§ 1-104(3), (12). Pursuant to amendments to the New York Election Law that became effective on April 3, 2020, to qualify as a party, a political organization's candidate for governor or president must have received the greater of 130,000 votes, or 2 percent of the total votes cast, in the most recent presidential or gubernatorial election. N.Y. Elec. Law § 1-104(3). Because New York gubernatorial elections occur off-cycle from presidential elections, this definition requires existing parties to requalify biennially. A political organization that fails to satisfy such requirements is an "independent organization." N.Y. Elec. Law § 1-104(12).

Parties, under the New York Election Law, are entitled to certain benefits, and are subject to certain requirements, which independent organizations are not. First, a party receives a "berthing" on general election ballots for president, governor, and other statewide elections, and for special elections and

state supreme court elections, without the need to submit voter signatures. N.Y. Elec. Law §§ 6-102, 6-104, 6-106, 6-114. Such secured ballot access is often referred to as “automatic” ballot access. Brehm Decl. ¶ 5. This “berthing” is reserved for the winner of the party’s nomination process, and the requirements for obtaining a party’s nomination vary with the office sought. N.Y. Elec. Law §§ 6-104, 6-114, 6-136, 7-104(5); Brehm Decl. ¶¶ 6-7. For those races in which a candidate must participate in a party primary, New York conducts primary elections to assist parties with selecting their nominees for certain offices, including Congressional and state legislature positions. Brehm ¶ 7.

By contrast, independent bodies nominate candidates directly onto the general election ballot, through submitting independent nominating petitions, which must include a specified number of signatures from registered voters, with different requirements depending on the public office sought. N. Y. Elec. Law § 6-142. The New York Election Law also supplies a third path for would-be public officeholders through write-in votes on the ballot.²

² However, write-in candidates for president or vice-president are required to make certain filings with the New York State Board of Elections before the third Tuesday before the general election. N.Y. Elec. Law § 6-153.

Parties enjoy other practical benefits under the New York Election Law. For example, parties are permitted to maintain a segregated account, often called a “housekeeping account,” to pay for the maintenance of its headquarters and party staff, to which ordinary contributions limits do not apply. Brehm Decl. ¶ 12; N.Y. Elec. Law § 14-124(3). Registered parties also appear on voter-registration forms so that voters can register as party members, N.Y. Elec. Law § 5-300, enabling parties greater ease in connecting with potential supporters.

Parties are also subject to certain regulatory requirements. For example, parties must establish certain committees, have certain officers, and submit certain filings with the Board. See, e.g., N.Y. Elec. Law §§ 2-102, 2-104, 2-106, 2-112, 2-114.

New York has a relatively high number of parties, which may be attributable to New York’s embrace of fusion voting. Mulroy Decl. ¶ 43. Fusion voting allows candidates nominated by more than one party or independent body to appear on a ballot multiple times, and as affiliated with each of the candidate’s nominating organizations. N.Y. Elec. Law § 7-104.³ While a

³ Candidates nominated by multiple parties appear next to each parties’ ballot line; more complicated rules apply for candidates nominated by a party and an independent body. See N.Y. Elec. Law § 7-104(4); Gonsalves v. New York State Bd. of Elections, 974 F. Supp. 2d 191, 195 (E.D.N.Y. 2013) (upholding the constitutionality of Section 7-104’s treatment of candidates

cross-nominated candidate's votes are "fused" across party or independent organization lines for purposes of the election, votes cast for the candidate count as votes for the party or independent organization on whose ballot line the voter selected, including for purposes of party requalification. Some have asserted that fusion voting enables minor parties to secure more votes in elections and enjoy greater influence. See, e.g., Mulroy Decl. ¶ 44. Both the SAM Party and the WFP have taken advantage of New York's fusion voting to cross-nominate candidates who are members of and have been nominated by different parties. Volpe Decl. ¶ 24; Nnaemeka, Decl. ¶ 10.

Prior to 2020, the New York party qualification requirements mandated an existing party to requalify every four years, by receiving over 50,000 votes in the gubernatorial election. Brehm Decl. ¶¶ 25-26. The party qualification threshold had remained at 50,000 votes for 85 years, despite the New York electorate experienced over a 2.5-fold increase over the period, increasing from close to 5 million in 1935 to nearly 13 million registered voters as of February 2020. Mulroy Decl. ¶ 12.

nominated by one or more parties and one or more independent bodies).

b.

The amended party qualification requirements that the plaintiffs challenge developed from the recommendations of a special commission, established to design a public campaign finance system for New York State and recommend electoral reforms. Part XXX of the Fiscal Year 2020 Enacted Budget created the New York State Campaign Finance Review Commission (the "Commission") as a "public campaign financing and election commission to examine, evaluate and make recommendations for new laws." 2019 N.Y. Sess. Laws, Ch. 59, Part XXX, § 1. Part XXX instructed the Commission to make its recommendations "in furtherance of the goals of incentivizing candidates to solicit small contributions, reducing the pressure on candidates to spend inordinate amounts of time raising large contributions for their campaigns, and encouraging qualified candidates to run for office." Id. The Commission was instructed to provide recommendations for a variety of aspects relating to the administration of a voluntary public campaign finance system, including contribution limits, appropriate ratios for contribution matching, regulatory compliance requirements, and penalties for violations of public financing rules. 2019 N.Y. Sess. Laws Ch. 59, Part XXX § 2.

The Commission was also instructed specifically to "determine and identify new election laws" relating to, among

other things, "rules and definitions governing: candidates' eligibility for public financing; party qualifications; multiple party candidate nominations and/or designations . . . " 2019 N.Y. Sess. Laws Ch. 59, Part XXX § 2(j). The Commission was also instructed that the public campaign finance system must be able to be administered with costs under \$100 million annually. 2019 N.Y. Sess. Laws Ch. 59, Part XXX § 3. Part XXX required the Commission to submit its report by December 1, 2019 and stated that its recommendation "shall have the full effect of law unless modified or abrogated by statute prior to December 22, 2019. 2019 N.Y. Sess. Laws Ch. 59, Part XXX § 1.

To arrive at a series of findings and recommendations, the Commission held public meetings, took public testimony, received written submissions, and conducted its own research. The Commission's Report to the Governor and the Legislature (hereafter, the "Report") included a series of recommendations to establish a voluntary public campaign finance system with matching of small-dollar donations up to certain caps for candidates for state office in primary and general elections that achieve certain donation thresholds, to lower campaign-contributions limits, and to found a Public Campaign Finance Board within the State Board of Elections to administer the public campaign finance system.

At issue here, the Commission also recommended changing the party qualification threshold to 2 percent of the total votes cast for a party's candidate in the previous gubernatorial or presidential race, or 130,000 votes, whichever is greater.⁴ The Commission explained that it made this recommendation because, among other reasons, the "ability of a party to demonstrate bona fide interest from the electorate is paramount in ensuring the success of a public campaign finance system," and that "setting a rational threshold for party ballot access, based on a demonstration of credible levels of support from voters in this state, helps to ensure that the political parties whose candidates will draw down on public funds under the public matching program reflect the novel and distinct ideological identities of the electorate of New Yorkers who ultimately fund this public campaign finance system." Report at 14. The Commission noted its belief that raising the party ballot access to a level that "retained a measure of proportionality" would "actually increase voter participation and voter choice, since voters will now be less confused by complicated ballots with multiple lines for parties that may not have any unique

⁴ The Report also recommended increasing the number of signatures required for "independent nominating petitions," used by a candidate supported by independent bodies or otherwise unaffiliated with a party to access the general election ballot. Report at 15.

ideological standards," and that the higher thresholds will enable voters to "make more resolute choices between candidates" as they can "rely upon the knowledge that such parties have sufficient popular support from the electorate of this state." Id. at 14-15. The Commission also noted the changes to the Party Qualification Threshold and Party Qualification Method were also important for "craft[ing] a public campaign finance system that remains within the enabling statute's limitation of \$100 million annual cost." Id. at 14.

The Commission detailed in its Report that in seeking to arrive at a "rational" threshold, it considered New York's historical experience, as well as the party qualification criteria and thresholds from other states. Report at 41-47. The Commission considered the frequency with which other states required parties to requalify, the number of votes required to requalify, whether qualification thresholds were made in reference to presidential and/or gubernatorial elections, whether states had public campaign finance systems, and whether states permitted fusion voting. Id. Minutes from the Commissions' meetings and statements from the individual Commissioners, included as part of the Report, reveal that a proposal of a 3 percent Party Qualification Threshold was originally considered and rejected, that the appropriate threshold was actively debated, and that the final 2 percent

threshold was a compromise based upon the information considered and competing policy views. See, e.g., Report at 48 (Statement of Commissioner Kimberly A. Galvin), 52 (Statement of Commissioner Denora Getachew), 62-64 (Statement of Commissioner Jay Jacobs), 67 (Statement of Commissioner John M. Nonna), 81 (Statement of Commissioner David C. Previte), and 133 (Minutes from November 25 Meeting at Westchester Community College).

The Commission issued its Report on December 1, 2019. Because the New York State Legislature did not pass any statutes modifying or abrogating the Commission's recommendations, such recommendations putatively acquired the "full effect of law" by December 22, 2019, and the relevant amendments to the party qualification requirements took effect on January 1, 2020. In an unrelated proceeding, a group of plaintiffs including several the WFP plaintiffs, challenged the Commission and its Report in New York state court. On March 12, 2020, the Honorable Ralph A. Boniello, III, of the New York State Supreme Court ruled that the New York State legislature improperly delegated legislative authority to the Commission, and as a result the Commission's recommendations did not have the force of law. SAM Party Am. Compl., Ex. B.

In response, Part ZZZ was added to the Fiscal Year 2021 Bill, which the New York State Legislature passed, and Governor Cuomo signed into law on April 3, 2020. Part ZZZ amended the New

York Election Law to enact the recommendations of the Commission, including an amendment to Section 1-104(3) to modify the definition of "party" to include the new Party Qualification Threshold and Party Qualification Method. 2020 N.Y. Sess. Laws Ch. 58, Part ZZZ.

c.

The SAM Party is a party in New York having successfully obtained over 50,000 votes for its gubernatorial candidates in the 2018 election. SAM Party Am. Compl. ¶¶ 2, 4. Michael Volpe is the Chairman and a registered SAM Party member, as well as a registered voter in New York. He also previously was the SAM Party's candidate for Lieutenant Governor in 2018. SAM Party Am. Compl. ¶ 5. In order to nominate Stephanie Minor and Michael Volpe, as its candidates for governor and lieutenant governor, respectively, in the 2018 gubernatorial election, the SAM Party and its supporters submitted an independent nominating petition; and, Minor and Volpe, as the SAM Party candidates, received more than the 50,000 votes for governor. See SAM Party Am. Comp. ¶ 31; Volpe Decl. ¶¶ 7, 15-22.

The SAM Party professes to be a "new kind of candidate-focused, process-driven" political party, one focused on "four pillars of good government": accountability, transparency, electoral reform, and problem solving. Volpe Decl. ¶¶ 2, 8-12. The SAM Party claims that it intends to "forego espousing

substantive positions” to “avoid getting prematurely embroiled in, or associated with, one side or the other of the ideological divide.” Volpe Decl. ¶ 13. Related to this aversion to being perceived as adopting substantive positions, the SAM Party claims that it “will not run a candidate for president” in 2020 and thus “will lose” its party status after November 2020, as a result of the amended law. SAM Party Am. Compl. ¶ 5.

The WFP is also a party in New York. Founded in 1998, the WFP achieved party status in the year it was formed by receiving more than 50,000 votes in the 1998 gubernatorial election and has maintained party status since. Nnaemeka Decl. ¶ 4. Over its 22 years as a party, the WFP has run thousands of candidates for federal, state, and local office, Nnaemeka Decl. ¶ 6. The WFP has run candidates for president in each of the last five presidential elections, including Hilary Clinton in 2016, Brehm Decl. Ex. A; Hallak Decl. G. Many of the WFP’s candidates, such as the plaintiffs, State Assemblymember Yuh-Line Niou and State Senator Robert Jackson, are members of other political parties and have been cross-nominated, allowing the WFP to use New York’s fusion voting laws to form coalitions with other parties and enabling such cross-nominated candidates to signal their commitment to the WFP’s “progressive policy agenda.” Niou Decl. ¶ 2-3; Jackson Decl. ¶ 3-4; Nnaemeka Decl. ¶ 10.

The SAM Party filed its original complaint on January 14, 2020, alleging the Commission's recommendations violated SAM Party's First and Fourteenth Amendment rights to freedom of association, freedom of speech, equal protection, and due process of law, and sought declaratory and injunctive relief. Following the invalidation and subsequent reenactment of the challenged the New York Election Law amendments, the SAM Party filed an amended complaint, challenging the New York Election Law amendments on the same grounds as those in the original complaint, on May 11, 2020, and moved for a preliminary injunction on May 18, 2020. Both the SAM Party's amended complaint and motion for a preliminary injunction challenge the use of a presidential election as a reference for the Party Qualification Method, but do not contest the reference to gubernatorial election votes or the quantum of the Party Qualification Threshold.⁵

On May 29, 2020, the WFP plaintiffs filed a complaint and moved for a preliminary injunction. In their complaint, the WFP plaintiffs assert that the Party Qualification Method and Party Qualification Threshold not only violated the First and

⁵ At oral argument, Counsel for the SAM Party plaintiffs noted that the Person case holds that a "gubernatorial requirement, per se, is constitutional." Tr. at 18. See Person v. New York State Bd. of Elections, 467 F.3d 141, 144 (2d Cir. 2006) (per curiam).

Fourteenth Amendments as applied to the WFP, its candidates, and its supporters, but are also "invalid in all their applications" and "facially invalid." WFP Compl. ¶ 58. The WFP also sought declaratory relief that "the Constitution and Laws of the State of New York guarantee the right of fusion voting." WFP Comp. ¶ 68. The WFP also filed a motion for a preliminary injunction on May 29, seeking to "restore the party qualification requirements to their pre-April 2020 levels and uphold the remainder of the Election Law as amended by Part ZZZ" of Fiscal Year 2021 Bill. WFP Prelim. Inj. Mem. at 30.

The defendants filed their opposition to the motions for a preliminary injunction on July 2, 2020, and this Court heard oral argument on the motions on August 13, 2020.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343; personal jurisdiction is not contested; and venue is proper.

II.

A preliminary injunction is "one of the most drastic tools in the arsenal of judicial remedies," Grand River Enter. Six Nations, Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007) (per curiam) (citation omitted), and "never awarded as of right." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). When seeking a "preliminary injunction against government action taken in the public interest pursuant to a statutory scheme,

[moving parties] must demonstrate that (1) [they are] likely to succeed on the merits of the underlying claim, (2) [they] will suffer irreparable harm absent injunctive relief, and (3) the public interest weighs in favor of granting the injunction." Pope v. Cty. of Albany, 687 F.3d 565, 570 (2d Cir. 2012); Upstate Jobs Party v. Kosinski, 741 F. App'x 838, 839 (2d Cir. 2018).⁶ A showing of irreparable harm is "the single most important prerequisite for the issuance of a preliminary injunction." Faiveley Transp. Malmo AB v. Wabtec Corp., 559 F.3d 110, 118 (2d Cir. 2009) (citation omitted). The moving party must also demonstrate that the "balance of equities tips in [their] favor." Winter, 555 U.S. at 20.

⁶ In the Second Circuit, when seeking an injunction that is "mandatory" (one that changes the status quo) a moving party is held to a heightened standard, requiring a demonstration of a "clear" or "substantial" likelihood of success on the merits and a "strong showing" of irreparable harm. See New York ex rel. Schneiderman v. Actavis PLC, 787 F.3d 638, 650 (2d Cir. 2015). Here, the SAM Party and WFP plaintiffs challenge statutory provisions that have already been enacted and taken effect. However, the consequences of the amended laws will not attach to the plaintiffs, as a matter of law, until after the November 2020 election. Thus, much depends on how the status quo is characterized. Cf. Tom Doherty Assocs., Inc. v. Saban Entm't, Inc., 60 F.3d 27, 34 (2d Cir. 1995) ("Confusion . . . as to whether an injunction is mandatory or prohibitory may stem from the meaning of 'status quo.'"). It is unnecessary to decide whether the heightened standard applies, because the plaintiffs have failed to satisfy even the regular standard.

As explained below, the plaintiffs have failed to demonstrate that they are likely to succeed on the merits of any of their claims, that they will suffer irreparable harm without an injunction, or that the public interest or balance of equities weigh in their favor.

a.

The United States Constitution “grants States broad power to prescribe the ‘Times, Places and Manner of holding Elections for Senators and Representatives,’ Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices.” Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 451 (2008) (quoting Clingman v. Beaver, 544 U.S. 581, 586 (2005)). While the “First Amendment protects the rights of citizens to associate and form political parties for the advancement of common political goals and ideas,” the Supreme Court and courts in this Circuit have recognized that “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997); Storer v. Brown, 415 U.S. 724, 730 (1974) (“As a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.”); Person, 467 F.3d at 144; Prestia v.

O'Connor, 178 F.3d 86, 88 (2d Cir. 1999) (per curiam). Since “each provision of [election law], whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends,” Burdick v. Takushi, 504 U.S. 428, 433 (1992), courts do not subject each election law or regulation to “strict scrutiny” nor “require that [each] regulation be narrowly tailored to advance a compelling state interest.” Id. To do so would “tie the hands” of state governments, Id., “hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes.” Clingman, 544 U.S. at 593.

Instead, when faced with a challenge to a state election law, federal courts are instructed to “weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.” Burdick, 504 U.S. at 434 (quoting Anderson v. Celebrezze, 460 U.S. 780, 789 (1983)). While voting and ballot “[r]egulations imposing

severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest," lesser burdens "trigger less exacting review." Timmons, 520 U.S. at 358. "When a state electoral provision places no heavy burden on associational rights, 'a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.'" Clingman, 544 U.S. at 593 (quoting Timmons, 520 U.S. at 358 (internal quotations omitted)).

While restrictions placed on a political party implicate the First Amendment rights of its supporters, Anderson, 460 U.S. at 786, political parties themselves "have no constitutional right to appear on a ballot." Person, 467 F.3d at 144 (citing Prestia, 178 F.3d at 88-89). Parties do not have a specific "right to use the ballot itself to send a particularized message." Timmons, 520 U.S. at 363 ("Ballots serve primarily to elect candidates, not as forums for political expression."). Courts have long understood that "States may condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office." Munro v. Social Workers Party, 479 U.S. 189, 193 (1986). See also Prestia, 178 F.3d at 88 (noting states' "important interest in requiring some preliminary showing of a significant modicum of support" before

permitting candidates to appear on a general election ballot) (quoting Jenness v. Fortson, 403 U.S. 431, 442 (1971)).

In this case, the burdens placed on the rights of the SAM Party, the WFP, and their supporters, while not trivial, are not severe. The amendments enacted by the New York State Legislature to the party qualification requirements were adopted in the pursuit of valid, important regulatory interests, and such interests are of sufficient weight to warrant the limitations placed upon the plaintiffs. Taken together, the Party Qualification Threshold and Party Qualification Method are reasonable, nondiscriminatory policy choices to advance valid regulatory interests, within the boundaries that the First and Fourteenth Amendments prescribe. Accordingly, the SAM Party and the WFP have failed to demonstrate that they are likely to succeed on the merits, such that a preliminary injunction is warranted.

1.

The SAM Party and the WFP plaintiffs argue that the Party Qualification Threshold and Party Qualification Method place “severe” burdens upon their First and Fourteenth Amendment rights, warranting strict scrutiny. The SAM Party claims that “[r]equiring the [SAM Party] to nominate a candidate for President or else lose ‘party’ status imposes a severe burden” on the SAM Party and its supporters, SAM. Am. Compl. ¶ 73. The

SAM Party further claims that, because the SAM Party "will not nominate a candidate for President," the Party Qualification Threshold will "bar[] [SAM Party] from the ballot." SAM. Am. Compl. ¶ 74. The WFP plaintiffs claim that "[r]equiring ANY [sic] Political Party to nominate a candidate for President and to obtain 2% of 130,000 votes or else lose 'party' status imposes a severe burden." SAM Party Compl. ¶ 56.

When assessing whether a challenged provision places a "severe burden" upon a plaintiff's First and Fourteenth Amendment rights, courts in this Circuit are instructed to "consider the alleged burden imposed by the challenged provision in light of the state's overall election scheme." Schulz v. Williams, 44 F.3d 48, 56 (2d Cir. 1994) (finding a signature threshold requirement was not a "severe burden"). "The hallmark of a severe burden is exclusion or virtual exclusion from the ballot." Libertarian Party of Connecticut v. Merrill, No. 3:20-CV-0467, 2020 WL 3526922, at *8 (D. Conn. June 27, 2020) (quoting Libertarian Party of Kentucky v. Grimes, 835 F.3d 570, 574 (6th Cir. 2016)). As such, state election laws are less likely to impose impermissibly severe burdens, if minor party candidates have other channels to seize upon the "availability of political opportunity." Munro, 479 U.S. at 199 (upholding a Washington State 'blanket' primary, in which minor-party candidates needed to secure more than 1 percent of votes cast in

order to be placed on the general election ballot as an acceptable "vehicle by which minor-party candidates must demonstrate voter support") (internal quotations omitted) .

Here, based on precedent from similar election laws and the other avenues available to the SAM Party and the WFP for supporting candidates for public office, the burdens imposed by the Party Qualification Threshold and Party Qualification Method to demonstrate a modicum of voter support are not severe.

First, the WFP's claim that the Party Qualification Threshold (of 130,000 votes or 2 percent of the votes cast) is a "severe burden" is unpersuasive, in light of precedent upholding ballot access provisions requiring demonstrations of a much higher "modicum of support" than the quantum Party Qualification Threshold requires. For example, in Jenness v. Fortson, the Supreme Court upheld a Georgia election law that required a political organization's candidate to receive 20 percent or more of the votes in the most recent gubernatorial or presidential election to be a recognized "political party," and required all other political organizations to secure the signatures of 5 percent of the voters in the state to get their candidates on the ballot. 403 U.S. 431, 434 (1971). The Jenness court examined the totality of opportunities available for political candidates under Georgia's Election Laws and emphasized that the availability of nominating petitions and write-in votes left

sufficient channels to avoid “freez[ing] the status quo” and to “recognize[] the potential fluidity of American political life.” Id. at 439. Other ballot access provisions requiring demonstrations of support from higher percentages of votes cast in a previous election or of registered voters (a more challenging denominator) have similarly been upheld. See, e.g., Prestia, 178 F.3d at 88 (noting that states’ “important interest in requiring some preliminary showing of a significant modicum” meant that “a requirement that ballot access petitions be signed by at least 5% of the relevant voter pool is generally valid, despite any burden on voter choice that results when such a petition is unable to meet the requirement”); Hewes v. Abrams, 718 F.Supp. 163, 167 (S.D.N.Y. 1989) (“[U]nder Jenness a standardized 5% signature requirement would be constitutional”), aff'd, 884 F.2d 74, 75 (2d Cir. 1989) (“affirm[ing] substantially for the reasons stated by” the district court); Rainbow Coal. of Okla. v. Okla. State Election Bd., 844 F.2d 740, 743 (10th Cir. 1988) (relying on Jenness and stating that a requirement for minor parties to obtain a number of voter signatures equal to 5 percent of the votes cast in the last presidential or gubernatorial election is “undeniably constitutional”). In short, the WFP has failed to demonstrate the quantum of the Party Qualification Threshold is such a “severe burden” such that strict scrutiny should be applied.

Next, both sets of plaintiffs argue that the Party Qualification Method, which requires a biennial qualification and thereby requires qualification in both gubernatorial and presidential elections, places severe burdens upon them and their supporters, warranting strict scrutiny.⁷ The SAM Party argues that the Party Qualification Threshold forces the SAM Party to run a presidential candidate or lose party status. The SAM Party claims that running a presidential candidate would be against to its chosen strategy, requiring the SAM Party to make a "180-degree shift" and "to speak to national issues—such as abortion, immigration, and military spending—on which SAM does not have and does not want a formal position." Volpe Decl. ¶ 33. However, the SAM Party's record belies its claims that running a presidential candidate would be as severe a burden as the SAM Party plaintiffs insist. The SAM Party claims it has devised a special selection methodology, a "scorecard," to nominate candidates from across the political spectrum, that match the

⁷ The WFP's claim that this restriction is a "severe burden" is undercut by the fact that the WFP has run presidential candidates in each of the last five elections. The certified election results supplied in Brehm Decl. Ex. A, appear to show that WFP presidential candidates have received over 130,000 votes on the WFP ballot line in the 2004, 2008, 2012, and 2016 Presidential elections, and would have also satisfied the 2 percent threshold in at least two such elections. See also Brehm Decl. ¶ 24 ("Since 2006, WFP achieved more than 2% of the vote in 4 out of 11 general elections for president or governor.").

SAM Party's commitment for transparency, accountability, electoral reform, and problem-solving. Yet, the SAM Party has failed to articulate a convincing explanation why it could not apply such a scorecard to nominate, or cross-nominate, a candidate for president.⁸ The SAM Party has already selected and run its own gubernatorial candidate, and a gubernatorial candidate must take positions on difficult, substantive issues. The SAM Party's claim not to want to take positions on issues that are "national in scope" seems at odds with the fact that the SAM Party has already nominated candidates for federal offices, Tr. at 23, that similarly will be forced to take positions on national, substantive issues. The SAM Party has failed to demonstrate why running a presidential candidate would be so categorically different or harmful.

In any event, the Party Qualification Method does not require the SAM Party to run a presidential candidate of its own or to cross-designate a candidate of one of the other parties. The SAM Party is left with a choice - which includes the continued opportunity to seek paths to the ballot other than a

⁸ The SAM Party's affiliated national SAM website, on a page that claims a 2019 copyright, exclaims that the SAM Party intends to run candidates "[i]n all 50 states, from dog catcher to president. See Hallak Decl. Ex. E; <https://joinsam.org/our-party/how-we-win/>. At oral argument, counsel for the SAM Party stated that the reference to "president" was intended to have been deleted after the SAM Party decided to change its strategy and that the web designers "missed" a reference. Tr. At 24.

party "berthing." The SAM Party plaintiffs have pointed to no authority to support their contention that the "choice" they are faced with is a severe burden, given that the SAM Party will still have means for accessing the state general election ballots for its candidates, even if it loses party status. Tr. at 31-32.

The reasoning of the Second Circuit Court of Appeals in Person v. New York State Board of Elections undermines the SAM Party's argument. 467 F.3d at 141, 144. In Person, the plaintiff argued that the New York Election Law's reference to votes received in gubernatorial elections, as a requirement for party status, was impermissible, because it forced parties "to nominate and place their emphasis upon obtaining votes for their gubernatorial candidate instead of a different statewide candidate they might have preferred to nominate and support." Id. at 144. The Person court, found that "it does not appear that the state is forcing [the plaintiff's] party to divert its resources in any particular way, nor that it is impermissibly interfering with the internal management of parties' affairs, because parties are free to choose not to seek official status." Id. Therefore, the requirement that linked party status to receiving a minimum number of votes in the gubernatorial election did not violate either the plaintiff's or "to the extent they exist, his party's rights." Id. The SAM Party is

free to choose whether it intends to endorse a candidate for president or not. That the SAM Party's chosen political strategy could lead to practical consequences through its loss of party status is not sufficient to demonstrate the Party Qualification Method places a "severe burden" warranting strict scrutiny. See Green Party of Arkansas v. Martin, 649 F.3d 675, 683 (8th Cir. 2011) (upholding a similar ballot access restriction which required parties to receive 3 percent of the votes cast in the previous gubernatorial or presidential election, over objections that it interfered with the Green Party's "strategy").

Both sets of plaintiffs seek to rely upon a single sentence in the opinion of the Sixth Circuit Court of Appeals in Libertarian Party of Kentucky v. Grimes, a case in which the Court of Appeals actually upheld a law requiring that a party demonstrate its candidate had received 2 percent or more of the vote in the last presidential election to gain automatic ballot access. 835 F.3d 570, 576 (6th Cir. 2016). In the sentence in which the plaintiffs seek comfort, the Grimes Court declined to consider a hypothetical case, offered by the appellants, of a party who had not previously run a presidential candidate needing to do so for the first time in order to achieve automatic ballot access. Grimes, 835 F.3d at 576 (noting that "while that argument may have some force, . . . the hypothetical

burden of Kentucky's regulation on a hypothetical party has no bearing on appellants, and we do not decide how severe, if at all, such a burden would be"). A hypothetical case that the Court of Appeals did not decide offers no support for the plaintiffs' argument here. The plaintiffs ignore the Grimes court's holding and reasoning - that the party qualification restriction at issue "cannot constitute exclusion or virtual exclusion" because the "alternative option of filing petitions for each candidate's candidacy remain[s] . . . a reasonable means of ballot access. 835 F.3d at 575-76. Like the plaintiffs in Grimes, the SAM Party and the WFP still have available such an alternative option for ballot access, by having their candidates secure their place on the ballot through independent nominating petitions. Candidates accessing the ballot through independent nominating petitions similarly have access to the public campaign finance system for the general election, provided they can satisfy the other eligibility criteria and thresholds. See N.Y. Elec. Law § 14-203(1)(b). That New York, unlike Kentucky, allows for fusion voting, further underscores that the Party Qualification Method leaves open to the SAM Party and the WFP a sufficient number of channels for political opportunity.

Finally, both sets of plaintiffs point to language in three cases in which the Supreme Court found regulations of party

primaries to be "severe" burdens because such regulations interfered with political parties' selection of their nominee. Cal. Dem. Party v. Jones, 530 U.S. 567, 581 (2000) (holding California's "blanket" primary process, in which each voter's primary ballot listed every candidate, regardless of party affiliation, and allowed voters to choose freely among them, was a "severe" burden); Eu v. S.F. County Dem. Cent. Comm., 489 U.S. 214, 223-24 (1989) (finding California Elections Code provisions that, among other things, banned party governing bodies from endorsing their preferred primary candidates, violated the First and Fourteenth Amendments); Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 215-16 (1986) (finding a Connecticut law that only permitted registered party members to vote in primary elections to violate the rights of a party which sought to permit unaffiliated voters participate in its primary). Simply put, these cases are inapposite. The Party Qualification Method does not infringe on the internal processes of political parties. The Party Qualification Method does not, in any way, "adulterate" the plaintiffs' primary process, by, for example "opening it up to persons wholly unaffiliated with the party," Jones, 530 U.S. at 581, or by preventing the governing bodies of the SAM Party or the WFP from endorsing or opposing a candidate in an election, Eu, 489 U.S. at 223-24, or by placing limits upon the "group of registered voters whom the [plaintiffs] may

invite to participate in the basic function of selecting the [SAM Party or the WFP] candidates." Tashjian, 479 U.S. at 215-16 (quotation marks and citation omitted). See also Green Party of Arkansas v. Martin, 649 F.3d 675, 682 (8th Cir. 2011) (rejecting similar arguments based on Jones, Eu, and Tashjian, advanced by plaintiffs opposing a party qualification requirement that required a threshold of performance in past gubernatorial or presidential elections). Instead, the SAM Party and the WFP remain free "to canvass the electorate, enroll or exclude potential members, nominate the candidate of its choice, and engage in the same electoral activities as every other party," or aspiring party, in New York. Clingman, 544 U.S. at 587. The SAM Party and the WFP each still have "great latitude in [their] ability to communicate ideas to voters and candidates," because the election laws at issue here do not restrict the plaintiffs' ability to "endorse, support, or vote for anyone they like," do not "directly limit the party's access to the ballot," and are "silent on the parties' internal structure, governance, and policymaking." Timmons, 520 U.S. at 363.

Therefore, neither the Party Qualification Threshold nor the Party Qualification Method rises to the level of being a "severe burden" on the SAM Party, the WFP, or their supporters' First or Fourteenth Amendment rights.

2.

Because neither the Party Qualification Threshold nor the Party Qualification Method place “severe” burdens upon the First Amendment rights of the SAM Party or the WFP, New York’s asserted regulatory interests “need only be sufficiently weighty to justify the limitation imposed on the [plaintiffs’] rights.” Timmons, 520 U.S. at 364 (internal quotation marks and citation omitted). See also Burdick, 504 U.S. 428, 434 (1992) (quoting Anderson, 460 U.S. at 788). Because the interests offered by New York are valid and “sufficiently weighty,” and the amendments to the Party Qualification Threshold and the Party Qualification Method are reasonable, nondiscriminatory measures, designed to further such interests, the SAM Party and the WFP plaintiffs have failed to show they are likely to prevail on the merits.

The State of New York has offered several important regulatory interests to justify the Party Qualification Threshold and Party Qualification Method. The amended party qualification requirements help ensure that candidates appearing on the ballots enjoy a “modicum” of support, thereby assisting in maintaining an organized, uncluttered ballot; preventing voter confusion and frustration; avoiding fraudulent and frivolous candidacies; and assisting the maintenance of an efficient public finance system. See Mulroy Decl. ¶¶ 34-36 (discussing ballot confusion); Brehm Decl. ¶¶ 31-42 (discussing

ballot complexity and voter confusion), ¶¶ 45-47 (discussing how the amended party qualifications help to ensure public campaign funding does not go towards frivolous intra-party primary campaigns). See Munro, 479 U.S. at 193-94 (affirming the validity of states' interest in avoiding frivolous candidates and ensuring candidates on ballots enjoy a "modicum" of support); Storer, 415 U.S. at 732 (affirming the validity of states' interest in preventing overcrowded ballots and voter confusion); Green Party of Connecticut v. Garfield, 616 F.3d 213, 232 (2d Cir. 2010) (affirming the validity of a state's interest in not funding "hopeless" candidates through a public campaign funding system) (citation omitted). As noted in the Commission's Report, the Commission believed "setting a rational threshold for party ballot access, based on a demonstration of credible levels of support from voters in this state, helps to ensure that the political parties whose candidates will draw down on public funds under the public matching program reflect the novel and distinct ideological identities of the electorate of New Yorkers who ultimately fund this public campaign finance system." Report at 14-15. The Commission's Report makes clear that its recommendations, which the New York State Legislature enacted, were in furtherance of these valid interests, and that the Commission sought to tailor its recommendations in reasonable, nondiscriminatory furtherance of such valid

interests. Timmons, 520 U.S. at 364 (noting the Burdick-Anderson balancing test does not “require elaborate, empirical verification of the weightiness of the State's asserted justifications”); Munro, 479 U.S. at 194–95 (“We have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access.”).

The party qualification standards, encompassing both the Party Qualification Threshold and the Party Qualification Method, are well within the election law requirements upheld in other cases and further the reasonable goals of avoiding overcrowded ballots and voter confusion and ensuring that candidates who appear on the ballot enjoy a “modicum of support.” See, e.g., Jenness, 403 U.S. at 440-41 (upholding a Georgia statute that required organizations have candidates receive 20 percent of the votes in a specified election to qualify for party access, and 5 percent for ballot access); Prestia, 178 F.3d at 88 (noting that ballot access petitions requiring demonstrations of support of “at least 5% of the relevant voter pool is generally valid, despite any burden on voter choice that results when such a petition is unable to meet the requirement”). See also Martin, 649 F.3d at 683 (upholding a requirement for a political party to obtain 3 percent of the

vote in the next general election); Libertarian Party of Ill. v. Rednour, 108 F.3d 768, 775 (7th Cir. 1997) (relying on Jeness and upholding a signature requirement based on 5 percent of the vote in the past gubernatorial election); McGlaughlin v. N.C. Bd. Of Elections, 65 F.3d 1215, 1222 (4th Cir. 1995) (upholding North Carolina election laws requiring a petition containing signatures of 2 percent of votes cast in the past gubernatorial election for a party to gain access to ballot and requiring party's candidate for president or governor to receive 10 percent of votes in the general election for the party to remain on the ballot); Rainbow Coalition, 844 F.2d at 744 (upholding a requirement of 5 percent of the votes cast in the last general election to become a party and concluding that "the five percent requirement itself is undeniably constitutional"); Aruntunoff v. Okla. State Election Board, 687 F.2d 1375, 1378-80 (10th Cir. 1982) (upholding an Oklahoma law requiring that a party receive 10 percent of the vote in the last gubernatorial or presidential election to maintain its party status).

The WFP alleges that the new Party Qualification Threshold will eliminate "nearly all parties that are currently qualified," and points to the 2018 gubernatorial election in which of the "eight minor parties" (those other than the Republican and Democratic parties) only one would have satisfied the new Party Qualification Threshold. Winger Decl. ¶ 6.

However, the Commission looked at past gubernatorial and presidential elections, and it appears that more parties would be able to achieve the threshold. See, e.g., Brehm Decl. Ex. A. In any event, the Supreme Court has made clear that states have valid, and “sufficiently weighty,” reasons to limit ballot access to parties with a “modicum” of support. See Timmons, 520 U.S. at 364; Jenness, 403 U.S. at 442. New York is not required to predict what the specific effects of reasonable ballot restrictions will be or the number of political organizations that will be able to maintain party status, by achieving that sufficient “modicum” of support.

The SAM Party and the WFP both argue that the changes made to the Party Qualification Method, requiring that parties requalify biennially based on their performance in alternating presidential or gubernatorial elections, even if not found to be severe, cannot survive a lower level of scrutiny. But, the Party Qualification Method of looking to statewide races, every two years, is a reasonable method for measuring whether parties continue to enjoy a sufficient “modicum” of support. Courts have regularly found the use of popular vote totals in previous elections to be an appropriate measure of public support. See, e.g., Jenness, 403 U.S. at 439-440; Green Party of Connecticut, 616 F.3d at 232 (noting that “popular vote totals in the last election are a proper measure of public support”) (quoting

Buckley v. Valeo, 424 U.S. 96, 99 (1976)). Many states other than New York link party status to votes received in specified elections. Mulroy ¶ 14. (noting at least 21 states require parties to demonstrate that they have a requisite amount of support by receiving votes in specified elections either to become or to remain a party). While states vary in how frequently they require parties to requalify, at least 18 other states require parties to meet certain state requirements to remain a party at least annually. Mulroy ¶ 13. Further, as the Committee noted in its report, “[o]f the [15] states that require qualification every two years or at every general election, twelve have thresholds at 2 [percent] or higher.” Report at 45.

Both the WFP and the SAM Party plaintiffs seek to analogize the use of the alternating reference to presidential and gubernatorial elections to the decision by the Court of Appeals for the Seventh Circuit in Libertarian Party of Ill. V. Scholz. 872 F.3d 518 (7th Cir. 2017). In that case, the Court of Appeals invalidated an Illinois ballot access statute that required parties to run a “full slate” of candidates for “each race in the relevant political subdivision” in order to maintain party status. Id. at 521. Scholz is inapposite. The party qualification requirement in Scholz is far more burdensome for parties—nascent or otherwise—than the New York qualification

criteria at issue here. New York parties need only focus on one race to requalify, and New York (unlike Illinois) permits fusion voting. Mulroy Decl. ¶ 49. Moreover, the Seventh Circuit Court of Appeals found that the “full slate” requirement was not sufficiently related to the justifications offered by Illinois (relating to demonstrating a modicum of support and seriousness of the candidates), because merely running candidates for a race did not in any way guarantee their seriousness or level of support. Scholz, 872 F.3d at 525-26. By contrast, the New York Party Qualification Method focuses exclusively on a party’s ability to build support for a candidate on a statewide basis. The criterion – number of votes in a statewide election – is directly linked to the goals advanced by New York. Further, New York’s fusion voting reduces the burden such a restriction places upon minor parties.

The Commission, upon whose recommendations the New York State Legislature acted, considered a variety of measures to ensure that parties automatically appearing on the ballot and enjoying access to the public campaign finance system for their primary would enjoy a “modicum” of support, and sought to reach a reasonable, nondiscriminatory compromise in furtherance of valid interests.⁹ The Party Qualification Threshold ultimately

⁹ Brehm Decl. ¶ 44-45. The plaintiffs have filed exhibits suggesting that, because the access to the public campaign

enacted is not so high and burdensome that it outweighs the state's valid regulatory interests. Munro, 479 U.S. at 198 ("States are not burdened with a constitutional imperative to reduce voter apathy or to 'handicap' an unpopular candidate to increase the likelihood that the candidate will gain access to the general election ballot.") The Party Qualification Threshold (of 130,000 votes, or 2 percent of the total votes

finance system requires both a minimum qualifying threshold of funds raised from a minimum number of donors, and is also subject to certain caps, including a \$5,000 cap for primary race candidates in smaller party primaries (specifically party primaries with fewer than 1,000 eligible primary voters), New York's cost-focused justifications, relating to minor party primaries, are not compelling. See N.Y. Elec. Law §§ 14-203(a), 14-204(5). While these arguments suggest it may not have been necessary to consider potential expense when raising the Party Qualification Threshold and requiring a more frequent Party Qualification Method, or that alternative policy options existed, these arguments do not show that it was impermissible to consider such potential costs. First, limiting access to public money, even if the amount is "only" \$5,000, "serves the important public interest against providing artificial incentives to splintered parties and unrestrained factionalism." Green Party of Connecticut, 616 F.3d at 231 (quoting Buckley, 424 U.S. at 96). Further, it was reasonable for the New York State Legislature and the Commission to have been concerned that a public campaign finance system may modify behavior, making running for office more attractive, at some expense to the public campaign finance system. Munro, 479 U.S. at 195-96 ("Legislatures ... should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights"). In any event, the remaining reasons for the restrictions on continued ballot access for parties were sufficiently weighty to justify such restrictions, even without considering any benefits relating to the public campaign finance system.

cast), while not set at a level the WFP would prefer, is not so disproportionate or unreasonable as to be unconstitutional. Similarly, the Party Qualification Method of measuring a party's performance in a statewide race biennially is a reasonable, proportionate policy choice to ensure parties continue to enjoy a sufficient "modicum" of support. Accordingly, the SAM Party and the WFP plaintiffs have failed to show that the adoption of either the Party Qualification Threshold or the Party Qualification Method warrants the strong judicial remedy of overturning a validly enacted act of the New York State Legislature.

For the reasons state above explaining why the WFP plaintiffs have failed to demonstrate the likelihood of success on the merits of their claims that the New York Election Law provisions at issue are unconstitutional as applied to them, the WFP plaintiffs have failed to make the much higher showing required to demonstrate a likelihood of success on the merits of their facial challenge. Wash. State Grange, 552 U.S. at 449 (upholding an election law restriction and noting "a plaintiff can only succeed in a facial challenge by "establish[ing] that no set of circumstances exists under which the Act would be valid," i.e., that the law is unconstitutional in all of its applications") (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)).

b.

The plaintiffs have also failed to establish that absent a preliminary injunction they will likely suffer “an injury that is neither remote nor speculative, but actual and imminent and one that cannot be remedied if a court waits until the end of trial to resolve the harm.” Freedom Holdings, Inc. v. Spitzer, 408 F.3d 112, 114 (2d Cir. 2005) (internal quotations omitted). For purposes of a preliminary injunction, the plaintiffs must show that the probability that harm would occur without an injunction is more than a “possibility.” JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75, 79 (2d Cir. 1990). For cases where the alleged injury relates to violations of First Amendment rights on the merits of the action, the presence of irreparable injury “turns on whether the plaintiff has shown a clear likelihood of success on the merits.” Beal v. Stern, 184 F.3d 117, 123-24 (2d Cir. 1999). Here, the plaintiffs have failed to demonstrate that they will suffer injuries which justify the extraordinary remedy of a preliminary injunction, especially because the plaintiffs have failed to demonstrate their likelihood of success on the merits of their claims.

The WFP plaintiffs’ primary theory for irreparable harm seems to be concern that they will fail to secure enough votes

in the November election to maintain party status.¹⁰ Such an injury is too speculative to warrant a preliminary injunction and is not “irreparable” without relief granted at this time. It is far from certain that the WFP will fail to achieve the required number of votes. But, even if the WFP did fail to meet that threshold, the WFP could pursue relief at that time.

The SAM Party has advanced a more unusual theory of harm, which is similarly unpersuasive. For the reasons explained above, the SAM Party’s claimed injuries suffered from alleged violations of the First and Fourteenth Amendment rights of the SAM Party and its supporters are without merit. As such, the possibility that the Party Qualification Method may interfere with the SAM Party of New York’s chosen strategy for the 2020 elections is not sufficient to demonstrate irreparable harm warranting a preliminary injunction. Further, if the SAM Party chooses not to nominate or cross-nominate a presidential candidate and forfeits requalification as a party, the SAM Party would still have other ways to access the ballot and communicate with voters. The SAM Party could also seek relief at that point.

¹⁰ The WFP has failed to provide an explanation for how the Party Qualification Threshold or the Party Qualification Method affect their behavior. Unlike the SAM Party, the WFP has already run a presidential candidate in each election after the WFP was established.

c.

When considering whether the preliminary injunction is warranted, federal courts must “balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,” as well as “the public consequences in employing the extraordinary remedy of injunction.” Yang v. Kosinski, 960 F.3d 119, 135–36 (2d Cir. 2020) (quoting Winter, 555 U.S. at 24). While the Party Qualification Threshold and Party Qualification Method may result in burdens and practical difficulties for both sets of plaintiffs, these burdens are outweighed by New York State’s important regulatory interests. Further, with respect to the timing of possible relief, the SAM Party and the WFP plaintiffs have failed to demonstrate harm they would incur absent a preliminary injunction. By contrast, New York has a strong interest in beginning to develop and implement the important electoral reforms contained within Part ZZZ, without the delay of further proceedings. Based on these considerations, the balance of equities and the public interest do not favor a preliminary injunction.

CONCLUSION

The Court has considered all of the arguments raised by the parties. To the extent not specifically addressed, the

arguments are either moot or without merit. The SAM Party plaintiffs' and the WFP plaintiffs' motions for preliminary injunctions are **denied**. The Clerk is directed to close all pending motions.

SO ORDERED.

Dated: New York, New York

September 1, 2020

/s/ John G. Koeltl

John G. Koeltl

United States District Judge