UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LIBERTARIAN PARTY OF NEW YORK, ANTHONY D'ORAZIO, LARRY SHARPE, GREEN PARTY OF NEW YORK, GLORIA MATTERA, and PETER LaVENIA, Plaintiffs, v. NEW YORK STATE BOARD OF ELECTIONS, 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.	Civil Action No. 1:20-cv-05820

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

CITATIONS

STATUTES

CASES

MISCELLANEOUS

PRELIMINARY STATEMENT

Plaintiffs Libertarian Party of New York ("LPNY"), Anthony D'Orazio, Larry Sharpe, Green Party of New York ("GPNY"), Gloria Mattera, and Peter LaVenia (collectively, "Plaintiffs") bring this motion for a preliminary injunction against Defendants New York State Board of Elections and its chairs, commissioners, and executive directors (collectively, "Defendants") to request a preliminary injunction preventing Defendants from implementing the voting and petitioning thresholds found in Sections 9 and 10 of Part ZZZ of the 2020–2021 fiscal year budget bill known as S7508-B/A9508-B ("Part ZZZ").[1]

This is a challenge to Governor Andrew Cuomo, the New York State Legislature, and the New York Campaign Finance Reform Commission's increased voter and petitioning thresholds that are designed to, and have the effect of, severely burdening minor parties from accessing the ballot and running candidates. In April of this year, at the height of the COVID-19 pandemic, Governor Cuomo inserted into the state budget a law to effectively eliminate third parties that do not rely on fusion. The law increases the number of votes and signatures it takes to get onto the ballot and to stay on, securing a ballot line on which to nominate candidates. In New York, unlike in other states, a political party has only one route to get onto a state-wide ballot: it must gather enough valid voter signatures over six weeks to petition a candidate onto the ballot with its party label. Once on the ballot, if the party's top statewide candidate garners enough votes, the party gets to avoid petitioning and operate as normal—so long as its top statewide candidates keep garnering enough votes every four years.

Until last April, this meant 15,000 valid signatures and 50,000 votes for governor. The new law makes three changes that render this already difficult process much more onerous: First,

[1] Attached to the Affirmation of Michael Kuzma as Exhibit "C".

it triples the number of signatures to 45,000. Second, it raises the number of votes to 2% of the total vote or 130,000, whichever is greater.[2] Third, it applies the new voter threshold every two years to presidential and gubernatorial elections, not every four years to gubernatorial elections as in the past.

While this Court has denied preliminary injunctions in related cases involving the SAM Party and the New York Working Families Party ("WFP"),[3] unfortunately, this Court was presented with only an incomplete view of New York State's ballot access regime. It did not have the benefit of analyzing the nefarious interplay between the new voter and petition thresholds, especially as manifested through Plaintiffs' longstanding efforts to navigate both thresholds and offer unique candidates to the voters. Indeed, after 46 years of trying, LPNY achieved statutory party status for the first time in 2018 with the expectation of four years during which to build support, two of which it is now deprived. In addition, contrary to the previous motions for preliminary injunction, irreparable harm is clearly established here as Plaintiff political parties' candidates did not meet the increased 2%- or 130,000-vote threshold in the recent November 3, 2020 presidential election, although they would have retained access under the previous threshold—either because it would not have applied in a presidential year or because, in addition, the LPNY candidate earned over 50,000 votes. Without relief from this Court, Plaintiffs will imminently lose the various benefits granted to political parties by New York State law, including, crucially, automatic ballot access for 2021 candidates.

Compared to the functioning status quo, no legitimate interest is served better by the new vote threshold, the tripling of signatures for petitioning without any extension of time for

[2] In 2020, this amounted to 171,897 votes—nearly 3.5 times the previous threshold.
[3] *SAM Party v. Kosinski*, No. 20-CV-323 (JGK), 2020 WL 5359640 (S.D.N.Y. Sept. 1, 2020).

collection, or doubling the frequency for qualification. Third parties (except for the Conservative Party, which usually cross-endorses Republicans) did not and do not generally meet the new voter threshold, and the new, nearly impossible petition threshold keeps third parties off the ballot or buries them in busywork to neuter their effectiveness. Notably, Part ZZZ tripled the petition threshold's number of signatures without at all extending the already painfully short six-week period available to gather them. This makes New York State the worst in the country—by far—in terms of the signatures required per day to qualify for party status or to nominate a candidate through which party status could be achieved. This constitutes a severe burden on access to the ballot and it is not justified or tailored to serve compelling or even legitimate government interests. The thresholds' primary public rationale, reflected in the structure of the statute, legislative history, and public comments, is to financially safeguard the campaign finance system. This interest is not only previously unrecognized but cannot morally or constitutionally be prioritized over ballot access.

STATEMENT OF FACTS

Plaintiffs refer the Court to the Complaint and the accompanying affidavits for extensive facts relevant to this motion. The following is a summary.

The Parties

Plaintiffs are the Libertarian and Green Parties of New York State and their leadership, all of whom are regular and prospective voters for their respective parties.[4] In addition, Larry Sharpe was the Libertarian candidate for governor in 2018, earning LPNY ballot access for what

[4] Anthony D'Orazio is now First Vice Chairman of LPNY.

was expected to be four years. He intends to run for governor on the LPNY line in 2022 and has been touring the state in preparation.

LPNY and GPNY are affiliates of the national Libertarian and Green Parties, respectively the third and fourth largest national parties in the United States for the last twenty years, who present unique ideological positions in contradistinction to the two major parties. Accordingly, LPNY and GPNY operate unlike fusion parties such as the WFP and Conservative Party and instead focus on providing unique candidates that reflect their ideological positions. As of November 1, 2020, GPNY had 28,501 enrolled voters (24,972 of which are active) and LPNY had 21,551 enrolled voters (20,298 of which are active). *See NYS Voter Enrollment by County, Party Affiliation and Status*, NYS Board of Elections, https://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov20.xlsx. Nationwide, among the 32 jurisdictions that track party enrollment, the Libertarian Party has 652,261 enrolled voters and the Green Party has 240,222 enrolled voters. Richard Winger, *Nationwide Voter Registration*, Ballot Access News (Oct. 24, 2020). The national Green and Libertarian Parties struggle each presidential election cycle to match the major parties in being on the ballot across the 50 states and DC. In 2016, the Green Party was on the ballot in 44 states and DC. In 2020, it was only on the ballot in 29 states and DC, but that represented 72.8% of voters. In 2016 and 2020, the Libertarian Party achieved universal ballot access. In 2024, New York's new thresholds, absent this Court's intervention, will have an outsized effect on our national politics by depriving the Libertarian Party of universal ballot access and New York voters of any option for voting for a third-party candidate.

LPNY and GPNY have recent experience navigating the voter and petitioning thresholds over time, and, importantly, with unique candidates. Until finally achieving ballot access in

2018, LPNY (as successor to the "Free Libertarian Party") ran candidates for governor and president every cycle but one since 1974. In 2018, Larry Sharpe's gubernatorial candidacy garnered over 95,000 votes for LPNY to gain ballot access for what was expected to be four years. GPNY ran Ralph Nader for president in 1996 and won ballot access in 1998. GPNY has since consistently run gubernatorial candidates and has consistently run presidential candidates in the last decade. It failed to reach the voter threshold in 2002 and 2006, but succeeded in 2010, 2014, and 2018.

The New Thresholds

Unlike other states that provide multiple routes to the ballot for political parties, including most notably a dedicated party petition, New York offers only one: first, a party must conduct an independent petitioning drive to run a gubernatorial, and now also presidential candidate, meeting a certain threshold of valid signatures from New York voters (the "petitioning threshold"). That candidate must then garner enough votes beyond a certain threshold (the "voter threshold") to grant the party official statutory recognition and automatic access to the ballot in subsequent years. The party continues to enjoy these benefits if its gubernatorial, and now presidential, candidate meets the voter threshold each subsequent election.

The voter threshold for party status was set in 1936 to be 50,000 votes in gubernatorial elections. The petition threshold for statewide candidates, through which a prospective party can attain party status, has been 15,000 valid signatures since 1992.[5] The previous highest point was 20,000 signatures.[6]

[5] *See* Election Reform Act of 1992, 1992 Sess. Law News of N.Y. Ch. 79 (S. 7922, A. 11505).
[6] *See Schulz v. Williams*, 44 F.3d 48, 57 (2d Cir. 1994).

In 2019, Governor Cuomo and the New York Legislature could not agree on the contours of a campaign finance system and agreed instead to create a Campaign Finance Commission ("Commission") whose recommendations would become law unless acted upon by the Legislature. *See* Part XXX of the Laws of 2019, Chapter 59, Bill No. S01509C. The Commission considered eliminating fusion voting, but allegedly determined that "it could not reasonably be established that the practice of fusion voting would have any significant detrimental impact on the costs of a public campaign finance program." *Report to the Governor and the Legislature,* Campaign Finance Reform Commission (Dec. 1, 2019), p.61, https://campaignfinancereform.ny.gov/system/files/documents/2019/12/campaignfinancereformfinalreport.pdf ("Recommendations").[7] Instead, the Recommendations included the increases to the voter and petition thresholds discussed herein: (1) increasing the voter threshold to 2% of the votes or 130,000, whichever is higher, for gubernatorial elections, and applying such threshold independently to presidential elections as well; and (2) increasing the signature threshold for independent nominating petitions for statewide office to 45,000 signatures or 1% of votes, whichever is less, for the last gubernatorial election. *Id.*, p. 5. On March 12, 2020, New York Supreme Court Justice Ralph A. Boniello, III found that the 2019 Statute authorizing the Commission was unconstitutional. *Hurley v. Pub. Campaign Fin. & Election Comm'n*, 69 Misc. 3d 254 (N.Y. Sup. Ct. 2020). The Court found that "[t]he Legislature established the Commission and delegated to it the authority to create new law and to repeal existing law which is a function reserved solely to the Legislature under the [state] Constitution." *Id.* at 261.

In late March 2020, rumors began circulating that Governor Cuomo intended to use the crisis COVID-19 budget to pass the defunct Commission recommendations through the

[7] Attached to the Affirmation of Michael Kuzma as Exhibit "D".

legislature. This was confirmed in amendments (Part ZZZ) to a transportation infrastructure bill on April 1, 2020. With one day of debate in each house, the bill passed and was signed by the Governor on April 3. Due to the incredibly restricted nature of amendment and voting on budget bills, the Legislature had essentially no choice in passing the bill.

The Petitioning Process

For the independent nominating petition to meet the petition threshold, New York imposes several notable restrictions. Signatures must be gathered over a 42-day period and are due 23 weeks before the general election, which falls in May. N.Y. Elec. Law §§ 6-138(4), 6-158(9). A signature is only counted if it is the first a voter has signed for the office concerned, including any designating petitions for party primary qualification. *Id.* § 6-138(1). Although previously held unconstitutional, Defendants continue to enforce the requirement that each signature may only be witnessed by a New York voter, forcing inefficient use of witnesses accompanying circulators. *See id.* § 6-140(1)(b); *Free Libertarian Party, Inc. v. Spano*, 314 F. Supp. 3d 444 (E.D.N.Y. 2018), *vacated and remanded*, No. 18-2089, 2020 WL 2747256 (2d Cir. May 7, 2020) (finding case to be mooted by LPNY achieving ballot access). Due to the formalities involved, most candidates rely on paid circulators, but New York bans payment directly based on circulators' productivity, *i.e.*, payment for each signature. *See Person v. New York State Bd of Elections*, 467 F.3d 141, 143 (2d Cir. 2006); N.Y. Elec. Law § 17-122(4).

Petitioning often involves using a combination of volunteers and paid petition circulators that is difficult to scale. There is a limited market for circulators, especially when they must still be New York voters without requiring accompaniment. See, affidavits of Howard Hawkins and Mark Axxin.

The 2020 Election

As Plaintiffs are part of strong, national parties, they were always planning on running presidential candidates. The Libertarian Party nominated Jo Jorgensen. The Green Party nominated Howie Hawkins. While they each garnered the third and fourth most votes, respectively, of any candidate, both in-state and nationwide, they did not garner enough votes in New York to meet the newly increased voter threshold now applying to presidential elections.

Dr. Jo Jorgensen garnered 60,234 votes in New York, surpassing the previous 50,000 voter threshold and placing third among candidates. *See 2020 Election Results*, NYS Board of Elections (Dec. 3, 2020), https://www.elections.ny.gov/2020ElectionResults.html. Howie Hawkins garnered 32,753 votes, placing fourth among candidates. *Id*. Nationally, Dr. Jorgensen garnered over 1.86m votes and Howie Hawkins garnered nearly 400,000 votes, each placing third and fourth, respectively.

ARGUMENT

I. A PRELIMINARY INJUNCTION IS WARRANTED WITH RESPECT TO THE FIRST TWO CAUSES OF ACTION.

"[T]o obtain a preliminary injunction against governmental action taken pursuant to a statute, the movant has to demonstrate (1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, and (3) public interest weighing in favor of granting the injunction. The movant also must show that the balance of equities tips in his or her favor." *Yang v. Kosinski*, 960 F.3d 119, 127 (2d Cir. 2020) Since Plaintiffs request an order prohibiting Defendants from implementing and enforcing the new thresholds and to carry on Plaintiffs' party status until a full adjudication on the merits, this is a request for a prohibitory injunction and does not trigger an increased burden. *See Mastrovincenzo v. City of New York*, 435 F.3d 78, 89–90 (2d Cir. 2006) Unlike, for example, in *Marchant v. New York City Bd. of Elections*, Plaintiffs' loss of party status is a result of automatic operation of the statute, not a finding by Defendants. 815 F. Supp. 2d 568, 577 (E.D.N.Y. 2011) (finding an injunction to place the candidate on the ballot to be a mandatory injunction when the NYCBOE already disqualified the candidate). Moreover, a preliminary injunction here would far from accord Plaintiffs' their full relief, which would continue party benefits into the 2022 elections and eliminate the new thresholds going forward. *Cf. id.*

A. Irreparable Harm Is Now Abundantly Clear

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).

Plaintiffs' case for irreparable harm is straightforward and compelling. As this Court acknowledged in *SAM Party v. Kosinski*, failing to meet the voter threshold and losing statutory party status, as Plaintiffs have, satisfies irreparable harm. No. 20-CV-323 (JGK), 2020 WL 5359640, at *13 (S.D.N.Y. Sept. 1, 2020). There is no speculative injury. Without this Court's intervention, Plaintiffs will, most importantly, lose the ability to field candidates for office using a party primary process for the 2021 elections. *Cf. Yang v. Kosinski*, 960 F.3d 119, 128 (2d Cir. 2020) They will also lose the various other benefits of party status that this Court has recognized. 2020 WL 5359640, at *2. Defendants have already deleted Plaintiffs from voter registration forms online. *See New York State Voter Registration Form*, NYS Board of Elections (last visited Dec. 8, 2020), https://www.elections.ny.gov/NYSBOE/download/voting/voteregform-eng-fillable.pdf. Most alarmingly, Plaintiffs' voters have begun receiving letters from county boards of elections heavily implying that they should enroll in other parties. *See* Cody Anderson Declaration.

If Plaintiffs prevail, but are deprived of interim relief, the damage is irreparable. Not only would the 2021 election season be inordinately difficult and precarious—the threat of an independent nominating petition is already compromising Plaintiffs' ability to attract candidates—but Plaintiffs would also be significantly delayed and wounded in their efforts at party growth and their ideological goals.

B. Plaintiffs Are Likely to Succeed on the Merits

Ballot access laws are analyzed for constitutionality under the First Amendment through the balancing framework established in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). The Supreme Court and the Second Circuit have cautioned that there is no "litmus-paper test" like a single data-point. *Anderson*, 460 U.S. at 789;

Yang v. Kosinski, 960 F.3d 119, 129 (2d Cir. 2020). Instead, a court is to conduct a "a two-step inquiry" as follows:

> First, we ascertain the extent to which the challenged restriction burdens the exercise of the speech and associational rights at stake. The restriction could qualify as "reasonable [and] nondiscriminatory" or as "severe." Once we have resolved this first question, we proceed to the second step, in which we apply one or another pertinent legal standard to the restriction.
>
> If the restriction is "reasonable [and] nondiscriminatory," we apply the standard that has come to be known as the *Anderson-Burdick* balancing test: we "must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate," and "then ... identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." "In passing judgment" under this more flexible standard, we must "determine [both] the legitimacy and strength of each of those interests" and "the extent to which those interests make it necessary to burden the plaintiff's rights."
>
> If the restriction is "severe," then we are required to apply the more familiar test of "strict scrutiny": whether the challenged restriction is "narrowly drawn to advance a state interest of compelling importance."

Yang, 960 F.3d at 129.

In addition, under the Fourteenth Amendment's Equal Protection Clause, "[w]here the state's classification 'limit[s] the access of new parties' and inhibits this development, the state must prove that its classification is necessary to serve a compelling government interest." *Green Party of New York State v. New York State Bd. of Elections*, 389 F.3d 411, 420 (2d Cir. 2004); *see Unity Party v. Wallace*, 707 F.2d 59, 63 (2d Cir. 1983). In a case such as this, the analysis substantially overlaps. 389 F.3d at 420.

1. Plaintiffs' Core Rights at Issue

"[A] court must . . . first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." *Burdick v. Takushi*, 504 U.S. at 434.

The Supreme Court has many times reiterated the importance of the constitutional rights that the new thresholds now imperil. Obstacles to the ballot burden "two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968); *see Rivera-Powell v. New York City Bd. of Elections*, 470 F.3d 458, 468 (2d Cir. 2006). The "Court has recognized the constitutional right of citizens to create and develop new political parties. The right derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences." *Norman v. Reed*, 502 U.S. 279, 288 (1992); *see also California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000).

While political parties are not guaranteed appearance on the ballot, *see SAM Party*, 2020 WL 5359640, at *7, "[n]ew parties struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties have had in the past." *Williams*, 393 U.S. at 32 ("Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms.").

This case directly implicates these rights. Plaintiffs LPNY and GPNY have provided vehicles for voters to associate to advance distinct ideological political beliefs. Their voters have

shown time and again their desire and commitment to support and vote for Plaintiffs' candidates. Plaintiffs further deserve the time and opportunity to organize and pursue their electoral goals. By their nature, the voter and petition thresholds—when working in conjunction—uniquely imperil third parties like Plaintiffs' access to the ballot. The Recommendations and the Governor have continually stressed that they expressly targeted third parties.

2. The New Thresholds Are Discriminatory and Impose a Severe Burden on Plaintiffs' Rights

This Court should apply strict scrutiny because the voter and petition thresholds are both discriminatory and impose a severe burden. As discussed on pages and in paragraphs 74-77 of the Complaint, the Commission and the Governor expressly calibrated the thresholds to eliminate the third parties that were on the ballot as of passage to minimize cost for the public campaign finance regime.

The new thresholds also impose a severe burden because, in conjunction, they operate to make party retention and then successful petitioning to regain party status effectively impossible. *See Williams v. Rhodes*, 393 U.S. at 31.

a) The Petitioning Threshold

The petitioning threshold, which was not at issue in the *SAM Party* Decision, is an extremely high and onerous outlier among the 50 states and DC. As shown in Appendix A, on a signature per day basis, New York provides the most onerous route to become a political party. Collecting 45,000 signatures over a 42-day period requires collecting 1,071.4 signatures per day. Twenty-four states provide alternative routes that do not involve petitioning or provide no start date for collecting signatures—prospective parties merely run the risk that older signatures would be invalid at filing. Of the 25 other states and DC that provide discrete periods for collection, they are all far below New York's requirement. The second most onerous is Illinois,

which requires a party to collect 25,000 signatures in 90 days to place its candidates on the ballot, resulting in 278 signatures per day—which is still only about *one-fourth* as much as New York requires. *See* 10 Ill. Comp. Stat. Ann. 5/7-2, 5/10-3, 5/10-4. Other, high statutory requirements (that are still below that of New York) have been reduced by federal courts after finding them to violate the Constitution. *See Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 405 (8th Cir. 2020) (reducing Arkansas signature requirement for a party petition from 3% of the gubernatorial vote to 10,000 and thus from approximately 297.2 signatures per day to 111.1); *Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340, 1373 (N.D. Ga. 2016) (reducing Georgia signature threshold for an independent candidate petition through which a party would gain status from 1% of registered voters to 7,500 and thus from approximately 385.3 signatures per day to 41.7), *aff'd*, 674 F. App'x 974 (11th Cir. 2017); *Constitution Party of Pa. v. Aichele*, No. 12-2726 (E.D. Pa. Feb. 1, 2018) (reducing Pennsylvania signature threshold for an independent candidate petition through which a party would gain status from 2% of votes cast in previous election to 5,000 and thus from approximately 600.3 signatures per day to 30); *see also Graveline v. Benson*, 430 F. Supp. 3d 297 (E.D. Mich. 2019) (reducing MI requirement of 30,000 signatures for independent candidates for statewide office to 12,000). By this measure alone, the petition threshold imposes a severe burden.[8]

The threshold is also impossible to satisfy as a practical matter. New York provides many significant and additional formal obstacles for submitting a successful petition, such as not counting the signatures of those who already signed another petition. To be safe, parties will need to collect two or more times the requisite number of signatures. Collecting 90,000

[8] The unusually short turnaround time is akin to timeframes for special elections, a context where numerous courts have had to intervene to reduce signatures requirements. *See Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340, 1371–72 (N.D. Ga. 2016).

signatures over 42 days is prohibitively expensive and there may not even be enough petitioning capacity with local circulators to achieve such a feat, since circulators must be New York voters. This is especially true if multiple parties compete over paid circulators, as volunteers are neither plentiful nor very available during the Spring. The relatively early time for collection of April and May (before mass summer events take place) and the unknowable legacy of the COVID-19 pandemic compound the difficulty. [See, Declaration of Cody Anderson] *See Rockefeller v. Powers*, 78 F.3d 44, 45 (2d Cir. 1996) (finding a signature requirement to be a severe burden when, among other things, there was a 37-day collection period, inclement weather, the rule limiting voters from signing another petition, and other technical requirements that demand parties get a multiple of the signatures required).

Section 10 of Part ZZZ also quintupled the amount of votes a petition must contain from each of one-half of congressional districts. Plaintiffs have not identified any rationale for why this requirement was increased at an even more extreme rate than the rough tripling of the voter and petition thresholds. This distributional requirement is unique to New York and already difficult to satisfy in practice. Many of New York State's congressional districts are in the New York metropolitan area, which also has the most density for efficient petition gathering. Yet researching and tracking voter signatures to tabulate their home district to make sure the distribution requirement is met is an arduous task that further saps volunteers' time and energy.

b) The Voter Threshold

Aspects of the increased voter threshold exacerbate the extreme petition threshold. Plaintiffs incorporate Mr. Richard Winger's analysis from the *SAM Party* case. *See* Decl. of Richard Winger in Support of Plaintiffs' Motion for Preliminary Injunction, *SAM Party*, No. 1:20-cv-00323-JGK, Dkt. No. 67. First, the 2% threshold "places New York at the higher end of

the spectrum" among states with a percentage-of-the-vote requirement and the 130,000-vote threshold would have only been met once in recent years by a non-fusion party—the Green Party in 2014. *Id.*, ¶16. Second, only four other states condition party status on the percentage of the vote in Presidential elections. *Id.*, ¶17. And third, unlike 39 states, New York does not provide a mechanism for organizations to obtain party status in anticipation of an election. *Id.*, ¶18.

The nefarious operation of the voter threshold is really shown as applied to Plaintiffs and other non-fusion parties—because its largest effect was to destroy the current third-party system and allow only one or two fusion parties to remain. *See Storer*, 415 U.S. at 742 ("[p]ast experience will be a helpful, if not always an unerring, guide" to determine if a reasonably diligent effort could be expected to satisfy the requirements). As the chart and graph on pages 19–20 of the Complaint show, Plaintiffs and other non-fusion parties already struggled to meet the previous 50,000-vote threshold. The GPNY had a 2014 performance remarkable enough to meet the new threshold, but, as shown in Appendix B hereto, there is no other instance of a non-fusion party doing the same since 2002. Other non-fusion parties like the Sapient, Rent is Too Damn High, and Socialist Workers parties have never managed to meet the prior threshold during that period. Even 2014's performance would not gain GPNY lasting ballot access since they unfortunately fare worse in presidential years. LPNY, on the other hand, worked diligently for over 40 years to finally attain ballot access and, due to Part ZZZ, is deprived of the full, expected four years to develop a base of support. The last time a non-fusion party would have met the new thresholds in successive presidential and gubernatorial elections was the Independence Party in 1996 and 1998, running Ross Perot and Tom Golisano. In 2000, however, they received only 24,369 votes for president, which, thankfully for them, did not imperil their party status. With the new thresholds, the list in Appendix B will never expand. It

is a fair extrapolation that only one or two fusion parties will remain, and no non-fusion party will manage a petition for president or governor, much less garner enough votes at that point to attain party status. The voters will perpetually have only two candidates on the ballot, although they may be found across three or four lines.

In *SAM Party*, 2020 WL 5359640, at *8, this Court looked primarily at the 2% aspect of the increased voter threshold to find that it does not impose a severe burden, however the outcome of the 2020 Election proves that burden is severe as the Plaintiffs, the SAM Party and the Independence Party have all lost ballot access due to not utilizing fusion voting. Further, but we submit that a similar analysis here would not be consistent with Supreme Court and Second Circuit precedent that forbids a "litmus-paper test." *See Green Party of Ga. v. Georgia*, 551 F. App'x 982, 984 (11th Cir. 2014); *Yang*, 960 F.3d at 129. Rather, the proper inquiry "is not whether each law individually creates an impermissible burden but rather whether the combined effect of the applicable election regulations creates an unconstitutional burden." *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 586 (6th Cir. 2006); *see Williams*, 393 U.S. at 34 (analyzing the "totality" of state law); *Burdick*, 504 U.S. at 435–36 (considering in detail all three mechanisms for candidates to appear on the Hawaii ballot); *Schulz*, 44 F.3d at 56 (To "evaluate the weight of the burden imposed by the challenged requirement . . . we proceed by the 'totality approach' and consider the alleged burden imposed by the challenged provision in light of the state's overall election scheme."); *see also Storer v. Brown*, 415 U.S. 724, 737 (1974).

Indeed, all the cases cited by this Court are distinguishable. In *Jenness v. Fortson*, the Court found the 5% signature requirement "balanced by the fact that Georgia has imposed no arbitrary restrictions whatever upon the eligibility of any registered voter to sign as many nominating petitions as he wishes" and that Georgia "imposes no suffocating restrictions

whatever upon the free circulation of nominating petitions," including "a six months' period" to seek signatures and a deadline in mid-June. 403 U.S. 431, 433–34, 438–39 (1971). Here, New York only counts the first designating or nominating petition per office that a voter signs, which is the source of many invalidated signatures upon challenge, and, of course, provides only 42 days to seek signatures with a deadline in May. N.Y. Elec. Law §§ 6-138(1), (4), 6-158(9).[9]

Prestia v. O'Connor, 178 F.3d 86, 89 (2d Cir. 1999) involved a 5% congressional primary petition threshold. The challenge was based entirely on prior precedent in *Rockefeller v. Powers*, 78 F.3d 44, which found a severe burden to the Republican Party presidential candidate from a 5% petition threshold. The *Prestia* court distinguished *Rockefeller* as involving a federal presidential campaign context and having a ready lesser requirement to apply, and that plaintiffs in *Prestia* made no showing that the overall election scheme precluded viable candidates. *Id.* Here, party status necessarily affects national presidential campaigns, the previous 50,000 vote threshold is readily available, and Plaintiffs have shown the restrictive effects of the greatly increased thresholds. This case also involves third-party ballot access, which presents its own special constitutional concerns not present for congressional candidacies.

Hewes v. Abrams, 718 F. Supp. 163, 164 (S.D.N.Y. 1989), merely mentions *Jenness*'s statement about presumptive constitutionality when analyzing an unrelated equal protection challenge to a signature cap that avoided a 5% signature requirement. The plaintiffs in *Rainbow Coal. of Oklahoma v. Oklahoma State Election Bd.*, 844 F.2d 740, 743–44 (10th Cir. 1988), unlike here, did not directly attack a 5% voter threshold—they merely argued that applying it

[9] Indeed, the Supreme Court cited New York's petitioning rules several times in contradistinction to Georgia's relatively generous regime, including New York's still enforced one-petition limit. *See* 403 U.S. at 439 n.15, 17, 19.

every two years would create an unconstitutional disparity based on the differing turnouts in gubernatorial vs. presidential elections.[10]

On the other hand, numerous courts have found percentage-based thresholds unconstitutional despite being under the 5% threshold mentioned in *Jenness*, many of them in analogous circumstances as here. *See Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 400 (8th Cir. 2020) (affirming preliminary injunction restoring prior signature requirement, finding likely unconstitutional "Arkansas's present requirement for 27,000 signatures [or 3% of votes cast in the last election], 425 days prior to the election and with a rolling 90 day window to obtain the signatures"); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 582–83 (6th Cir. 2006) (striking down Ohio regulatory scheme where minor political parties could gain general-election ballot access only if they both participated in the March primary and—120 days prior to the March primary—met a 1% signature requirement); *Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340, 1371–72 (N.D. Ga. 2016) (holding unconstitutional a 1% petitioning threshold), *aff'd*, 674 F. App'x 974 (11th Cir. 2017); *McLain v. Meier*, 637 F.2d 1159, 1163–64 (8th Cir. 1980) (finding a 3.3% petitioning threshold, constituting the sole method for ballot access for a new political party, unconstitutional, when coupled with a "particularly troublesome" filing deadline 90 days before the primary election and 150 days before the general election); *Libertarian Party of S. Dakota v. Krebs*, 290 F. Supp. 3d 902, 910 (D.S.D. 2018) (finding a 2.5% or 6,936 signature requirement collected over one year by March 27 to be a severe burden and unconstitutional); *Libertarian Party of Tennessee v. Goins*, 793 F. Supp. 2d 1064, 1085–90 (M.D. Tenn. 2010) (finding Tennessee's 2.5% petition requirement for political parties

[10] Moreover, the threshold in *Rainbow* provided a year to circulate petitions resulting in 124.6 and 172.0 signatures per day for the two years considered therein—both far below New York's increased threshold. *Id.* at 741–42.

unconstitutional when coupled with its early deadline and requirement for signers to attest to party membership); *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, 593 F. Supp. 118, 122 (W.D. Okla. 1984) (holding increased 5% signature requirement unconstitutional in light of "the combination of the short time allowed for petitioning, the large number of signatures required, the prevention of the party's effective solicitation of signatures, and the unusually inclement weather during the petitioning period").

This case is perhaps most analogous to recent decisions holding Michigan's independent candidate petition requirement for statewide office unconstitutional. There, the severe burden was a requirement "caused by the combination of (1) the amount of signatures Michigan requires—30,000, or about one percent of ballots cast in the prior election . . . and, (2) the timing of the collection and filing of those signatures—a candidate has 180 days to collect signatures that are to be filed by 110 days before the general election [*i.e.* in July]." *Graveline v. Johnson*, 747 F. App'x 408, 413 (6th Cir. 2018) (affirming grant of a preliminary injunction); *Graveline v. Benson*, 430 F. Supp. 3d 297 (E.D. Mich. 2019) (granting summary judgment and permanent injunction for same). Here, the petition threshold, its formalities, and its timing work in conjunction to be even more severe than the Michigan threshold, and the minor party and nationwide context makes this case particularly compelling. With the extremely difficult and abruptly instituted voter threshold, Part ZZZ offers a one-two punch to force third parties to lose status and deprive them of the opportunity to petition back on.

3. The State's Interests are Neither Compelling nor Served by the Increased Thresholds

This Court should apply strict scrutiny and find that the increased thresholds are not "narrowly drawn to advance a state interest of compelling importance." *Yang*, 960 F.3d at 129. Even were the Court to apply the more flexible *Anderson-Burdick* analysis, the State's primary

interest is neither legitimate nor strong, and the secondary interests do not come close to justifying the increased thresholds. *Id*.; *see Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 149–50 (2d Cir. 2000).

The State's "primary" rationale is to save money for the new public campaign finance system. This is clear from several facts. First, Part ZZZ consists of two major reforms – the new campaign finance system and the increased voter and petitioning thresholds. Indeed, Part ZZZ includes a nonseverability provision that shows the Legislature's intent for the two to rise and fall together. Second, the Recommendations themselves lay out that "[t]he ***primary motivation*** for the Commission addressing party ballot access is to craft a public campaign finance system that remains within the enabling statute's limitation of a $100 million annual cost." Recommendations, p. 14 (emphasis added). Third, in their Answer, Defendants have admitted that "Part ZZZ reflects the substance of the Commission's Recommendations" and "that the Recommendations reflect the Commission's determinations that the increased thresholds for party-qualification status are related to the public campaign financing program and that the recommendations be part of a single, non-severable package." Answer, ¶¶ 47, 59. Fourth, Governor Cuomo has recently reiterated that this was allegedly the sole motivation:

> The way we set the thresholds, we always expected the Working Families Party to survive. It was set deliberately so we expected the Conservative Party to survive, but you're going to a public finance system. Should taxpayers really fund all these races, in all these little marginal parties? [T]he SAM Party should be funded by taxpayer money? The Independence Party[?] [I]f you want taxpayer money, you have to be a credible party. And otherwise, it'd be extraordinarily expensive and the voters and the citizens in this state would be upset and rightfully so. Conservative Party, legitimate party. Working Families Party, legitimate party. Democratic Party, Republican Party, legitimate parties. Okay, I

> have no problem saying to the public, we should do public financing for those parties. They are legitimate parties.[11]

Alan Chartock, *Gov. Cuomo On WAMC's Roundtable 11/5/20*, WAMC (Nov. 5, 2020), https://www.wamc.org/post/gov-cuomo-wamcs-roundtable-11520.

This rationale, however, does not hold up to any scrutiny. As this Court acknowledged in *SAM Party*,

> because the access to the public campaign 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.

2020 WL 5359640, at *12 n.9. This Court nevertheless found such cost-savings to be a permissible consideration. *Id*. Respectfully, it is not.[12] The cost of a voluntary program like public campaign finance should not trump essential access to the ballot. There is no precedent otherwise. On the other hand, in *Buckley v. Valeo*, 424 U.S. 1, 20–23 (1976), the Court found that political parties have an overriding right to association and only allowed limits on receiving individual contributions because it found there would no "dramatic adverse effect on the funding of campaigns and political associations." Moreover, the Court expressed that discrimination in campaign finance regulations against minor parties would be "troubling," which is exactly what the State and Governor are purporting to do here with the new thresholds. *Id.* at 33–35.

[11] Governor Cuomo mentioned every New York minor party in this interview, except for Plaintiffs. We submit that this was an implicit admission that as the most prominent and longstanding third parties nationwide, one cannot realistically claim the GPNY and LPNY to be "illegitimate parties," although they have been excluded by the new thresholds.

[12] The Recommendations raised the petition threshold purportedly to avoid another route to public campaign funding, but minor parties having to consistently petition would be unlikely to have the resources left to merit matching funds.

The State's other justifications should be foreclosed from the analysis because Part ZZZ reflects an overriding legislative determination to tie the new thresholds entirely to the new campaign finance system and Defendants have conceded that the campaign finance rationale was the primary motivation. Nevertheless, the new thresholds do not advance these other justifications, which are: (1) ensuring "proportionality" so political parties "assert a bona fide representative status" for those who vote for them; (2) making the ballot less complicated; (3) eliminating parties "that may not have unique ideological stances"; and (4) allowing voters to "rely upon the knowledge such parties have sufficient popular support from the electorate of this state." Recommendations, pp. 14–15. Rather than eliminating parties without "unique ideological stances," the new thresholds have, predictably, eliminated the non-fusion parties with the clearest ideological positions in favor of the Conservative and Working Families Parties who almost exclusively cross-endorse major party candidates. And the previous 50,000-vote threshold more than adequately served the State's legitimate interests in avoiding confusion and having "bona fide" parties on the ballot with a modicum of support. Requiring over 130,000 votes is blatantly excessive. *See Hewes*, 718 F. Supp. at 167.

C. The Balance of Equities Favors Plaintiffs and a Preliminary Injunction Is in the Public Interest

Lastly, this Court 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, 960 F.3d at 135–36.

Plaintiffs and their voters are suffering continuing harm now and will likely suffer permanent harm absent preliminary relief for the 2021 elections because of these unconstitutional thresholds. *See New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) ("securing First Amendment rights is in the public interest. . . The Government

does not have an interest in the enforcement of an unconstitutional law" (punctuation and citation removed)). The State's legitimate interests in ensuring a modicum of support would be well protected by applying the former thresholds in the interim. Even if the State had an interest in safeguarding the campaign finance program, it would not come into effect until 2022 for the 2024 election and is therefore not implicated in immediate relief.

II. ALTERNATIVELY, THE COURT SHOULD GRANT A PRELIMINARY INUNCTION PURSUANT TO THE THIRD AND FOURTH CAUSES OF ACTION.

The plaintiffs have established above their entitlement to a preliminary injunction with respect to the first two causes of action. We also request that the Court grant injunctive relief with respect to the third and fourth causes of action which allege violations of due process and free speech and association in connection with the factually unique circumstances here. They include imposing stricter ballot access requirements in the middle of a pandemic where the state itself has locked the state down and made it tremendously more difficult to campaign or obtain signatures, as well as depriving the plaintiffs of the four years of ballot access they had earned through hard work and the expenditure of their scarce funds, in reliance on the state's commitment of four years of ballot access.

Because of the unique circumstances of these causes of action, even if the plaintiffs cannot definitively show their likelihood of success on merits, they have established "sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Faiveley Transp. Malmo AB v. Wabtec Corp.* , 559 F.3d 110, 116 (2d Cir. 2009).

The Court previously denied preliminary injunctive relief to parties in related cases who raised some issues similar to those raised herein. Significantly, the plaintiffs here pled two causes of action not present in those cases. See, Complaint, third and fourth causes of action. The plaintiffs' fourth cause of action alleges a hybrid First Amendment and due process violation because of the totality of the circumstances surrounding the enactment of the statute complained of by the plaintiffs, including the following factors cited in the complaint.

a. The Governor's personal vendetta against third parties which motivation cannot constitute the rational basis for a statute under due process;
b. The passage of the bill with little notice or opportunity to be heard in the midst of a pandemic;
c. Smuggling the bill inside a budget bill which made it difficult to separate out or oppose;
d. Depriving the plaintiffs of a right to free speech they had earned in the political marketplace, without a rational basis or just cause.
e. Changing the rules of the game in the middle to the prejudice of the plaintiffs who lack the time to adjust to the new rules.
f. Drastically increasing the difficulty of obtaining ballot status during a pandemic that has essentially shut down retail political activity and restricted political activity to extremely expensive television advertising beyond the means of the plaintiffs as minor parties and activists in those parties; in fact, increasing the risk of the spread of disease in the future by tripling signature requirements;

As stated in the complaint:

> "These illicit factors, which in combination, are offensive to decent sensibilities, have deprived the plaintiff of due process, including substantive due process in the sense of fundamental fairness and they fail to meet the minimum standard of reason that an American statute requires to pass muster under the due process clause. Part ZZZ, Sections 9–10, and 12, as applied separately and in combination, impose unfair and unexpected burdens on Plaintiffs, both cause injury to and violate rights guaranteed to Plaintiffs by the Due Process Clauses of the U.S. Constitution."

The COVID – 19 element of the cause of action has been litigated and at least one case has granted relief on the basis that the lockdown created a severe burden on petitioning. In *Garbett v. Herbert,* 458 F. Supp. 3d 1328 (D. Utah 2020), the court reduced the number of signatures by 32%, stating:

> "On balance, considering the current pandemic and the totality of the State's emergency measures to combat it, Utah's ballot access framework as applied this year imposed [*1345] a severe burden on Garbett's First Amendment rights. In light of nearly all public events being canceled, orders for people to stay six feet apart and to stay home, and the extraordinary impact on nearly all aspects of everyday life, it is difficult to imagine a confluence of events that would make it more difficult for a candidate to collect signatures."

On the other hand, the court in *Bond v. Dunlap,* 2020 U. S. Dist. LEXIS 131389, denied similar relief apparently because the State of Maine had extended the time to obtain signatures and because the number required "was lower than percentages required by other state ballot schemes, including those that have survived challenged in the COVID-19 context." *Id.* In sharp contrast, New York responded to COVID-19 by (1) *suddenly* making ballot status contingent on the performance of the party's presidential candidate, and (2) drastically *increasing* the number of votes required. See also, *Murray v. Cuomo,* 2020 U. S. Dist. LEXIS 86391 (relief denied because New York extended time and reduced the signature requirement). Thus, there is sufficient support in the case law for the position advanced by the plaintiffs in the third and fourth causes of action.

The fact that courts have disagreed on the precise consequences of COVID-19 on ballot access requirement shows that we have met our burden of showing sufficiently serious questions going to the merits to make them a fair ground for litigation. Similarly, the affidavits provided to the Court clearly establish a balance of hardships tipping in their favor as each party faces catastrophic consequences from being decertified while the State cannot demonstrate *any* harm from these parties having permanent ballot status for the past several years.

One of the few comparable cases is *Hudler v. Austin*, 419 F. Supp. 1002 (E.D. Mich. 1976), aff'd sub nom. *Allen v. Austin*, 430 U.S. 924 (1977). That court provided relief in the form of delaying implementation of a tougher ballot access scheme, writing:

> "Depriving plaintiffs of adequate time and notice saddled them with an additional burden beyond that considered in the court's earlier assessment of the likelihood of compliance if reasonably diligent efforts are made. The short time limits, extra expense and duplicative effort required to regenerate the support of plaintiffs' constituencies falls outside *Storer's* "reasonably diligent efforts" standard and imposes an unnecessarily prejudicial burden on the plaintiff new parties seeking 1976 ballot status."

It has already been established that the plaintiffs will suffer irreparable harm in the absence of preliminary injunctive relief. It will take perhaps years to recover their current status which itself took decades to establish. In contrast, the defendants will simply have to continue to administer elections as they have done uneventfully for many years. Disruptions from a preliminary injunction will be minor, particularly since primary election petitioning does not begin until the spring.

Thus, we respectfully request that Court also grant injunctive relief based on the third and fourth causes of action.

REQUESTED RELIEF

For the foregoing reasons, the Plaintiff respectfully request the Court grant a motion for a preliminary injunction for the following relief, or on the alternative one or more of the following requested relief:

A. Order Defendants not to implement, act upon, or enforce the new thresholds of "AT LEAST TWO PERCENT OF THE TOTAL VOTES CAST FOR ITS CANDIDATE FOR GOVERNOR, OR ONE HUNDRED THIRTY THOUSAND VOTES, WHICHEVER IS GREATER, IN THE YEAR IN WHICH A GOVERNOR IS ELECTED AND AT LEAST TWO PERCENT OF THE TOTAL VOTES CAST FOR ITS CANDIDATE FOR PRESIDENT, OR ONE HUNDRED THIRTY THOUSAND VOTES, WHICHEVER IS GREATER, IN THE YEAR WHEN A PRESIDENT IS ELECTED" under section 10.3 of the New York State Election LAW as amended by Part ZZZ of the 2020-2021 fiscal year budget bill known as S75508-B/A9508-B; AND

B. Order Defendants not to implement, act upon, or enforce the new thresholds for "independent nominating petition for candidates" of "FORTY-FIVE thousand voters" under section 9 of the New York State Election LAW as amended by Part ZZZ of the 2020-2021 fiscal year budget bill known as S75508-B/A9508-B;

C. Order Defendants to retain Plaintiffs as an officially recognized "Party" by the New York State Board of Elections on all voter registrations, ballots, and official New York State Board of Election literature, publications, and websites until and through December 31, 2022; and Order Defendants to permit voters to register under the Libertarian Party of New York or the Green Party of New York until and through December 31, 2022;

D. Order Defendants to send notifications to all registered voters that the Plaintiffs are still an officially recognized "Party" by the New York State Board of Elections; and

E. Order any other relief permissible under the law.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that this Court grant a motion for a preliminary injunction directing Defendants not to apply the new voter and petitioning thresholds from Part ZZZ and continue to apply the previous party definition.

Dated: December 29, 2020

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this memorandum of law complies with the Court's word limit as modified by the Court's order of December 23, 2020, in that this brief contains 8541 words excluding portions falling outside of the Court's rules.

Dated: December 29, 2020

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Appendix A – Jurisdictions by Lowest Number of Signatures per Day to Qualify Party

#	State	Requirement for Party Qualification	Other Equivalent Process	Reference	Time Period	Signatures per Day
1	New York (new)	Candidate petition with 45,000 voters		N.Y. Elec. Law §§ 1-104, 6-138, 6-158	42 days	1071.4
	New York	Candidate petition with 15,000 voters		N.Y. Elec. Law §§ 1-104, 6-138, 6-158	42 days	357.1
2	Illinois	Party petition with 1% of voters at the last statewide general election, or 25,000, whichever is less		10 Ill. Comp. Stat. Ann. 5/7-2, 5/10-3, 5/10-4	90 days	278
3	Michigan	Party petition with 1% of gubernatorial vote (42,505 from 2018)	Statewide candidates may qualify as party candidates with candidate petition of 12,000 voters (E.D. Mich.)	Mich. Comp. Laws Ann. §§ 168.544f, 168.560a, 168.590b, 168.685; *Graveline v. Benson*, 430 F. Supp. 3d 297, 318 (E.D. Mich. 2019)	180 days	236.1* (suspect under *Graveline*)
4	Oklahoma	Party petition with 3% of gubernatorial or presidential vote (46,821 for 2020)		Okla. Stat. Ann. tit. 26, §§ 1-108, 1-109	1 year	128.3
5	Kansas	Party petition with 2% of gubernatorial vote (21,112 from 2018)		Kan. Stat. Ann. §§ 25-302a, 25-3602	180 days	117.3
6	Arkansas	Party petition with 3% of gubernatorial vote (26,746 from 2018) (statute) or 10,000 voters (8th Cir.)		Ark. Code Ann. § 7-7-205; *Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 405 (8th Cir. 2020)	90 days	297.2 (statute) / 111.1 (8th Cir.)
7	Virginia	Candidate petition with 10,000 voters		Va. Code Ann. §§ 24.2-506, 24.2-507	January 1 to second Tuesday in June. (158 days for 2021.)	63.3
8	Louisiana	Candidate petition with 5,000 voters	Party status can be through enrollment of at least 1,000 voters and registration fee. Candidate to qualify can pay a fee.	La. Stat. Ann. §§ 18:441, 18:465, 18:1254	90 days	55.6
9	Massachusetts	Candidate petition with 10,000 voters	Enrollment of 1% of voters.	Mass. Gen. Laws Ann. ch. 50, §§ 1, 6, 7	190 days	52.6
10	Idaho	Party petition with 2% of presidential vote (17,348 from 2020)		Idaho Code Ann. § 34-501	One year	47.5

11	Wisconsin	Party petition with 10,000 voters / candidate petition with 2,000 voters		Wis. Stat. Ann. §§ 5.62, 8.20; EL-171 https://elections.wi.gov/sites/elections.wi.gov/files/2019-02/EL-171%20Petition%20for%20Ballot%20Status%20%28Rev%202019-02%29.pdf	90 days (party) / 47 days (governor) or July 1 to first Tuesday in August (35 days in 2020; president) (candidate)	111.1 (party) / 42.6-57.1 (candidate)
12	Georgia	Candidate petition with 1% of registered voters eligible to vote in last election (statute) (69,359 from 2018); 7,500 (11th Cir. decision)		Ga. Code Ann. §§ 21-2-2(25), 21-2-110, 21-2-170; *Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340, 1373 (N.D. Ga. 2016), aff'd, 674 F. App'x 974 (11th Cir. 2017); *Cooper v. Raffensperger*, No. 1:20-CV-01312-ELR, 2020 WL 3892454, at *3 (N.D. Ga. July 9, 2020)	180 days	385.3 (statute) / 41.7 (11th Cir.)
13	Oregon	Party petition with 1.5% of gubernatorial vote (28,005 for 2020)		Or. Rev. Stat. Ann. § 248.008	2 years	38.4
14	Connecticut	Candidate petition with 7,500 voter signatures (for statewide)		Conn. Gen. Stat. Ann. §§ 9-372(6); 9-453a, et al.	First business day of the year to 90th day before regular election. 219 days for 2022.	34.2
15	Pennsylvania	Candidate petition with 2% of votes cast for the office (100,252 for governor from 2018) (statute) / candidate petition with 5,000 voters (governor) (E.D. Pa.)		25 Pa. Stat. Ann. §§ 2831, 2911-13; *Constitution Party of Pa. v. Aichele*, No. 12-2726 (E.D. Pa. Feb. 1, 2018)	Tenth Wednesday before primary election to August 1 (167 days in 2020).	600.3 (statute) / 30.0 (E.D. Pa.)
16	Kentucky	Candidate petition with 5,000 voters		Ky. Rev. Stat. Ann. §§ 118.015, 118.315, 118.365; *Stoecklin v. Fennell*, 526 S.W.3d 104, 108 (Ky. Ct. App. 2017)	From "the first Wednesday after the first Monday in November of the year preceding" the election to "the first Tuesday after the first Monday in June" before the election. (For 2019: 202 days)	24.8
17	Minnesota	Party petition with 1% of voters in preceding election (32,930 from 2020) / candidate petition with 2,000 voters		Minn. Stat. Ann. §§ 200.02, 204B.08, 204B.09	For party petition, one year. For candidate, 92 days.	90.2 (party) / 21.7 (candidate)

18	District of Columbia	Candidate petition with 3,000 voters or 1.5% of voters (3,370 from 2018 mayor), whichever is less		D.C. Mun. Regs. tit. 3, § 1603	144 days	20.8
19	North Dakota	Party petition with 7,000 voters		N.D. Cent. Code Ann. §§ 16.1-11-30, 1-01-50	1 year	19.2
20	New Hampshire	Party petition with 3% of total votes cast at previous general election (24,435 from 2020) / candidate petition with 3,000 voters		N.H. Rev. Stat. Ann. §§ 652:11, 655:40, 655:41, 655:42	January 1 through the Friday after the first Wednesday of June. (For 2020: 157 days.)	155.6 (party) / 19.1 (candidate)
21	Rhode Island	Party petition with 5% of gubernatorial or presidential vote (25,888 for 2020) / candidate petition with 1,000 voters		17 R.I. Gen. Laws Ann. §§ 17-1-2, 17-12-15, 17-14-4, 17-14-7	January 1 to August 1 (June 1 if for primary) (213 days) (party) / 65 days (candidate)	121.5 (party) / 15.4 (candidate)
22	Maine	Candidate petition with 4,000 voters	Party status can be through enrollment of at least 5,000 voters	Me. Rev. Stat. tit. 21-A, §§ 302-04	For petition, not before Jan. 1 of the election year to June 1 (152 days) (governor) or Aug. 1 (213 days) (president). For enrollment, approx. one year.	26.3/18.8 (petition) / 13.7 (enrollment)
23	Maryland	Party petition with 10,000 voters		Md. Code Ann., Elec. Law § 4-102	Two years	13.7
24	Wyoming	Party petition with 2% of U.S. representative vote (5,418 for 2020)		Wyo. Stat. Ann. §§ 22-1-102, 22-4-402	April 1 of year preceding general to June 1 (428 days)	12.7
25	North Carolina	Party petition with 0.25% of gubernatorial vote (13,757 from 2020) / candidate petition with 1.5% of gubernatorial vote (82,542 from 2020)	Party can file documentation showing candidate nominated on general election ballot on 70% of states in Presidential year	N.C. Gen. Stat. Ann. §§ 163-96, 163-122; https://ballotpedia.org/Ballot_access_requirements_for_political_parties_in_North_Carolina	Anytime within presidential cycle, due June 1. (1,248 days if from Jan. 1, 2021).	11.0 (party) / 66.1 (candidate)
26	Utah	Party petition with 2,000 voters		Utah Code Ann. §§ 20A-8-101, 20A-8-103; United Utah Party v. Cox, 268 F. Supp. 3d 1227, 1235 (D. Utah 2017)	Late November of election year to November 30 of year before election (approx. 1 year).	~5.5
27	Tennessee	Party petition with 2.5% of gubernatorial vote (56,083 for 2020) / candidate petition with 25 votes		Tenn. Code Ann. §§ 2-1-104, 2-5-101, 2-5-102	No start date for party. 60 days for candidate (90 days for president).	~0 (party) / 0.42, 0.28 (candidate)
28	Alabama	Party petition with 3% of gubernatorial vote (51,588 from 2018)		Alabama Code § 17-6-22; *Swanson v. Worley*, 490 F.3d	No start time.	~0

				894, 898 n.4 (11th Cir. 2007)		
29	Alaska	Candidate petition with 1% of vote from previous general election (3,614 from 2020)	3% gov/sen/rep vote as enrollment (10,842 from 2020)	Alaska Stat. Ann. §§ 15.25.160, 15.80.008, 15.80.010	June 1 through primary date. For 2018: 81 days	44.6 / ~0 (enrollment)
30	Arizona	Party petition with 1.33% of gubernatorial vote (31,686 from 2018)		Ariz. Rev. Stat. Ann. §§ 16-801, 16-803	No start time. Arizona Green Party v. Bennett, 20 F. Supp. 3d 740, 748–49 (D. Ariz. 2014), aff'd sub nom. Arizona Green Party v. Reagan, 838 F.3d 983 (9th Cir. 2016)	~0
31	California	Party petition with 10% gubernatorial vote (1,246,423 from 2018) / candidate petition with 65 voters (and fee or 7,000 voter petition)	Enrollment of 0.33% of voters (72,757)	California Elections Code Section 5000-5006, 5100, 5151, 8060-8070 https://www.sos.ca.gov/elections/political-parties/political-party-qualification	~1,326 days (135 days before primary, after earlier primary) (party) / 25 days (candidate) / no start date (enrollment)	940.0 (party) / 2.6 (candidate) / ~0 (enrollment)
32	Colorado	Party petition with 10,000 voter signatures	1,000 enrolled voters	Colo. Rev. Stat. Ann. §§ 1-4-1302, 1-4-1303	No start time.	~0
33	Delaware	0.1% of total voters enrolled (~743)		Del. Code Ann. tit. 15, § 3001	No start time.	~0
34	Florida	Only formalities required.		Fla. Stat. Ann. § 103.091	N/A	0
35	Hawaii	Party petition with 0.1% of registered voters eligible to vote in last election (833 from 2020)		Haw. Rev. Stat. Ann. § 11-62	No start time.	~0
36	Indiana	Candidate petition with 2% of votes cast for Sec'y of State (44,936)		Ind. Code Ann. § 3-8-6-3	No start time. Hall v. Simcox, 766 F.2d 1171, 1176 (7th Cir. 1985)	~0
37	Iowa	Candidate petition with 1,500 voters	Convention method with 250 electors from 25 counties for statewide candidates	Iowa Code Ann. §§ 43.2, 45.1	No start time.	~0
38	Mississippi	Only formalities required.		Miss. Code. Ann. §§ 23-15-1051-69	N/A	0
39	Missouri	Party petition with 10,000 voters		Mo. Ann. Stat. §§ 115.315, 115.329	No start date.	~0
40	Montana	Party petition with 5,000 voters		Mont. Code Ann. § 13-10-601	No start date.	~0

41	Nebraska	Party petition with 1% of gubernatorial vote (8,659 from 2018)		Neb. Rev. Stat. Ann. § 32-716	No start date.	~0
42	Nevada	Party petition with 1% of U.S. representatives vote (13,557 from 2018)		Nev. Rev. Stat. Ann. § 293.1715	No start date.	~0
43	New Jersey	Assembly candidate petitions with 100 voters each	Statewide candidates may qualify as party candidates with candidate petition of 800 voters	N.J. Stat. Ann. §§ 19:1-1, 19:12-1, 19:13-5	No start date.	~0
44	New Mexico	Party petition with 0.5% of gubernatorial vote (3,483 from 2018)		N.M. Stat. Ann. § 1-7-2	No start date.	~0
45	Ohio	Party petition with 1% of gubernatorial or presidential vote (59,222 for 2020) / candidate petition with 5,000 votes		Ohio Rev. Code Ann. §§ 3517.01, 3513.257	No start date.	~0
46	South Carolina	Party petition with 10,000 voters		S.C. Code Ann. § 7-9-10	No start date.	~0
47	South Dakota	Party petition with 1% of gubernatorial vote (3,393 for 2020)		S.D. Codified Laws § 12-5-1	No start date.	~0
48	Texas	Party petition with 1% of gubernatorial vote in addition to precincts convention list (83,435 from 2018) (and to avoid fees, candidate petition with 2% of gubernatorial vote (166,868 from 2018)); candidate petition with 1% of gubernatorial vote	Can organize wholly or partly through precincts convention of 1% of gubernatorial vote.	Tex. Elec. Code Ann. §§ 142.004-06, 142.009, 172.002, 172.025, 181.002-181.006, 202.007; *Miller v. Doe*, 422 F. Supp. 3d 1176, 1181 (W.D. Tex. 2019)	No start date for precincts convention. 75 days after precincts convention (candidate after convention). 114 days (if no run-off primary) (candidate).	~0 (precincts convention) / 731.9 (candidate)
49	Vermont	Only formalities required.		Vt. Stat. Ann. tit. 17, §§ 2301, 2318		0
50	Washington	Candidate petition with filing fee.	Candidates can run with filing fees and designate party status. (Top two primary system.)	Wash. Rev. Code Ann. §§ 29A.04.086, 29A.04.097, 29A.24.031, 29A.24.091	N/A	0
51	West Virginia	Candidate petition with 1% of gubernatorial vote (7,689 for 2020)		W. Va. Code Ann. §§ 3-1-8, 3-5-23	No start date.	~0

Appendix B – Historical Performance of Unique Candidates in Presidential ("P) and Gubernatorial ("G) Elections in New York State[13]

Year	G/P	Party	Votes	Percentage
1918	G	Socialist	121,705	5.71%
1924	P	Progressive	474,913	14.55%
1924	P	Soc. Labor	9,928	0.30%
1924	P	Workers	8,244	0.25%
1928	P	Socialist	107,332	2.44%
1932	P	Socialist	177,397	3.78%
1932	P	Communist	27,956	0.60%
1932	P	Socialist Labor	10,339	0.22%
1936	P	Socialist	86,897	1.55%
1936	P	Communist	35,609	0.64%
1940	P	Socialist	18,950	0.30%
1948	P	American Labor	509,559	8.25%
1948	P	Socialist	40,879	0.66%
1952	P	American Labor	64,211	0.90%
1958	G	Independent-Socialist	31,658	0.55%
1962	G	Conservative	141,877	2.44%
1962	G	Socialist Worker	19,698	0.34%

[13] This list is compiled from Dave Leip's Atlas of U.S. Presidential Elections, available at https://uselectionatlas.org/. This list is missing gubernatorial elections from before the 1960s. Highlighted in green are years in which a party exceeded 2% of the vote. Highlighted in yellow are years in which a party met the previous voter threshold.

1962	G	Socialist Labor	9,762	0.17%
1966	G	Conservative	510,023	8.46%
1966	G	Liberal	507,234	8.41%
1968	P	Courage	358,864	5.29%
1968	P	Freedom & Peace	24,517	0.36%
1970	G	Conservative	421,529	7.07%
1980	P	Liberal	467,801	7.54%
1980	P	Free Libertarian	52,648	0.85%
1980	P	Right to Life	24,159	0.39%
1980	P	Citizens	23,186	0.37%
1988	P	Right to Life	20,497	0.32%
1990	G	Conservative	827,614	20.40%
1990	G	Right-to-Life	137,804	3.40%
1990	G	New Alliance	31,089	0.77%
1990	G	Libertarian	24,611	0.61%
1990	G	Socialist Workers	12,743	0.31%
1992	P	Independent	1,090,721	15.75%
1994	G	Independence Fusion	217,490	4.18%
1996	P	Independence	503,458	7.97%
1996	P	Green	75,956	1.20%
1996	P	Right to Life	23,580	0.37%
1998	G	Independence	364,056	7.69%

1998	G	Liberal	77,915	1.65%
1998	G	Right-to-Life	56,683	1.20%
1998	G	Green	52,533	1.11%
1998	G	Marijuana Ref.	24,788	0.52%
2000	P	Green	244,398	3.58%
2000	P	Right to Life	31,659	0.46%
2000	P	Independence	24,369	0.36%
2002	G	Independence	654,016	14.28%
2002	G	Right to Life	44,195	0.97%
2002	G	Green	41,797	0.91%
2002	G	Marijuana Reform	21,977	0.48%
2002	G	Liberal	15,761	0.34%
2002	G	Libertarian	5,013	0.11%
2004	P	Independence	99,873	1.35%
2006	G	Green	42,166	0.95%
2006	G	Libertarian	14,736	0.33%
2006	G	RTH	13,355	0.30%
2006	G	Socialist Workers	5,919	0.13%
2008	P	Populist	41,249	0.54%
2008	P	Libertarian	19,596	0.26%
2010	G	Green	59,906	1.29%
2010	G	Libertarian	48,359	1.04%
2010	G	Rent Too High	41,129	0.88%

2010	G	Freedom	24,571	0.53%
2010	G	Anti-Prohibition	20,421	0.44%
2012	P	Libertarian	47,256	0.67%
2012	P	Green	39,984	0.56%
2014	G	Green	184,419	4.83%
2014	G	Libertarian	16,967	0.44%
2016	P	Libertarian	57,438	0.74%
2016	P	Independence	119,160	1.55%
2016	P	Green	107,937	1.40%
2018	G	Green	103,946	1.70%
2018	G	Libertarian	95,033	1.56%
2018	G	SAM	55,441	0.91%
2020	P	Libertarian	60,369	0.70%
2020	P	Green	32,822	0.38%
2020	P	Independence	22,650	0.26%