

21-1464

**UNITED STATES COURT OF APPEALS
SECOND CIRCUIT**

LIBERTARIAN PARTY OF NEW YORK,
ANTHONY D'ORAZIO,
LARRY SHARPE,
GREEN PARTY OF NEW YORK,
GLORIA MATTERA,
PETER LaVENIA,

Plaintiffs-Appellants,

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-Appellees.

BRIEF AND SPECIAL APPENDIX FOR PLAINTIFFS-APPELLANTS

JAMES OSTROWSKI
Attorney for Appellants
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
jamesmostrowski@icloud.com

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PRELIMINARY STATEMENT

Plaintiffs-Appellants are the state affiliates of the third and fourth largest and most impactful third parties in the United States over the past twenty years, and some of the most significant to ever exist in our history. Yet the State of New York has constructed a massive and interdependent increase in obstacles to the ballot to virtually exclude any minor party from automatic ballot access—and statewide elections in particular—that is not willing or able to cross-endorse a major party candidate. As a result, in major elections, New York voters will be perpetually faced with only two candidates in the general election (over perhaps three or four lines) and no third party may ever again attain universal ballot access to pose a legitimate national threat. Therefore, under the First and Fourteenth Amendments, New York’s increased party qualification and petition thresholds impose a severe burden on Plaintiffs-Appellants and their voters, and are not narrowly tailored to further any compelling government interest.

In holding otherwise and denying Plaintiffs-Appellants’ motion for preliminary injunction, the district court failed to heed this Court’s and the Supreme Court’s admonition not to apply a “litmus-paper test” to obstacles to ballot access. *Yang v. Kosinski*, 960 F.3d 119, 129 (2d Cir. 2020); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). Instead, the District Court superficially

analogized some of the mere percentages involved to prior cases (and selected language therein) without considering any contextual distinctions. This is manifestly improper. As the Eleventh Circuit has recently explained, “the determination that a 1 percent petition requirement by one state’s election law in one context is constitutional, *vel non*, does not guarantee the same determination of a similar law in a different context.” *Cowen v. Georgia Sec’y of State*, 960 F.3d 1339, 1342 (11th Cir. 2020).

Unlike in the narrow and limited case of *SAM Party of New York v. Kosinski*, 987 F.3d 267 (2d Cir. 2021) (“*SAM Party II*”), presented before this Court earlier this year where the SAM Party primarily challenged the new requirement to nominate a presidential candidate, the Libertarian Party of New York (“LPNY”), the Green Party of New York (“GPNY”), and their affiliated individual plaintiffs-appellants, have shown through a national comparison, a thorough analysis of many aspects of New York State’s election regime, a history of party performances, and personal and party experience, that the increased party qualification and petition thresholds function to virtually eliminate all non-fusion minor parties from the ballot and keep them off in subsequent years with virtually impossible petition requirements. By raising the party qualification threshold in an election year from 50,000 votes to 130,000 votes or 2%, whichever is greater, New York not only imposed an objectively difficult (and, indeed, severe) threshold, but

also one that no non-fusion party could plausibly meet in 2020 (including LPNY, which qualified for the first time in 2018 after nearly half a century of trying and expecting a full four years to finally gather momentum without the burden of independent petitioning). That party qualification threshold then functions in combination with the threefold increase in the petitioning threshold for regaining party status—from 15,000 to 45,000 valid signatures (and a fivefold increase in its already difficult geographic distribution requirement)—to deal a one-two punch to keep minor parties off the ballot in perpetuity.

Most unfortunately, although a previous panel of this Court touched on the increased petition threshold in *SAM Party II*, that case did not present a challenge to the petition threshold, and consequently this Court did not even address—much less rule upon—the as-applied, in combination claim that Plaintiffs-Appellants present here. Nowhere in its opinion in *Sam Party II* did this Court address the stark difficulties presented by New York’s petitioning process—most notably that the tripled 45,000 valid signatures must be collected over an unchanged period of 42 days, yielding by far the most onerous signature requirement nationwide to pursue party status in terms of signatures-per-day. The court below was required to address all these obstacles operating in conjunction, but it did not. It is up to this Court to not only promptly reverse the district court’s denial of a preliminary injunction so Plaintiffs-Appellants can fully participate in upcoming 2021 and

2022 elections, but to clearly explain the analysis that should be applied moving forward in this case of monumental importance for local and *national* democracy.

JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because the case arises under First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. The district court entered the Opinion and Order appealed from on May 13, 2021. Plaintiffs-Appellants filed a notice of appeal on June 11, 2021. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1292(a)(1) because this appeal is from refusal of an injunction.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred by applying a “litmus-paper test” and analyzing each obstacle *ad seriatim*, rather than in combination, to deny a preliminary injunction in this ballot access case, where the Supreme Court and this Court have both recognized that such cases require a fact-specific and fact-intensive analysis of the entire election regime under the *Anderson-Burdick* framework?

2. Whether the District Court erred in not finding a probability of success on the claims that New York’s newly increased party qualification and petitioning thresholds imposed a severe burden on the First and Fourteenth Amendment rights of Plaintiffs-Appellants and their voters and are not narrowly tailored to further a compelling state interest?

3. Whether the District Court erred in not issuing a preliminary injunction to prohibit Defendants-Appellees from enforcing New York’s newly increased party qualification and petitioning thresholds in favor of the previous thresholds?

4. Did the District Court err in failing to premise a preliminary injunction on the plaintiffs’ third and fourth causes of action since the defendants virtually defaulted in responding to them?

STATEMENT OF THE CASE

Procedural History

This appeal arises from an action commenced on July 27, 2020 by Libertarian Party of New York (“LPNY”), Anthony D’Orazio, then-Chair and now Vice-Chair of LPNY, Larry Sharpe, LPNY’s candidate for governor in 2018 and prospective candidate in 2022, Green Party of New York (“GPNY”), and Gloria Mattera and Peter LaVenja, Co-Chairs of GPNY (collectively, “Plaintiffs-Appellants”). Plaintiffs-Appellants filed suit pursuant to 42 U.S.C. § 1983, and alleged that the party qualification 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”) are unconstitutional on their face and as applied. Section 10 raised the threshold for qualifying for or retaining statutory party status from 50,000 votes in gubernatorial elections to 130,000 votes or 2% of the vote, whichever is higher, in both gubernatorial and presidential elections—meaning every two years instead of every four. Section 9 tripled the threshold of voter signatures required for a statewide independent nominating petition to attempt party qualification from 15,000 to 45,000 or 1% of the previous gubernatorial vote, whichever is less, and quintupled its geographic distribution requirement from at least 100 to 500 signatures being from voters residing in each of one-half of New

York's congressional districts. Plaintiffs-Appellants requested declaratory and injunctive relief.

Following the 2020 presidential election and NYSBOE's decertification of LPNY and GPNY, Plaintiffs-Appellants moved on December 29, 2020 to request a preliminary injunction to prevent the New York State Board of Elections and its members and directors (collectively, "Defendants-Appellees" or "NYSBOE") from implementing the increased party qualification and petitioning thresholds to exclude LPNY and GPNY as statutory parties for the 2021 and subsequent elections pending final adjudication.

By Opinion and Order entered on May 13, 2021, the Hon. John G. Koeltl, USDJ, denied Plaintiffs-Appellants' motion for preliminary injunction. *See Libertarian Party of New York, v. New York Board of Elections*, No. 20-CV-5820 (JGK), 2021 WL 1931058, at *1 (S.D.N.Y. May 13, 2021) ("*LPNY*"). He held that Plaintiffs-Appellants failed to demonstrate a probability of success on the merits because (1) the increased party qualification and petition thresholds do not impose a severe burden on the rights of Plaintiffs-Appellants and their supporters; (2) the thresholds "are reasonable, nondiscriminatory policy choices;" and (3) the thresholds "advance valid, important regulatory interests . . . within the boundaries that the First and Fourteenth Amendments prescribe." *Id.* at *6.

Factual Background

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, that present unique ideological positions in contradistinction to the two major parties. Accordingly, LPNY and GPNY operate unlike New York's ever-present "fusion" parties, such as the WFP and Conservative Party that qualify consistently as statutory parties by cross-endorsing major party candidates, and instead focus on providing unique candidates that reflect their ideological positions. As of November 1, 2020, GPNY had 28,501 enrolled voters and LPNY had 21,551 enrolled voters. *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 to offer America's voters true alternatives. 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 number still represented 72.8% of voters. In 2016 and 2020, the Libertarian Party achieved universal ballot access for the fourth and fifth times in its history. In 2024, New York’s newly increased 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.

As the Court recognized in *SAM Party II*, 987 F.3d at 271–72, New York law distinguishes between statutory political parties that are allowed “a designated ballot line or ‘birth’” for most elections, and “independent bodies seeking to place candidates on the ballot [that] must gather the requisite number of signatures for each candidate.” See N.Y. Elec. Law §§ 1-104(3), 1-104(12), 6-102, 6-104, 6-106, 6-114, 6-142, 7-104(4). “Parties also enjoy access to primaries administered by the government, automatic membership enrollment from voter-registration forms, and permission to maintain a financial account, exempt from ordinary contribution limits, to pay for office space and staff.” 987 F.3d at 272; see *Green Party of New York State v. New York State Bd. of Elections*, 389 F.3d 411, 415–16 (2d Cir. 2004).

New York is but one of eleven U.S. jurisdictions that provide for party qualification *only* through the performance of a statewide independent candidacy. Unlike many other states, it does not provide an independent method to qualify as a

party in anticipation of an election. *See* Declaration of Richard Winger in Support of Plaintiffs’ Motion for Preliminary Injunction, *SAM Party of New York v. Kosinski*, No. 1:20-cv-00323-JGK (S.D.N.Y. May 18, 2020), ECF No. 67, ¶18 (“Winger Decl.”). Since 1936, to become a statutory party in New York and to retain such status, a body’s candidate for governor must have received 50,000 votes. *SAM Party II*, 987 F.3d at 272.

To field a candidate for governor without preexisting party status, an independent body must have collected 12,000 signatures from 1922 through 1971, 20,000 signatures from 1971 through 1992, and finally 15,000 signatures from 1992 until 2020. *See* App. 169-170, Brehm Decl. ¶¶ 63–64; Election Reform Act of 1992, 1992 Sess. Law News of N.Y. Ch. 79 (S. 7922, A. 11505). Of those signatures, 100 must have been from voters residing in each of one-half of New York’s congressional districts. N.Y. Elec. Law § 6-142(1) (2020).

In addition to the above, New York’s election regime has for many years imposed extraordinary obstacles for prospective parties to meet the petitioning threshold. Most notably, 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). Unlike other jurisdictions, a signature is only counted if it is the first a voter has signed for the office concerned, including any designating petitions for party primaries, the collection of which precedes the period for

independent nominating petitions. *Id.* § 6-138(1); *cf. Jenness v. Fortson*, 403 U.S. 431, 438–39 & n.15 (1971) (“Georgia imposes no suffocating restrictions whatever upon the free circulation of nominating petitions. A voter may sign a petition even though he has signed others,” unlike New York Election Law); *LaRouche v. Kezer*, 990 F.2d 36, 40 (2d Cir. 1993) (“Connecticut’s petition statute is free from many restrictive features found elsewhere. For example, party members may sign more than one petition, thus preserving the pool of potential signatories from diminution by competing candidates.”). Although previously held unconstitutional, Defendants continue to enforce the requirement that each signature may only be witnessed by a New York voter, which reduces the pool of potential witnesses. N.Y. Elec. Law § 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* N.Y. Elec. Law § 17-122(4); *Person v. New York State Bd of Elections*, 467 F.3d 141, 143 (2d Cir. 2006). Finally, because parties may object to petitions based on the above technicalities and others, it is common and expected practice to collect two or more times the number of required

signatures to be assured of a successful petition. App. 117-Axinn Decl. ¶4; App. 121-Hawkins Decl. ¶4.

It should be noted that New York uniquely allows cross-endorsement of candidates across multiple party lines. This encourages the emergence of so-called “fusion” parties that operate nearly exclusively by cross-endorsing major-party candidates, especially at the statewide level. A major-party voter can then express a mild ideological preference without compromising on their choice of candidate. LPNY and GPNY are not fusion parties. They focus on running unique candidates devoted to their respective ideological perspectives, most importantly and consistently in the context of high-profile gubernatorial and presidential elections.¹

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, headed by the Chair of the state Democratic Party, considered eliminating fusion, but allegedly determined

¹ The District Court noted that LPNY does at times cross-endorse some candidates, but this is misleading. *Libertarian Party of New York, v. New York Board of Elections*, No. 20-CV-5820 (JGK), 2021 WL 1931058, at *8 n.6 (S.D.N.Y. May 13, 2021). LPNY selectively allows the practice for down-ballot candidates—it does not cross-endorse gubernatorial and presidential candidates, which are the most important races in the eyes of the public and key to ballot access and party status. (*See* App. 95, Anderson Decl. ¶ 23.)

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. (“Report”). Instead, the Report included the increases to the voter and petition thresholds discussed herein: (1) increasing the party qualification 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 in the past gubernatorial election, whichever is less, with at least 500 signatures or 1% of enrolled voters, whichever is less, from each of one-half of the congressional districts in the state. *Id.*, p. 5. While the Campaign Finance System would not take effect until November 2022 in anticipation of 2024 elections, the increased thresholds would apply immediately for the 2020 presidential election. Report, 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).

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 legislature. This was confirmed in an amendment inserting Part ZZZ to the transportation infrastructure budget bill on April 1, 2020. With one day of debate in each house, the bill was passed and signed by the Governor on April 3. Due to the incredibly restricted nature of amendment and voting on budget bills, as well as New York's historic pandemic emergency, the Legislature had no choice but to pass the bill.

As Plaintiffs are part of strong, national parties, they were always planning on running presidential candidates for the 2020 election.² 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 if it were to apply. *See* 2020 Election Results, NYS Board of

² The SAM Party ran a unique candidate for governor in 2018, but chose not to run a presidential candidate in 2020. Thus, while it could be considered a non-fusion minor party like LPNY and GPNY, its situation and its limited and narrow claims are quite distinguishable. *Contra Libertarian Party of New York*, 2021 WL 1931058, at *8. However, if Plaintiffs-Appellants are successful, they would not object to the SAM Party receiving the same relief.

Elections (Dec. 3, 2020), <https://www.elections.ny.gov/2020ElectionResults.html>.
 Howie Hawkins garnered 32,753 votes. *Id.* Nationally, Dr. Jorgensen garnered over 1.86 million votes and Howie Hawkins garnered nearly 400,000 votes, each placing third and fourth, respectively. On December 3, 2020, NYSBOE decertified LPNY and GPNY for not reaching the newly increased party qualification threshold, which amounted to 172,337 votes.

New York electoral history shows that the party qualification threshold on its own severely burdens third parties because it is set so high that such parties will only rarely, if ever, comply with it. The change from 50,000 to 130,000 votes is a 2.6-fold minimum increase. Taking contemporary 2016 presidential election results, the threshold would be set at 154,431—over a three-time increase. The level was set above the recent performances of all third parties except the Conservative Party—a fusion party that complies by nominating Republican candidates—and far above any presidential performance of any minor party not running a major candidate since 1980, save billionaire Ross Perot and celebrity Ralph Nader. In gubernatorial elections since 2002, only GPNY’s extraordinary 2014 effort would have exceeded the party qualification threshold (only to fail in 2016). Indeed, over the last century, only twice would parties running non-major party candidates meet the new threshold in successive cycles for a full four-year period (and no longer)—the American Labor Party in 1948–1952 and the

Independence Party in 1996–2000 (running Perot and billionaire Tom Golisano). (See Exhibit A, Plaintiff’s Memorandum of Law in the District Court, DN 46.)

Plaintiffs-Appellants have also shown that the party qualification threshold works in conjunction with the now practically impossible petition threshold to virtually exclude non-fusion third parties from the ballot. The changes to the petition threshold were a threefold increase from 15,000 to 45,000 overall signatures and a fivefold increase to the geographic requirement that 100 (now 500) signatures must be from voters residing in each of one-half of congressional districts. The new threshold’s demand to collect 45,000 signatures over 42 days yields an expectation of 1,071 signatures per day (which in practice must be two or three times as much to resist a challenge). Among all jurisdictions, this is the most—by far—that a party would have to gather to qualify for party status and related access to the ballot. (See Exhibit “B” Plaintiff’s Memorandum of Law in the District Court, DN 46.) The threshold’s difficulty is only compounded by New York’s notoriously restrictive petition regime.

In contrast, the prior requirements were more than sufficient to protect the State’s asserted interests. The number of unique candidates has not dramatically increased since the original party retention threshold was established for the 1936 election. Around those times, there would be on average six unique candidates in gubernatorial and presidential elections. (See Exhibit A, *supra*) Since 2002, there

have been on average only five unique candidates in gubernatorial and presidential elections, including the last four in succession. (*Id.*)

LPNY and GPNY have experience navigating the previous voter and petitioning thresholds, 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.

Both Parties have recently relied on a combination of volunteer and paid petition circulators. LPNY’s former chairman Mark Axinn testified that LPNY “expended approximately \$70,000 to obtain approximately 20,000 ballot signatures,” and estimated that it would cost “at least \$157,000” to gather 45,000 signatures, which is prohibitively expensive for the Party. App. 117-118-Axinn Decl., ¶¶ 4–6, 8. Howie Hawkins, GPNY’s 2020 presidential candidate, and GPNY Co-Chair Gloria Mattera collectively testified that it would cost \$270,000 to collect a safe 90,000 signatures, which is impossible for GPNY to satisfy. App.

122-Hawkins Decl., ¶ 9; App. 127-Mattera Decl., ¶ 12. These numbers and claims are undisputed.

SUMMARY OF ARGUMENT

This Court should reverse the District Court’s Opinion and Order because, in analyzing the merits the District Court (1) applied an impermissible litmus-paper test, (2) improperly analyzed each burden *ad seriatim* (sequentially, in isolation), and (3) failed to scrutinize, as required, the extent of the thresholds’ burdens and the extent to which they are necessary to further the State’s asserted interests.

A proper analysis would readily find that Part ZZZ’s increased party qualification and petition thresholds impose a severe burden on Plaintiffs-Appellants—and, indeed, all non-fusion minor parties—and the thresholds are nowhere near narrowly tailored to further a compelling interest from the State. Even if a court were not to find a severe burden imposed, under a proper *Anderson-Burdick* weighing analysis, one would readily find that Defendants-Appellees’ asserted state interests and justifications are incredibly weak and the great extent of the thresholds’ increases are not at all necessary to achieve them—indeed, the undisputed facts demonstrate that the prior requirements were more than sufficient to protect the state’s asserted interests. Thus, the thresholds are likely unconstitutional.

Accordingly, the District Court should have granted a preliminary injunction on Plaintiffs-Appellants’ behalf so they can participate in 2021 elections and

beyond as long as they qualify under the previous thresholds, which were more than adequate to further the state’s legitimate interests. Indeed, Plaintiffs-Appellants satisfied the party retention threshold in 2018 with the firm expectation that they have automatic ballot access through 2022. Despite their compliance, Defendants-Appellees have stripped Plaintiffs-Appellants of their earned rights.

STANDARD OF REVIEW

“A party seeking a preliminary injunction must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest.” *N. Am. Soccer League, LLC v. United States Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018).

This Court “reviews a district court’s legal rulings *de novo* and its ultimate denial of a preliminary injunction for abuse of discretion. A district court abuses its discretion when it rests its decision on a clearly erroneous finding of fact or makes an error of law.” *New York v. Griep*, 991 F.3d 81, 102 (2d Cir. 2021). “A factual finding is clearly erroneous when, ‘although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” *Id.*

ARGUMENT

I. THE DISTRICT COURT’S DECISION SHOULD BE REVERSED BECAUSE IT APPLIED AN IMPERMISSIBLE “LITMUS-PAPER TEST,” ANALYZED THE BURDENS OF THE NEW THRESHOLDS *AD SERIATUM* RATHER THAN IN COMBINATION AND IN CONTEXT, AND FAILED TO SCRUTINIZE THE BURDENS’ NECESSITY—ALL CONTRARY TO THE *ANDERSON-BURDICK* ANALYSIS.

Standard of Review: A denial of a preliminary injunction is reviewed for abuse of discretion.

In analyzing the merits of Plaintiffs’ claims for the purpose of their motion for preliminary injunction, the District Court properly stated some of the standard to be applied, but wholly failed to implement it faithfully. *See Libertarian Party of New York v. New York Bd. of Elections*, No. 20-CV-5820 (JGK), 2021 WL 1931058, at *6–7 (S.D.N.Y. May 13, 2021) (“*LPNY*”).

Restrictions on ballot access like the State’s newly increased party qualification and petition thresholds at issue here are analyzed as the Supreme Court established in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992):

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 its analysis of the State’s increased party qualification and petition signature thresholds, the District Court failed in at least three respects: (1) it applied an impermissible “litmus-paper test,” (2) it analyzed the burdens of the new thresholds *ad seriatum* rather than in combination and in context, and (3) even if it were correct in finding that the increased thresholds do not impose a severe burden, it failed to determine “the extent to which [state] interests make it necessary to burden the plaintiff’s rights”—all contrary to the *Anderson-Burdick* analysis and this Court’s precedents.

A. The District Court Applied an Impermissible Litmus-Paper Test When it Compared Each Burden to Precedent Based on Mere Numbers or Percentages

In analyzing whether each threshold imposes a severe burden, the District Court analyzed in turn and in isolation each aspect of Part ZZZ’s new thresholds and their operation and analogized to prior cases upholding superficially similar requirements without evaluating each case’s /context or distinguishing features—many of which Plaintiffs had expressly pointed out. *LPNY*, 2021 WL 1931058, at *7–13.

In so doing, the District Court violated clear precedent in the Supreme Court and in this Circuit that forbids courts from applying a “litmus-paper test” to ballot access restrictions. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) (“Constitutional challenges to specific provisions of a State's election laws . . . cannot be resolved by any ‘litmus-paper test’ that will separate valid from invalid restrictions.”); *Yang v. Kosinski*, 960 F.3d 119, 129 & n.37 (2d Cir. 2020); *Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 145–46 (2d Cir. 2000) (“policing this distinction between legitimate ballot access regulations and improper restrictions on interactive political speech does not lend itself to a bright line or ‘litmus-paper test’”). This principle is foundational to the Supreme Court’s ballot access jurisprudence. *See Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610, 1616 (2008) (“Rather than applying any ‘litmus test’ that would neatly

separate valid from invalid restrictions, we concluded that a court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the ‘hard judgment’ that our adversary system demands.”); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997); *Burson v. Freeman*, 504 US 191, 210-11 (1992); *Buckley v. American Constitutional Law Foundation, Inc.*, 525 US 182, 192 (1989); *Tashjian v. Republican Party of CT.*, 479 U.S. 208, 214 (1986); *Munro v. Socialist Workers Party*, 479 US 189, 193 (1986); *Clements v. Fashing*, 457 U.S. 957, 963 (1982).

1) Party Qualification Threshold

The District Court first found that the party qualification threshold (130,000 votes or 2% of the vote, whichever is higher) did not impose a severe burden “for the same reasons that this Court denied the SAM Party’s preliminary injunction motion.” *Id.* at *7. It did so there “in light of precedent upholding ballot access provisions requiring demonstrations of a much higher ‘modicum of support’ than the quantum Party Qualification Threshold requires.” *SAM Party v. Kosinski*, 483 F. Supp. 3d 245, 258 (S.D.N.Y. 2020) (*SAM Party I*). The District Court also cited to this Court’s affirmance stating that “[s]everal federal courts of appeals have approved of thresholds as high and higher.” *SAM Party II*, 987 F.3d at 275–76.³

³ The *SAM Party II* panel also mentioned that “New York’s 2% threshold is in the middle of the pack among the three-dozen states that require parties to obtain a certain level of support in a

Neither court, however, provided any further analysis of these decisions beyond that they upheld 2% or higher thresholds. *Id.*

Unfortunately, this kind of analysis is a prototypical and impermissible bright line or litmus-paper test. *See Lerman*, 232 F.3d at 145–46. When a party presents a substantial challenge (beyond criticizing the mere percentage itself), a court cannot simply point to precedent and compare percentages. *See Cowen v. Georgia Sec’y of State*, 960 F.3d 1339, 1342 (11th Cir. 2020) (“the determination that a 1 percent petition requirement by one state’s election law in one context is constitutional, *vel non*, does not guarantee the same determination of a similar law in a different context”); *Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 404 (8th Cir. 2020) (a claim challenging a signature requirement percentage below the 5% in *Jenness* could fail “if it stood alone,” but not if “the current regime *as a whole* was unconstitutionally burdensome”); *Green Party of Ga. v. Georgia*, 551 F. App’x 982, 984 (11th Cir. 2014) (“The district court based its dismissal on our past decisions that upheld a 5% petition signature requirement for other offices. . . . The district court’s approach employs the type of ‘litmus-paper test’ the Supreme Court rejected in *Anderson*.”); *see also Storer v. Brown*, 415 U.S. 724, 737 (1974) (“[A] number of facially valid election laws may operate in tandem to produce

statewide race.” 987 F.3d at 275. This conclusion is flawed, however, since many of these states offer multiple options such as a party or candidate petition.

impermissible barriers to constitutional rights.”). Indeed, each of the cases relied on in *SAM Party I* and *II* is distinguishable in context. And although Plaintiffs-Appellants cited to numerous district courts and Courts of Appeals that analyzed the relevant context and found requirements unconstitutional lower than the presumptively constitutional 5% threshold, the District Court made no effort to address them.

Incredibly, in addition to its impermissible analysis, the District Court reasoned that “[t]here is no authority for the proposition that a state is *required to requalify* a party that has garnered such low levels of support” as the 0.70% and 0.38% garnered by Plaintiffs-Appellants’ 2020 presidential candidates. *LPNY*, 2021 WL 1931058, at *7 (emphasis added). This is a complete distortion of all Supreme Court ballot access precedent and warrants correction in itself—the proper analysis focuses firmly on the burden and tailoring of the obstacles imposed by the State on core political rights, not on whether plaintiffs have adequately merited the “privilege” of ballot access. Plaintiffs-Appellants *never* framed their arguments as such.

2) Petition Threshold

Similar errors carry over to the District Court’s analysis of the 45,000-signature or 1% of the prior gubernatorial vote, whichever is lower, petition

threshold. First, it expressly imposed an improper threshold test on Plaintiffs-Appellants pointing exclusively to the percentage imposed: “The plaintiffs have failed to cite any persuasive legal authority to demonstrate that it is impermissible for New York to set the necessary ‘modicum’ of demonstrated support at 0.33 percent of the State’s registered voters.” *Id.* at *13.

Second, in analyzing the severity, the District Court merely cited to three cases that upheld a 5% signature requirement and determined that any lower threshold is constitutional, including this one. *Id.* at *8. It did not engage with the factual showing that Plaintiffs-Appellants made with regard to the difficulty of meeting the new requirement and it did not truly analyze how New York’s electoral regime operates in conjunction to render the signature threshold impossible (except in dismissing certain isolated critiques, discussed further below). The District Court’s holding is therefore again a clear application of an impermissible litmus-paper test. *See Arizona Green Party v. Reagan*, 838 F.3d 983, 990 (9th Cir. 2016) (proper application of the *Anderson-Burdick* analysis “rests on the specific facts of a particular election system, not on ‘strained analogies’ to past cases”).

The District Court is incorrect even in its reading of precedent. This Court in *Prestia* only stated that a 5% threshold is “generally valid.” 178 F.3d at 88. It never stated that this is some kind of formal presumption that would obviate the

need for a proper *Anderson-Burdick* analysis (that the Supreme Court established *after Jenness*). On the contrary, the *Prestia* court specifically discussed an example of “special circumstances” that would render a lower threshold unconstitutional. *Id.* at 89 (distinguishing *Rockefeller v. Powers* 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); *see Rockefeller v. Powers*, 78 F.3d 44, 45 (2d Cir. 1996) (finding a 5% signature requirement for a presidential candidate in a primary to be an unconstitutionally 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 candidates get a multiple of the signatures required). What *Jenness* and *Prestia* really stand for is that a plaintiff cannot simply point to precedent that found a certain number threshold unconstitutional unless it is greater than 5%. This is a fair and reciprocal corollary to the admonition against litmus-paper tests.

**B. THE DISTRICT COURT’S *AD SERIATIM* ANALYSIS
EVEN IF, HYPOTHETICALLY, THE INCREASED
THRESHOLDS WERE NOT TO IMPOSE A SEVERE
BURDEN, THE DISTRICT COURT FAILED TO ANALYZE
THE EXTENT TO WHICH THE STATE’S ASSERTED
INTERESTS MAKE THE BURDEN NECESSARY.**

In challenging Part ZZZ’s increased thresholds, Plaintiffs-Appellants identified the ways in which each threshold is difficult as a historical and comparative matter and how each threshold interacts negatively with other aspects of New York’s election regime. In addition, Plaintiffs-Appellants showed how logically and historically, the petitions operate in conjunction to deal a “one-two punch” to knock current non-fusion minor parties off the ballot and render them (and any new such parties) incapable of petitioning back on for qualifying statewide contests.

The District Court, in contrast, analyzed each alleged difficulty presented by the thresholds and New York’s election regime *ad seriatim* and in isolation, or simply ignored them. In doing so, the District Court failed to “look at the combined effect of New York’s ballot-access restrictions,” as required. *SAM Party II*, 987 F.3d at 275; *see Graveline v. Benson*, 992 F.3d 524, 542–43 (6th Cir. 2021) (“Defendants begin by analyzing the effect of each of the challenged provisions individually instead of assessing their combined effect as applied. . . . This technique fails to heed our precedent.”)

For example, the fact that political parties must now meet the increased party qualification threshold every two years instead of every four undoubtedly compounds the burden on them. However, the District Court simply stated in response that “the plaintiffs have not identified any authority to support the proposition that [this shift] is *itself* a severe burden,” which is a proposition that Plaintiffs-Appellants never asserted and did not have to show. *LPNY*, 2021 WL 1931058, at *7 (emphasis added). In addition, the District Court never discussed the facts that only four other states condition party status on the percentage of the vote in Presidential elections, and, unlike 39 states, New York does not provide a mechanism for organizations to obtain party status in anticipation of an election.

The District Court further did not discuss the fact that the party qualification threshold was set far above the 2016–18 performances of non-fusion minor parties and it was effectively impossible that they would meet the threshold in 2020. Neither the Commission nor the Legislature considered to exempt parties that already qualified for four years in 2018 such as *LPNY* and *GPNY*. Rather, the timing was set to eliminate parties in anticipation of the campaign finance program. Indeed, Governor Cuomo is on record stating that he expected and intended all parties but the Conservative and Working Families Parties to be eliminated because he did not consider them to be “legitimate” parties.

Instead, the District Court focused on four historic performances where non-fusion minor parties would have met the increased threshold to conclude that “New York does not have an election system that has proven to be so starkly inhospitable to independent and minor party candidates” over 25 years. *LPNY*, 2021 WL 1931058, at *10 n.10. The District Court therefore failed to appreciate that all current non-fusion minor parties would, based on historical performance, fail to qualify, at which point they would be prevented by the impossible petition threshold from regaining party qualification. Even the four examples mentioned show nothing more than the abilities of certain exceptional and scattered non-fusion parties to qualify for a newly shortened two-year term. Based on publicly available information, the Independence Party’s 1996–2000 hypothetical four-year term is a twice-a-century event. (Exh. A, below.) This record of historical performance should more than adequately constitute virtual exclusion from the ballot and a requirement that a reasonably diligent non-fusion minor party simply cannot meet. *See Storer*, 415 U.S. at 742 (“[T]here will arise the inevitable question for judgment: . . . could a reasonably diligent independent candidate be expected to satisfy the signature requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot? Past experience will be a helpful, if not always an unerring, guide. . .”)

Regarding the petition threshold, Plaintiffs-Appellants provided witness testimony and cited various ways in which it interacts with New York’s election regime to render it effectively impossible to meet. Yet, nowhere in its opinion did the District Court look at New York’s various restrictions on petition gathering and the limited pool of voters that are eligible to sign.

The District Court’s most significant errors are present in its analysis of the fact that the increased petition threshold now demands that 45,000 valid signatures be collected over 42 days, yielding a daily requirement of over 1,071 signatures, which is by far the highest such requirement nationwide to attain party status. (*See* Exhibit B, *supra*.) While Plaintiffs-Appellants presented this fact as compounding all the other obstacles present—in addition to being severe in itself—the District Court analyzed it in isolation and only as against previous precedent: “The plaintiffs’ argument that the Supreme Court in *Jenness*, the Court of Appeals in *Prestia*, and other courts have failed to consider the timing within which signatures must be gathered is unpersuasive.” *LPNY*, 2021 WL 1931058, at *9.

Yet even this improperly narrow analysis was irretrievably flawed. The District Court concluded that this nationally egregious threshold is nevertheless “unpersuasive [because] [l]itigants have previously raised the argument that a ‘signature-per-day’ requirement is too onerous without success.” *Id.* This is far from an appropriate balancing test—the District Court essentially refused to

properly analyze this restriction. Significantly, the District Court primarily relied here on two pre-*Anderson-Burdick* cases from 1974: *Am. Party of Texas v. White*, 415 U.S. 767, 786–87 (1974), and *Storer v. Brown*, 415 U.S. 724—taking *Storer*’s speculation concerning signature gathering and extrapolating that number to New York. See *Graveline v. Johnson*, No. 18-1992 (6th Cir. Sept. 6, 2018) (“And although the Supreme Court upheld a five-percent signature requirement in *Jenness* . . . , that signature requirement was analyzed using a less stringent framework than that required by *Anderson* and *Burdick*.”).

Even *White* involved a less onerous requirement than the new petition threshold, demanding “only” 400 signatures per day—less than half the burden that New York now imposes, 415 U.S. at 786–87, and *Storer* found that “gathering 325,000 signatures in 24 days . . . is a substantial requirement” meriting further factfinding. 415 U.S. at 740; *but see id.* at 762–66 (Brennan, J., dissenting). The *Storer* Court also specifically considered a petition threshold for independent candidates for president and therefore applied a high standard “for one who desires to be a candidate for president,” finding it significant that ballot access was *not* at stake. *Id.* at 740, 745-46. Here, by contrast, we are not primarily concerned with the capabilities of a candidate looking to be immediately elected to the nation’s highest office, but with the foundational rights of minor parties and their voters to participate in elections and grow their organizations. As the Supreme Court has

recognized, the associational rights that derive from the First Amendment freedoms of speech, petition and assembly extend to political parties and their supporters. *See Cousins v. Wigoda*, 419 U.S. 477, 487 (1975); *Norman v. Reed*, 502 U.S. 279, 288 (1992); *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973).

Most importantly, the decades of political interplay and experience informing Plaintiffs’-Appellants’ witness testimonies and the levels at which the various election regimes across the country have settled are far better proof of the capabilities of a reasonably diligent minor party than one case’s abstract speculation in *dicta* and from the 1970s about how many canvassers one could be reasonably expected to recruit and/or hire each day and at what expected efficiency rate.

Indeed, this Court *has* previously analyzed the interplay between signature thresholds and the time in which to gather them and has never dismissed the argument out of hand as the District Court did. In *Rockefeller*, 78 F.3d at 45-46, the Court found persuasive that, in combination with other restrictions, a slate of Republican delegates would need to collect 5% or 1,250 Republican voter signatures, whichever is less, over a period of only 37 days. Though of course there were other relevant restrictions (like those discussed here throughout), that requirement yielded only 33.8 signatures per day—a far, far lower burden than the increased petition threshold here—and yet was held unconstitutional. In *LaRouche*

v. Kezer, 990 F.2d 36, 41 (2d Cir. 1993), although the Court upheld Connecticut’s signature threshold for presidential candidates’ access to the primary ballot, the Court considered its expectation of 466 signatures-per-day, which the Court readily accepted to be a serious issue, but found it mitigated by Connecticut’s population density. Here, of course, we are dealing with a threshold that is more than double that number, a petition regime that does not share Connecticut’s lack of restrictive features, and a threshold for party status and fundamental ballot access, not just for presidential elections. *Id.* at 40.⁴

Outside this Circuit, many courts have found constitutional issue with requiring the collection of an unreasonable number of signatures in too short a time. Most importantly, several have found such in the context of restrictions around party status and qualification. *See Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 400, 405 (8th Cir. 2020) (“Arkansas’s present requirement for 27,000 signatures, 425 days prior to the election and with a rolling 90 day window to obtain the signatures sets a much higher bar” than “a generally

⁴ The District Court speculated that New York City’s metropolitan area may offer a similar mitigating advantage for gathering signatures, *LPNY*, 2021 WL 1931058 at *11 n.11, but it failed to address the reality that tracking and verifying compliance with the geographic distribution requirement—now increased fivefold—is incredibly burdensome and time-consuming for volunteers and coordinators. Considering the amount of everyday mobility in and out of districts, to trace signatures to individual districts is indeed more difficult than to “fan out throughout the state,” which, after all, is the clear intent of the geographic distribution requirement. *Id.* Defendants did not dispute Plaintiffs’-Appellant’ showings and testimony regarding their costs and capabilities.

permissible 10,000 signature requirement”) (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), *aff’d*, 674 F. App’x 974 (11th Cir. 2017); Order, *Constitution Party of Pa. v. Aichele*, No. 12-2726 (E.D. Pa. Feb. 1, 2018), ECF No. 115 (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); *Green Party of Arkansas v. Daniels*, 445 F. Supp. 2d 1056 (E.D. Ark. 2006) (finding unconstitutional 3% signature requirement for party petitions requiring 161 signatures-per-day and reducing it to 10,000, which was the level for independent candidate petitions or 66.7 signatures-per-day).

The unusually short turnaround time here is akin to often compressed 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) (finding a 180-day span to collect around 50,000 signatures—approx. 278 signatures per day—to qualify for a special election to be unconstitutional), *aff’d*, 674 F. App’x 974 (11th Cir. 2017); *Breck v. Stapleton*, 259 F. Supp. 3d 1126, 1129 (D. Mont. 2017) (finding a 46-day span to

collect 14,268 signatures—approx. 310 signatures per day—to qualify for a special election to be unconstitutional); *Jones v. McGuffage*, 921 F. Supp. 2d 888 (N.D. Ill. 2013) (finding a 62-day span to collect 15,682 or 5,000 signatures, depending on whether as a party or independent candidate—approx. 253 or 81 signatures per day—to qualify for a special election to be unconstitutional); *Hall v. Merrill*, 212 F. Supp. 3d 1148 (M.D. Ala. 2016) (finding a 56- or 106-day span to collect 5,938 signatures—approx. 106 or 56 signatures per day—to qualify for a special election to be unconstitutional), *vacated and remanded as moot*, 902 F.3d 1294 (11th Cir. 2018).

The only way that the District Court addressed how the various restrictions worked in combination was by gesturing to this Court’s non-precedential and necessarily tentative analysis in *SAM Party II*, where a panel of this Court did not have the benefit of the extensive briefing and factual showings made by Plaintiffs-Appellants. *LPNY*, 2021 WL 1931058, at *8. The panel there claimed to “look at the ‘combined effect of [New York’s] ballot-access restrictions,’” but only reasoned that the “2%” party qualification threshold “is in the middle of the pack among the three-dozen states that require parties to obtain a certain level of support in a statewide race” and that the up to 1% or 5% signature requirements for petitioning that the SAM Party would be subject to “pale in comparison to those

upheld” in various cases. 987 F.3d at 275–76. This, however, is plainly inadequate.

Firstly, the opinion in *SAM Party II* was only concerning a motion for preliminary injunction and therefore its findings—whatever they may be—are not at all binding precedent. An “interlocutory appeal of a preliminary injunction [is] a distinctive procedural posture” that requires only a “likelihood” of success, not “actual success.” *Cayuga Indian Nation of New York v. Seneca Cty., New York*, 978 F.3d 829, 834 (2d Cir. 2020). “It would therefore be anomalous . . . to regard [an] initial ruling as foreclosing the subsequent, more thorough consideration of the merits that the preliminary injunction expressly envisions.” *Goodheart Clothing Co. v. Laura Goodman Enterprises, Inc.*, 962 F.2d 268, 274 (2d Cir. 1992).

Secondly, the panel was only presented with the SAM Party’s claims, which have an extremely limited focus to the requirement for parties to field presidential candidates. *See* 987 F.3d at 273 (“The SAM Party challenges New York’s new presidential-election party-qualification requirement, alleging that it unconstitutionally burdens the associational rights of its members and compels their speech. The SAM Party does not challenge the increase to the qualification threshold for the gubernatorial election.”). As this Court has held, courts should “avoid relying on ‘implicit holdings’” that do not explicitly address a party’s

argument. *Cayuga*, 978 F.3d at 834. Plaintiffs-Appellants have shown here a likelihood of success on the much broader and direct claim that the party qualification and petition thresholds, separately and in combination with each other and New York’s electoral regime, impose unconstitutional burdens on minor parties and their voters.

Thirdly, the *SAM Party II* panel did not have the benefit of Plaintiffs’ arguments and factual showings concerning the burdens of both thresholds and their operation in context. The *only* analysis that the panel conducted was to take the mere percentages of the voter and petition thresholds in isolation and compare them to percentages that other courts upheld in different circumstances. 987 F.3d at 275–76. Here, Plaintiffs have provided a much greater record to show how the two thresholds work in a nefarious combination to virtually exclude non-fusion minor parties from the ballot, making it impossible for a reasonably diligent non-fusion minor party to run statewide candidates. Notably, since the SAM and WFP Parties did not challenge the petition threshold, neither the District Court nor the Second Circuit were made aware of it being an extreme nationwide outlier when considering the time in which to gather signatures and other unique difficulties. The Eleventh Circuit has recognized that because the factual record of each case necessarily differs, its own prior decision upholding the constitutionality of a challenged statute does not “foreclose the [plaintiff’s] right to present the evidence

necessary to undertake” the *Anderson-Burdick* analysis in a new case. *Bergland v. Harris*, 767 F.2d 1551, 1554 (11th Cir. 1984).

C. EVEN IF, HYPOTHETICALLY, THE INCREASED THRESHOLDS WERE NOT TO IMPOSE A SEVERE BURDEN, THE DISTRICT COURT FAILED TO ANALYZE THE EXTENT TO WHICH THE STATE’S ASSERTED INTERESTS MAKE THE BURDEN NECESSARY.

Even if the District Court were correct to determine that the increased party qualification and petition thresholds do not impose a severe burden, it failed to “determine both the legitimacy and strength of each of [the State’s] interests and the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Yang*, 960 F.3d at 129; accord *Price v. New York State Bd. of Elections*, 540 F.3d 101, 108–09 (2d Cir. 2008) (“Under *Burdick*’s ‘flexible standard,’ . . . the court must actually ‘weigh’ the burdens imposed on the plaintiff against ‘the precise interests put forward by the State,’ and the court must take ‘into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.’”).⁵

The District Court did not follow this Court’s precedents. It described the State’s purported interests to be “important” and “non-discriminatory” and found

⁵ We submit that a proper analysis would find a severe burden and necessitate strict scrutiny, which the increased thresholds would surely fail.

the party qualification threshold (and biennial requirement) to be “well within the election law requirements upheld in other cases” and “a reasonable method for measuring whether a party continues to enjoy a sufficient ‘modicum of support.’” *LPNY*, 2021 WL 1931058, at *11–12. Regarding the petition threshold, the District Court reasoned that “[u]nder the less searching scrutiny that non-severe ballot-access restrictions receive, New York’s chosen Petition Requirement need not be the best way to avoid ballot overcrowding—it need only be a reasonable way to avoid ballot overcrowding,” and found that “[r]aising the number of signatures required is a reasonable, direct, and narrowly-tailored method for assuring that a candidate enjoys sufficient public support before allowing such candidate to appear on the ballot.” *Id.* at *12. By looking only as to whether the thresholds were “reasonable,” the District Court thus applied a kind of improper rational basis analysis that was far more deferential to the State than that demanded by *Anderson-Burdick*, *Yang*, and *Price*.⁶ *See, e.g., Price*, 540 F.3d at 108–09 (explaining that the appropriate standard is *not* rational basis review where “the plaintiff must ‘negative every conceivable basis which might support’ the challenged law”); *see also Crawford v. Marion County Election Bd.*, 553 U.S. 181,

⁶ The Supreme Court has stated that “reasonable, nondiscriminatory restrictions” are generally sustained, but it has also clearly explained that this is purely descriptive and not a separate standard or analysis. *See Crawford*, 553 U.S. at 191. The District Court is therefore wholly wrong in holding that a threshold “need only be a reasonable way to avoid ballot overcrowding” and should be reversed on this point alone. *LPNY*, 2021 WL 1931058, at *12.

191 (2008) (“However slight that burden may appear . . . it must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’”).

Notably, the District Court took Defendants-Appellees’ assertion of generic state interests in avoiding ballot over-crowding, voter confusion, etc., at face-value, when evidence shows that the new requirements are far more restrictive than necessary to protect those interests, as discussed further below. More importantly, it disregarded the “primary” interest the defendants asserted, which was to protect the viability of the campaign finance scheme. But as recognized in *Green Party of Connecticut v. Garfield*, 616 F.3d 213, 220 (2d Cir. 2010), there is a less burdensome alternative to eliminating all minor parties from the ballot, which is to set the requirements for public financing high enough that minor parties will not automatically qualify just because they have ballot access.

Furthermore, contrary to this Court’s instructions, the District Court never questioned the extent of each increase and whether the State’s interests could be satisfied at some lower number. It also dismissed the burdens on Plaintiffs-Appellants out of hand by erroneously imposing a burden of proof on Plaintiffs-Appellants before it would even engage in a weighing analysis, incredibly claiming that (1) “[t]here is no authority for the proposition that a state is required to requalify a party that has garnered such low levels of support” and (2) though

Plaintiffs-Appellants “may need to increase the number of volunteers they have previously used or hire additional paid canvassers[, this] does not establish that the burdens are outweighed by New York’s regulatory interests.” *Id.* at *7, 13.

The District Court *should* have demanded that “the State . . . put forward . . . substantive justifications for the restrictions imposed” (that are more than contrived and not undercut by other policies) and weigh them against the burden imposed. *Price*, 540 F.3d at 109-10; *cf. Green Party of Georgia*, 551 F. App’x at 984 (“the district court failed to apply the *Anderson* balancing approach”).

II. A PROPER ANALYSIS WOULD FIND THAT PLAINTIFFS HAVE SHOWN A LIKELIHOOD OF SUCCESS BECAUSE PART ZZZ’S INCREASED THRESHOLDS IMPOSE A SEVERE BURDEN AND ARE NOT NARROWLY TAILORED TO FURTHER COMPELLING STATE INTERESTS—NOR ARE THEIR EXTENT AND BURDENS JUSTIFIED BY THE STATE’S INTERESTS.

Standard of Review: A denial of a preliminary injunction is reviewed for abuse of discretion.

If the District Court had applied a proper analysis, it would have determined that the increased thresholds impose a severe burden and are not narrowly tailored to further a compelling state interest. At the very least, it would find that the

Defendants have failed to justify the extent of the burdens imposed by the increased thresholds on Plaintiffs-Appellants.

**A. THE ANALYSIS SHOULD FOCUS ON THE
BURDEN ON NON-FUSION MINOR PARTIES.**

As a preliminary matter, this Court should clarify that the analysis of the burden should focus on non-fusion minor parties. The District Court held the Conservative and Working Families Parties’ continued existence against Plaintiffs-Appellants and claimed that “the New York Election Law does not draw a distinction between ‘fusion’ or ‘non-fusion’ parties, nor require a party that has previously chosen to cross-nominate candidates to continue to do so,” but this type of reasoning disregards both the nature of the core rights at issue and the practical significance of fusion parties remaining on the ballot (or, rather, the lack thereof). *LPNY*, 2021 WL 1931058, at *7-8.

State laws preventing minor parties access to the ballot “place burdens on 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).

The Supreme Court has emphatically endorsed the role of third parties as integral to democracy, always assuming that their primary mode of association is running their own candidates: “The States’ interest in screening out frivolous ***candidates*** must be considered in light of the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office.” *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185–86 (1979) (emphasis added); see *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (“Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate ***candidates who espouse their political views***. The formation of national political parties was almost concurrent with the formation of the Republic itself.” (emphasis added)); *Clements v. Fashing*, 457 U.S. 957, 965 (1982) (plurality) (“The Court has recognized . . . that [ballot access] requirements may burden First Amendment interests in ensuring freedom of association, as these requirements classify on the basis of a ***candidate’s*** association with particular political parties. Consequently, the State may not act to maintain the ‘status quo’ by making it virtually impossible for any but the two major parties to achieve ballot positions for ***their candidates***.”

(emphasis added)). On the other hand, as the Supreme Court held in *Timmons v. Twin Cities Area New Party*, the ability for parties and voters to signal to candidates on a fusion basis does not even implicate constitutional rights of association: “We are unpersuaded . . . by the party’s contention that it has a right to use the ballot itself to send a particularized message, to its candidate and to the voters, about the nature of its support for the candidate.” 520 U.S. 351, 362–63 (1997).

Practically speaking, the new thresholds operate to eliminate all current non-fusion parties and allow one or two fusion parties to continue on by cross-endorsing major party candidates. Fusion parties avoid partisan resistance by convincing voters that they can signal an ideological preference to candidates without doing any harm to a major party’s electoral chances. While the District Court is correct that there is no “rule” that they must only cross-endorse in statewide races, the undisputed facts demonstrate that they nevertheless must do it to meet the party qualification threshold. In *Williams*, the Supreme Court found ballot restrictions to violate equal protection because “they give the two old, established parties a decided advantage over any new parties struggling for existence and thus place substantially unequal burdens on both the right to vote and the right to associate.” 393 U.S. at 31. A system where minor parties can only practically exist by cross-endorsing major party candidates does not resolve the

major parties’ advantages—they still alone determine the candidates on any voter’s ballot. In *Jones*, the Supreme Court found California’s blanket primary system to be unconstitutional because it similarly “force[d] political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival.” 530 U.S. at 577. It did not matter that no “rule” dictated this conclusion—the evidence demonstrated a “clear and present danger” of this consequence. *Id.* at 578.

B. THE INCREASED THRESHOLDS IMPOSE A SEVERE BURDEN.

To determine whether the thresholds impose a severe burden, “[t]he inevitable question for judgment” is this: “in the context of [state] politics, could a reasonably diligent [non-fusion minor party] be expected to satisfy the [party qualification and] signature requirements, or will it be only rarely that the [non-fusion minor party] will succeed in getting on the ballot?” *Ulrich v. Mane*, 383 F. Supp. 2d 405, 412 (E.D.N.Y. 2005) (*quoting Storer v. Brown*, 415 U.S. 724, 730 (1974)). “The hallmark of a severe burden is exclusion or virtual exclusion from the ballot.” *Libertarian Party of Connecticut v. Lamont*, 977 F.3d 173, 177 (2d Cir. 2020).

Plaintiffs have overwhelmingly established that Part ZZZ’s increased thresholds impose a severe burden “by leveraging historical records, showing a lack of alternative means to qualify, and identifying specific burdens imposed by the statutory scheme.” *Graveline*, 992 F.3d at 543.

Part ZZZ’s increased party qualification threshold is set above the historic and regular performance of all non-fusion minor parties. Over the last one hundred years, only twice has any non-fusion minor party performed well enough in consecutive gubernatorial and presidential elections to qualify twice in a row to maintain the ballot access for the four years they were previously entitled to—the Independence Party in 1996-2000 and the American Labor Party in 1948-52. Even these would lose party status after one full four-year term. Yes, non-fusion minor parties have had scattered successful years like GPNY’s exceptional 2000 or 2014 performances, but the increased petition threshold will ensure that such campaigns will either never make it to the ballot in the first place or, if they somehow do, they would be so sapped of funds or volunteer effort to make such successful electoral performance unattainable. The District Court conspicuously ignored the fact that all this is exacerbated by New York’s longtime choice—unlike 39 other states—not to provide a separate mechanism for parties to qualify separately from independent candidates or ahead of an election. Thus, the party qualification

threshold merits extra scrutiny beyond a normal independent candidate threshold like that at issue in *Jenness*.

Notably, in the short term, the party qualification threshold was set far above the ability of any non-fusion minor party in 2020, only 7 months before a predictably partisan presidential election. As Governor Cuomo stated publicly, it was designed to exclude them from the ballot before implementation of the campaign finance system, deeming only the Conservative and Working Families Parties to be “legitimate” (and not the nation’s third and fourth largest parties). The burden on LPNY underscores the unfairness at play. After 44 years of running gubernatorial candidates by petition, it finally built itself up to successfully meet and surpass the 50,000-vote party qualification with the candidacy of Plaintiff-Appellant Larry Sharpe in 2018 (whose campaign raised and spent almost half a million dollars).⁷ After these efforts, LPNY was finally positioned to concentrate on elections rather than petitions, expecting a full four years to build and organize. Yet the rug has been pulled out from under it and it has been deprived of its full four-year term to do so. The Commission and Legislature imposed the new party

⁷ See Matt Welch, *Libertarian Larry Sharpe Has Raised a Record \$450,000 in New York Governor's Race*, Reason (Oct. 31, 2018), <https://reason.com/2018/10/31/libertarian-larry-sharpe-has-raised-a-re/>.

retention threshold immediately in 2020 with no exemption for parties that had satisfied previous requirements.

Next, all practical indications show that the increased petition threshold—to collect 45,000 valid signatures over 42 days—is both an extreme outlier and essentially impossible to meet without an unprecedented amount of cash and volunteers. As shown in Exhibit B *supra*, New York demands the most signatures-per-day among all jurisdictions—by far—to access party qualification. This is further compounded by a fivefold increase in its geographic distribution requirement, which itself requires a great deal of effort and cost to track and satisfy. Furthermore, New York’s petition gathering requirements are incredibly restrictive compared to other jurisdictions, including, but not limited to, the requirements (1) that witnesses must be New York residents; (2) that a voter may sign only one petition for each office, including designating petitions for party primary candidates collected prior to independent petitioning; and (3) that it is illegal to pay petition gatherers by signature. Thus, competitive candidates (and their parties) must collect two or three times the necessary number to withstand or discourage a challenge. In 2018, Larry Sharpe and Stephanie Miner (for the SAM

Party) filed over twice the 15,000 required signatures.⁸ That year, actress Cynthia Nixon remarkably filed 65,000 signatures to safely challenge Governor Cuomo in the primary.⁹ Thus, the increased threshold would require, as a practical matter, a filing of at least 90,000 signatures collected over 42 days. LPNY and GPNY representatives have testified that this would be prohibitively expensive for the parties and would be beyond their institutional capacity—indeed it would be beyond most major party candidates’ capacities. Of the largest recent local petitioning efforts, we know that Cynthia Nixon had 3,500 volunteers collect 45,000 signatures and paid canvassers \$81,500 to collect another 20,000.¹⁰ We also know that Governor Cuomo allegedly spent \$1 million to collect 100,000 signatures in 2002.¹¹ Each of these candidates intended to go above and beyond to pursue victory. Requiring a similar or greater herculean effort merely to make it onto the ballot is undoubtedly a severe burden.

⁸ David Lombardo, *Independent gubernatorial candidates file for spots on ballot*, Times Union (Aug. 21, 2018), <https://www.timesunion.com/news/article/Independent-gubernatorial-candidates-file-for-13171744.php>.

⁹ Kenneth Lovett, *Nixon files 65,000 signatures to get on the primary ballot to challenge Cuomo*, Daily News (Jul. 12, 2018), <https://www.nydailynews.com/news/politics/ny-pol-cuomo-nixon-williams-hochul-teachout-james-maloney-eve20180712-story.html>.

¹⁰ *Id.*; Kenneth Lovett, *Nixon and other progressive statewide candidates pay more than \$80,000 for petitioning efforts*, Daily News (Jul. 23, 2018), <https://www.nydailynews.com/news/politics/ny-pol-nixon-teachout-williams-working-families-party-cuomo-petition-20180722-story.html>.

¹¹ *Id.*

In combination, the increased party qualification and petition thresholds operate to eliminate all non-fusion minor parties from the ballot and keep them off. Thus, they deliver a one-two punch to New York's non-fusion minor parties and most notably to Plaintiffs-Appellants. If the thresholds remain, New York voters will be left with two candidates in statewide and presidential elections, freezing the status quo in perpetuity.

C. THE STATE'S INTERESTS IN INCREASING THE THRESHOLDS ARE EXCEEDINGLY WEAK AND CANNOT BE JUSTIFIED TO IMPOSE SUCH BURDENS ON NON-FUSION MINOR PARTIES.

The District Court found the relevant state interests purportedly served by the thresholds to be “to 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.” *LPNY*, 2021 WL 1931058, at *11. As detailed above, however, the District Court failed to all assess whether the extent of the requirement was necessary to achieve these aims. A proper analysis would show that these interests are in fact very weak and need little or no adjustment of the thresholds at play.

The “primary” justification for the Commission’s adjustment of the thresholds was to save funds for the Campaign Finance regime established by the rest of Part ZZZ. This is confirmed by the Report itself, the statutory timing of the thresholds to take effect immediately to clear the ballot in time for implementation of the campaign financing portion in 2022 for 2024 elections, the presence of the thresholds themselves in Part ZZZ along with a non-severability clause pronouncing that the campaign finance system is inseparable from the new thresholds and vice versa, and finally Governor Cuomo’s public statement that the thresholds were designed to eliminate all but the “legitimate” Working Families and Conservative Parties to safeguard the Campaign Finance System.

[Wamc.org/post.gov-cuomo-wamcs-roundtable-11520](https://www.wamc.org/post/gov-cuomo-wamcs-roundtable-11520) (Nov. 5, 2020 at 14:45).

Yet, non-fusion minor parties present an infinitesimal threat to the \$100 million allocated budget for the campaign finance system established by Part ZZZ. Even the District Court was forced to concede in *SAM Party I* that “New York’s cost-focused justifications, relating to minor party primaries, are not compelling” “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.” 483 F. Supp. 3d at 264 n.9. Practically speaking, few minor party candidates would qualify for public matching funds,

especially as compared to major party candidates. In addition, these other thresholds already ensure that such candidates have a modicum of support. Moreover, the Legislature could have easily established a separate minor party threshold like that affirmed in *Green Party of Connecticut v. Garfield*, 616 F.3d 213, 220 (2d Cir. 2010), that regulated access to the campaign finance system rather than *access to the ballot itself*. While saving money is undoubtedly a legitimate interest, to compromise on core constitutional rights to “primarily” further a voluntary public financing regime is a perversion of democratic priorities, especially if it is to save the State a mere \$5,000 per candidate. Even worse, the thresholds were set by Governor Cuomo, the Commission, and the Legislature specifically to generously sacrifice Plaintiffs-Appellants’ and all other non-fusion minor parties’ ballot access to accomplish such. This is exactly the kind of conduct where courts must step in to ensure minority voters are not disenfranchised.

The other state interests recognized by the District Court must be discounted by the statutory context and legislative intent that the “primary” justification is to save funds for the new campaign finance program. Nevertheless, Defendants-Appellees have far from shown that the extent of these threshold increases are at all justified.

Regarding the party qualification threshold, Defendants-Appellees have merely contrived a post-hoc and incomplete rationale for increasing the threshold to 130,000 votes to account for increased voter registration numbers since 1936. This rationale does not hold up. Firstly, the Commission explained its original rationale in its Report that was based on changes in voter turnout since 1936—not registration—although Defendants-Appellees must have recognized that that rationale was nonsensical and self-contradictory and have thus quietly repudiated it, even though they have admitted that the Legislature merely implemented the Commission’s recommendations. Secondly, the Commission’s rationale does not explain why the threshold was set at 2% *or* 130,000, *whichever is higher*. A disjunctive threshold usually favors the lower number because a modicum of support could be shown multiple ways, but this one ratchets to the higher number and Defendants-Appellants have never provided a satisfactory justification for this. *The only plausible explanation is to ensure that no minor parties slip by in low turnout gubernatorial elections, which is not legitimate.* Thirdly, if one considers voter turnout and not registered voters, numbers have increased very little since 1936. Yes, we as a society may have improved accessibility and outreach regarding registration, but this should not affect the level of a *minimum* modicum of support from the voters who are actually engaged enough to vote.

Regarding increasing the petition threshold, the District Court and Defendants-Appellees claim that the increase was a “corollary” to an increase to the party qualification threshold and argue that too many parties gain ballot access without consistent performance or success. *LPNY*, 2021 WL 1931058, at *12. For the same reasons as above, this “corollary” claim is undermined by the infinitesimal risk petition candidates pose to the campaign finance system. The District Court also concluded that “New York has demonstrated that the comparatively low signature requirement has resulted, since 1994, in no fewer than 5 and up to 10 candidates for governor in each gubernatorial election, many from quixotic, one-time nominating bodies without lasting support.” *Id.* This is misleading, however, in several important ways. First, “one-time nominating bodies” is an expected feature of New York’s independent nominating process because this is the only way for one-time independent candidates to run for office—they *must* create a party name and run on it.¹² Second, the Legislature last changed the petition threshold as recently as 1992 because it determined that

¹² The District Court cites to the “Rent Is Too Damn High Party” and the “Stop Common Core Party” as significant examples of “quixotic, one-time nominating bodies without lasting support,” but these show the opposite. *Id.* The Stop Common Core Party did well enough to gain party status in 2014. It changed its name to the Reform Party before underperforming in 2018. Therefore it is a success story as far as petitioning goes. The Rent is Too Damn High Party was a vehicle for Jimmy McMillan and has succeeded in bringing its eponymous message into the popular consciousness and mainstream politics. See, e.g., Dan Amira, *Jimmy McMillan Reacts to SNL Parody: ‘Election Over’*, New York Magazine Intelligencer (Oct. 25, 2010), https://nymag.com/intelligencer/2010/10/jimmy_mcmillans_reaction_to_sn.html.

20,000 signatures was *too restrictive*.¹³ During the time in which that raised threshold operated from 1971 to 1992, there were 4 to 8 candidates for governor in each gubernatorial election. *See* Exhibit B, *supra*. Thus, a slight increase to 5 to 10 candidates is exactly what the Legislature intended and found sufficient to ensure that candidates receive a modicum of support. Indeed, the last two gubernatorial elections have involved only 5 candidates.

¹³ The Election Reform Act of 1992 was specifically designed to spare New York State the embarrassment that it would otherwise endure if Ross Perot could not make it onto the ballot in that state alone, and therefore provided for immediate implementation of the lower threshold for the 1992 presidential election. 1992 Sess. Law News of N.Y. Ch. 79 (S. 7922, A. 11505); *see Bill Would Smooth Perot's Path to Ballot*, New York Times (Apr. 24, 1992, B5) (“The bill expresses the simple idea that New Yorkers should not be denied the opportunity to vote for legitimate, nationally recognized independent candidates. . . I find it unacceptable and frankly embarrassing that New York would provide less democracy than any other state.” (quoting Assembly Speaker Saul Weprin)); Kevin Sack, *Albany Takes Step to Revise Election Laws*, New York Times (May 1, 1992, 25).

III. THE TRIAL COURT ERRED IN SUMMARILY DENYING RELIEF BASED ON THE PLAINTIFFS' THIRD AND FOURTH CAUSES OF ACTION.

Standard of Review: A denial of a preliminary injunction is reviewed for abuse of discretion.

The plaintiffs moved in the alternative for a preliminary injunction with respect to the two causes of action which alleged 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 trial court summarily dismissed these arguments, discussing only the impact of the COVID Lockdown. See, order, pp. 36-37. The court spent one paragraph discussing the impact of COVID on petitioning in 2022, while ignoring all the other aspects of the cause of action including the impact of COVID on presidential candidates in 2020 during a lockdown of the state. See, Anderson Decl. 29-31, App. 95.

Because the defendants and the trial court dealt with these causes of action in a cursory manner, we have met our burden of showing sufficiently serious questions going to the merits to make them a fair ground for litigation.

IV. THIS COURT SHOULD DIRECT THE DISTRICT COURT TO GRANT PLAINTIFFS' PRELIMINARY INJUNCTION AND ORDER DEFENDANTS-APPELLEES TO INCLUDE PLAINTIFFS-APPELLANTS' CANDIDATES IN 2021-22 ELECTIONS AND APPLY THE FORMER THRESHOLDS UNTIL A FINAL ADJUDICATION

The District Court based its rejection of Plaintiffs-Appellants' request for preliminary injunction entirely on the merits prong of the standard, however the harm and public interest prongs clearly favor Plaintiffs-Appellants since they are deprived of all the benefits of party status and election participation rights are permanently lost if relief is not immediately granted. This Court should therefore not only reverse the decision below, but also direct the District Court to enter a

preliminary injunction in Plaintiffs-Appellants' favor to accept their candidates by nomination by the LPNY and GPNY state committees for the 2021 elections (since the primary season has now passed), and to treat LPNY and GPNY as statutory parties for subsequent elections so long as they satisfy the prior party qualification and petition thresholds of 50,000 votes in gubernatorial elections, and 15,000 signatures (with 100 signatures from each of one-half of congressional districts), respectively. LPNY and GPNY already met the party retention threshold in 2018 to participate through to 2022 elections as statutory parties.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's denial of a preliminary injunction to Plaintiffs-Appellants and direct the trial court to enter a preliminary injunction in favor of the Plaintiffs-Appellants.

Respectfully submitted,

August 6, 2021

/s/ James Ostrowski
Attorney for Appellants
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
jamesmostrowski@icloud.com

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of [Second Circuit Local Rule 32.1(a)(4)/Federal Rule of Appellate Procedure 32(a)(7)] because this brief contains 13,965 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a:

Times New Roman in 14 point font.

Dated: August 6, 2021

Buffalo, New York

s/ James Ostrowski

James Ostrowski, Esq.

Attorney for Appellants

SPECIAL APPENDIX

SPECIAL APPENDIX TABLE OF CONTENTS

Opinion and order of Honorable John G. Koeltl, filed May 13, 2021, Appealed from	SPA-1
Part ZZZ of the 2020–2021 fiscal year budget bill known as S7508-B/A9598-B	SPA-40

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LIBERTARIAN PARTY OF NEW YORK, ET
AL.,

Plaintiffs,

- against -

NEW YORK BOARD OF ELECTIONS, ET AL.,

Defendants.

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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5-13-2021

20-cv-5820 (JGK)

OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The Libertarian Party of New York (the "Libertarian Party") and the Green Party of New York (the "Green Party"), together with individual members, have sued the New York Board of Elections (the "NYBOE"), and its chairs, commissioners, and executive directors (together, the "NYBOE Defendants"), alleging that the amendments to the New York Election Law found in Sections 9 and 10 of Part ZZZ of the 2020-2021 Fiscal Year New York State Budget Bill ("Part ZZZ"), violate the plaintiffs' First and Fourteenth Amendment rights. Section 10 of Part ZZZ amended the overall number of votes required for a political organization to qualify as a "party" and the frequency with which parties must requalify ("Party Qualification Requirement"). Section 9 of Part ZZZ increased the number of signatures required for a candidate to gain access to the ballot by an independent nominating petition ("Petition Requirement").

As amended, the New York Election Law now requires that a political organization's chosen candidate 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, to qualify as a recognized party. Because the respective presidential candidates of the Libertarian Party and the Green Party both failed to achieve the required vote threshold in the 2020 presidential election, both have been decertified as recognized political parties by the NYBOE. Thus, to gain access to the ballot in 2022, candidates from the Libertarian Party and the Green Party must file independent nominating petitions. For gubernatorial candidates, such nominating petitions must be submitted with signatures from 1 percent of the number of votes cast in the last gubernatorial election (up to 45,000), and at least 1 percent of such enrolled voters (up to 500) must reside in each of one-half of New York's 27 congressional districts.

The plaintiffs have moved for a preliminary injunction to require the NYBOE to reinstate the Libertarian Party and the Green Party as recognized parties for the 2022 gubernatorial election, and to enjoin the NYBOE Defendants from continuing to implement Sections 9 and 10 of Part ZZZ. Because the plaintiffs have failed to demonstrate that the challenged amendments violate their Constitutional rights, otherwise cause irreparable harm to the plaintiffs absent relief at this time, or be against the public interest, their motions are **denied**.

I.

The plaintiffs have challenged Sections 9 and 10 of Part ZZZ, and thus, this case involves substantially similar facts to those at issue in SAM Party v. Kosinski, 483 F. Supp. 3d 245 (S.D.N.Y. 2020), aff'd sub nom. SAM Party of New York v. Kosinski, 987 F.3d 267 (2d Cir. 2021).¹

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). Following the challenged amendments contained within Section 10 of Part ZZZ, that took effect on April 3, 2020, 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 for that organization to qualify as a recognized "party." N.Y. Elec. Law § 1-104(3). A political organization that fails to satisfy such requirements is an "independent body." N.Y. Elec. Law § 1-104(12).

Recognized parties enjoy certain practical benefits that independent bodies do not, such as the authority to maintain a segregated financial account, to which ordinary contributions

¹ Unless otherwise noted, this Opinion and Order omits all alterations, citations, footnotes, and internal quotation marks in quoted text.

limits do not apply, for certain expenditures. 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 §§ 5-210(5)(k)(x), 5-300, enabling parties greater ease in connecting with potential supporters. Compl. ¶ 25. And, as particularly relevant for this case, each recognized party receives a “berthing” for the winner of the party’s nomination process on general election ballots for certain state-wide elections. Brehm Decl. ¶ 5; N.Y. Elec. Law §§ 6-102, 6-104, 6-106, 6-114.²

By contrast, independent bodies are not provided with a guaranteed ballot “berth” and must nominate candidates directly onto the general election ballot, by submitting independent nominating petitions. N.Y. Elec. Law § 6-142. The candidates of independent bodies appear with their political organization’s name and emblem on the nominating petition, and, if successful in satisfying the Petition Requirement, on the ballot. N.Y. Elec. Law § 6-138(2)-(3); Compl. ¶ 26. Following the challenged amendments in Section 9 of Part ZZZ, nominating petitions for statewide office must be signed by the lesser of 45,000 registered voters or 1 percent of the votes cast in the last

² Parties are also subject to various regulatory requirements, such as maintaining certain governing committees and submitting certain required filings. See, e.g., N.Y. Elec. Law §§ 2-102, 2-104, 2-106, 2-112, 2-114. Further, the internal party primary process is governed by certain requirements. See, e.g., N.Y. Elec. Law §§ 6-104, 6-110, 6-118, 6-136.

gubernatorial election. N.Y. Elec. Law § 6-142. The signatures are required to be from registered voters who have not yet signed a different petition for the same office. N.Y. Elec. Law § 6-138(1). In addition, of the required signatures, at least 500 (or 1 percent of enrolled voters, whichever is less) must be from signatories residing in each of one-half of the State's 27 congressional districts. N.Y. Elec. Law § 6-142(1). Finally, the petition can only be circulated during a specific, prescribed 6-week period. N.Y. Elec. Law § 6-138(4).

For 85 years, New York conferred recognized "party" status on any political organization whose candidate in the prior gubernatorial election received at least 50,000 votes. Declaration of Elliot A. Hallak, ECF No. 52 ("Hallak Decl."), Ex. D ¶ 12. Similarly, the number of signatures required for independent nominating petitions was set in 1911 at 6,000, which was then raised in 1922 at 15,000, and then raised again in 1971 to 20,000, before being lowered, in 1992, to 15,000. Declaration of Robert A. Brehm, ECF No. 51 ("Brehm Decl.") ¶¶ 66.³ The 6-week or 42-day collection period for signatures was adopted in 1946. 1946 N.Y. Sess. Laws, Ch. 17, § 137(4).

³ In 1922, in addition to raising the Petition Requirement from 6,000 to 15,000, the New York State Legislature set the required vote threshold to maintain party status at 25,000 votes. Brehm Decl. ¶¶ 31, 61. Although the party requirement was then raised again to 50,000 in 1935, the Petition Requirement remained the same until 1971. *Id.* ¶¶ 31, 66.

The amended Party Qualification Requirement and Petition Requirement 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 2020 Fiscal Year 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(a). 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 also instructed 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 . . . " Id. § 2(j). In addition, Section 3 of Part XXX required that the Commission design the public campaign finance system such that it could 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.

The Commission's Report to the Governor and the Legislature (hereafter, the "Report") included a series of recommendations to, among other things, 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. Declaration of Michael Kuzma, ECF No. 46-5 ("Kuzma Decl.") Ex. D.

At issue here, the Commission also recommended changing the Party Qualification Requirement's vote 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. 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 program.” Kuzma Decl. Ex. D, at 28; Compl. ¶ 106. The Commission noted its belief that raising the Party Qualification Requirement’s threshold 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 ideological stances,” and that the higher thresholds will enable voters to “make more resolute choices between candidates” because they can “rely upon the knowledge that such parties have sufficient popular support from the electorate of this state.” Report at 14-15. The Commission also noted the changes to the Party Qualification Requirement 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 nominating petition 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 vote threshold for the Party Qualification Requirement was considered and rejected, that the appropriate threshold was actively debated, and that the 2 percent vote 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).

As a "corollary" to the recommended changes to the Party Qualification Requirement, the Committee 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. From 1922 to November 2020, New York experienced over a four-fold increase in the number of enrolled voters. Brehm Decl. ¶ 67. The

Commission's recommendation of 45,000 signatures amounts to 0.74 percent of the voters who voted in the 2018 New York gubernatorial election and only 0.33 percent of New York's 13.55 million registered voters. Brehm Decl. Exs. A, B.

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, the 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 challenged the Commission and its Report in New York state court. On March 12, 2020, 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. Compl. ¶ 48.

In response, Part ZZZ was added to the 2020-2021 Fiscal Year New York State Budget Bill, which the New York State Legislature passed, and Governor Cuomo signed into law on April 3, 2020. Compl. ¶ 72. 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 Requirement and

an amendments to Section 6-142(1) to include the amended Petition Requirement. 2020 N.Y. Sess. Laws Ch. 58, Part ZZZ.

B.

The Libertarian Party is the New York State “affiliate” of the national Libertarian Party, which the plaintiffs allege is the third-largest political party in the United States. Compl. ¶ 7. Anthony D’Orazio is the Chair of the New York State Libertarian Party, and Larry Sharpe was the Libertarian Party candidate for governor in 2018. Compl. ¶¶ 8-9. From 1972 until 2018, the Libertarian Party operated as an independent body, under N.Y. Election Law § 1-104(12). Id. ¶ 7. Since 1974, the Libertarian Party successfully obtained a place for its chosen candidates on the ballot through the independent nominating petition process, with the exception of 1986. Id.

The Green Party of New York was formed in 1992, and is affiliated with the Green Party of the United States, which the plaintiffs assert is the fourth-largest political party in the country. Id. ¶ 11. The Green Party first became a recognized party in New York in 1998, but lost the status as a result of its gubernatorial candidate’s performance in the 2002 election. Id. However, the Green Party regained party status in 2010 and requalified under the previous party qualification requirements in 2014 and 2018. Id. Gloria Mattera and Peter LaVenita are the co-chairs of the New York State Green Party. Id. ¶¶ 12-13.

In the November 2020 election, the presidential candidates from the Green Party and Libertarian Party received 32,753 and 60,234 votes, or 0.38 percent and 0.70 percent of total votes cast, respectively. Brehm Decl. ¶¶ 21, 28; Ex. A. Because both parties thus failed to meet the amended Party Qualification Requirement, both parties were “decertified” by the NYBOE. Declaration of William Anderson, ECF No. 46-2 (“Anderson Decl.”) ¶¶ 3, 5.

Mark Axinn, a former Libertarian Party Chairman, has represented that the Libertarian Party has historically relied on paid petition gatherers to collect independent nominating petition signatures. Declaration of Mark Axinn, (“Axinn Decl.”) ¶¶ 4-6. For example, in 2016 and 2018, the Libertarian Party “expended approximately \$70,000 to obtain approximately 20,000 ballot signatures,” using paid petitioners. Id. ¶ 8. Axinn estimates that it would cost the Libertarian Party “at least \$157,000” to gather 45,000 signatures, which Axinn represents “the [Libertarian] Party does not have.” Id. ¶ 8.

Howie Hawkins, the Green Party’s candidate in the 2020 November presidential elections has represented that the Green Party also has relied on paid petition canvassers and that “[p]rofessional petition firms have tended to charge roughly \$3 per signature,” although this amount has increased recently because of COVID-19. Declaration of Howie Hawkins, ECF No. 46-3

(“Hawkins Decl.”) ¶¶ 6-7. Hawkins explained that the Green Party has thought it necessary to collect as many as twice the required number of signatures for petitions, because signatures can be rejected for several reasons including the failure of the petitioner to fill out witness statements correctly, or to include certain details (such as, the signatory’s congressional district). Id. ¶¶ 4, 14. Hawkins estimates that it would cost the Green Party \$270,000 to gather 90,000 signatures—the level that Hawkins believes to be necessary to provide an appropriate safety margin for rejected signatures. Id. ¶ 9. Hawkins acknowledged that “the best petitioners have been able to achieve an average of 10-20 signatures per hour.” Id. ¶ 12. Gloria Mattera, current Co-Chair of the Green Party has stated that it is her opinion that it would be “nearly impossible for the Green Party to qualify candidates for statewide and federal office” with the new petitioning requirements. Declaration of Gloria Mattera, ECF No. 46-4 ¶ 12.

c.

The plaintiffs filed their complaint on July 27, 2020, alleging violations of the plaintiffs’ rights to speak and associate guaranteed by the First and Fourteenth Amendment (Count I), as well as rights guaranteed by the Equal Protection Clause (Count II) and Due Process Clause of the Fourteenth Amendment (Counts III and IV), and Article VII of the New York

Constitution (Count V). The defendants filed their Answer on August 18, 2020. In the interim, on September 1, 2020, this Court denied a motion for preliminary injunction filed by the Serve American Party of New York ("SAM Party"), the Working Families Party ("WFP"), and their supporters, seeking to enjoin Sections 9 and 10 of Part ZZZ, in two related cases, SAM Party v. Kosinski, 483 F. Supp. 3d 245 (S.D.N.Y. 2020), aff'd sub nom. SAM Party of New York v. Kosinski, 987 F.3d 267 (2d Cir. 2021). On December 29, 2020, the plaintiffs filed their motion for a preliminary injunction based on Counts I-IV. Kuzma Decl. ¶ 2. While the parties briefed the present motion for a preliminary injunction, the Court of Appeals affirmed this Court's denial of the SAM Party plaintiffs' motion for a preliminary injunction. SAM Party, 987 F.3d at 267.

II.

The plaintiffs have sought to enjoin the NYBOE from implementing the Party Qualification Requirement, by requiring that the Green Party and the Libertarian Party be reinstated as recognized parties, despite their 2020 presidential election performance. In addition, the plaintiffs have sought to enjoin the NYBOE from implementing the increased Petition Requirement for statewide elections for the 2022 election.

"To 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," and (4) "that the balance of equities tips in [the movant's] favor." Libertarian Party of Conn. v. Lamont, 977 F.3d 173, 176 (2d Cir. 2020).⁴

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 Constitution provides that States may prescribe 'the Times, Places and Manner of holding Elections for Senators and Representatives,'" and courts have recognized "that States retain the power to regulate their own elections." Burdick v. Takushi, 504 U.S. 428, 433 (1992) (quoting U.S. Const. Art. I, § 4, cl. 1). Although the "First Amendment protects the rights of citizens to associate and form political parties for the

⁴ 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, and "a district court may enter a mandatory preliminary injunction against the government only if it determines that, in addition to demonstrating irreparable harm, the moving party has shown a 'clear' or 'substantial' likelihood of success on the merits." Libertarian Party of Conn., 977 F.3d at 176-77. The plaintiffs argue that their request is one for a "prohibitory injunction," that would not trigger the increased burden. It is unnecessary to decide whether the heightened standard applies, because the plaintiffs have failed to satisfy even the lesser standard.

advancement of common political goals and ideas," states are permitted to, "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, 357-58 (1997). Because every election law "inevitably affects" individual voters' rights to vote and to associate with others for political ends, Burdick, 504 U.S. at 433, courts do not subject every election law or regulation to "strict scrutiny," nor "require that [each] regulation be narrowly tailored to advance a compelling state interest." Id.

Instead, courts evaluate challenges to state action restricting ballot access under the Anderson-Burdick framework, and vary the level of scrutiny applied depending on the burden that the state law imposes on First and Fourteenth Amendment rights. Libertarian Party of Conn., 977 F.3d at 177. See Burdick, 504 U.S. 428, 434 (1992) (quoting Anderson v. Celebrezze, 460 U.S. 780, 788 (1983)). When a challenged state election regulation imposes "severe restrictions on First and Fourteenth Amendment rights," it "must be narrowly drawn to advance a state interest of compelling importance." Burdick, 504 U.S. at 434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). However, "when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important

regulatory interests are generally sufficient to justify the restrictions." Id. In such cases, a court "must weigh the State's justification against the burden imposed," but such review is "quite deferential" and does not require "elaborate empirical verification of the weightiness of the State's asserted justifications." Libertarian Party of Conn., 977 F.3d at 177; see also Timmons, 520 U.S. at 364.

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 v. New York State Bd. of Elections, 467 F.3d 141, 144 (2d Cir. 2006) (citing Prestia v. O'Connor, 178 F.3d 86, 88-89 (2d Cir. 1999)). "Ballots serve primarily to elect candidates, not as forums for political expression," and thus parties and their supporters do not have a specific "right to use the ballot itself to send a particularized message." Timmons, 520 U.S. at 363. Accordingly, "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.

The plaintiffs have argued that, as amended, the New York Election Law's Party Qualification Requirement and Petition

Requirement are unconstitutional, both facially and as applied to them. The plaintiffs argue that both the Party Qualification Requirement and the Petition Requirement impose a “severe burden” upon the rights of the Libertarian Party, the Green Party, and their supporters, and that such provisions are not sufficiently related to legitimate state interests to justify the restrictions under any level of scrutiny.

However, the burdens placed on the rights of the Libertarian Party, the Green Party, and their supporters by the Party Qualification Requirement and the Petition Requirement are not severe. Further, the New York State Legislature enacted Sections 9 and 10 of Part ZZZ, consistent with the recommendations of the Commission, to advance valid, important regulatory interests, and such interests are of sufficient weight to warrant the limitations placed upon the plaintiffs. The Party Qualification Requirement and Petition Requirement are reasonable, nondiscriminatory policy choices to advance valid State regulatory interests, within the boundaries that the First and Fourteenth Amendments prescribe. Accordingly, the plaintiffs have failed to demonstrate that they are likely to succeed on the merits of their claims.

1.

To determine whether a challenged provision places a “severe burden” on 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). As the Second Circuit Court of Appeals has recently instructed, “the hallmark of a severe burden is exclusion or virtual exclusion from the ballot.” Libertarian Party of Conn., 977 F.3d at 177 (quoting Libertarian Party of Kentucky v. Grimes, 835 F.3d 570, 574 (6th Cir. 2016)). Moreover, “[w]hat is ultimately important is not the absolute or relative number of signatures required but whether a reasonably diligent candidate could be expected to be able to meet the requirements and gain a place on the ballot.” Id. at 177-78. The concern is to ensure that such reasonably diligent candidates retain means for seizing upon the “availability of political opportunity.” Munro, 479 U.S. at 199.

The plaintiffs argue that the Party Qualification Requirement and Petition Requirement – both separately and in conjunction – pose severe burdens by making the process for accessing the general election ballot significantly more difficult for the chosen candidates of the Libertarian Party and the Green Party for state-wide office. However, those arguments are unpersuasive.

First, with respect to the Party Qualification Requirement, for the same reasons that this Court denied the SAM Party’s

preliminary injunction motion, which the Court of Appeals affirmed, and denied a similar preliminary injunction motion by the WFP, the Party Qualification Requirement does not impose a "severe burden." See SAM Party, 987 F.3d at 276. The Party Qualification Requirement did not prevent the WFP and Conservative Party from requalifying as parties, in addition to the Democratic and Republican parties, as a result of the 2020 presidential election. And, the Libertarian Party and the Green Party only failed to requalify as parties because they obtained only 60,234 votes and 32,753 votes (or 0.70 percent and 0.38 percent of the total votes cast), respectively. Brehm Decl. ¶¶ 21, 28. There is no authority for the proposition that a state is required to requalify a party that has garnered such low levels of support. Indeed, courts have upheld ballot access provisions requiring demonstrations of a much higher "modicum of support" than the quantum the amended New York Election Law requires.⁵ Further, the plaintiffs have not identified any

⁵ Unlike the SAM Party plaintiffs, the Libertarian Party and the Green Party have not seriously argued that the use of votes collected in presidential elections as a reference is a severe burden—possibly because both parties have historically run candidates in presidential elections. Nevertheless, as the Court of Appeals found in SAM Party, and all Circuit Courts of Appeal that have addressed the issue on the merits have found, the decision to consider the number of votes a political organization's candidate receives in the presidential election does not alter the constitutional analysis or impose a "severe burden." See SAM Party, 987 F.3d at 275-76; Libertarian Party of Ky. v. Grimes, 835 F.3d 570, 575 (6th Cir. 2016); Green Party of Ark. v. Martin 649 F.3d 675, 683-84 (8th Cir. 2011); Aruntunoff v. Okla. State Election Bd., 687 F.2d 1375, 1379 (10th Cir. 1982). Further, the Green Party's challenge to the Party Qualification Requirement's quantum of required votes is especially unpersuasive because the Green Party's presidential candidate received only 32,753 votes (0.38 percent) in the

authority to support the proposition that shifting the qualifications from quadrennial to biennial is itself a severe burden.

The plaintiffs attempt to distinguish the decisions by this Court and the Court of Appeals in SAM Party by arguing that as “non-fusion parties” (parties that will not cross-nominate candidates from other parties), both plaintiffs face uniquely severe burdens, that the plaintiffs in SAM Party and WFP did not. The plaintiffs point to data suggesting that such “non-fusion” parties have typically garnered fewer votes than “fusion” party candidates in New York state-wide elections, and, at oral argument, the plaintiffs suggested that “fusion” parties are “not germane” to the analysis of the burden the amended Party Qualification Requirement places on minor parties. Tr. at 17. That argument is unpersuasive.

As a preliminary note, this distinction is mistaken, because the SAM Party did nominate its own candidates, including its own gubernatorial ticket of Stephanie Miner and Michael Volpe, in the gubernatorial 2018 election. SAM Party, 987 F.3d at 272.⁶ Further, the New York Election Law does not draw a distinction between “fusion” or “non-fusion” parties, nor

November 2020 election, which means that the Green Party would have failed to requalify even under the previous 50,000 vote threshold. Brehm Decl. ¶ 21.

⁶ Further, the Libertarian Party appears to have nominated a combination of Libertarian Party and cross-endorsed candidates in 2020. Anderson Decl. ¶ 23.

require a party that has previously chosen to cross-nominate candidates to continue to do so. Historical data suggest that on several occasions "non-fusion" parties have received 2 percent of the total votes, including the Independence Party that received votes exceeding the current threshold in back-to-back races in 1996 and 1998. Brehm Decl. Ex. A. Such historical evidence belies the plaintiffs' suggestion that the Party Qualification Requirement would result in "virtual exclusion" from the ballot for non-fusion parties.

Moreover, the independent nominating petition is a viable means for candidates to obtain ballot access and the recently-enacted Petition Requirement has not foreclosed that avenue of ballot access. It is uncontested that other courts have upheld required levels of demonstrated support in other cases well above the number of signatures required by the Petition Requirement—1 percent of the number of votes cast in the last gubernatorial election (up to 45,000 votes).

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 place their candidates on the ballot. 403

U.S. 431, 434, 439-440 (1971). In Prestia v. O'Connor, the Second Circuit Court of Appeals interpreted Jenness and its progeny to establish that "a requirement that ballot access petitions be signed by at least 5 [percent] 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." 178 F.3d at 88. See also 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").

Moreover, the Court of Appeals in SAM Party already considered the "combined effect of New York's ballot-access restrictions," including the potential for smaller political organizations in New York to "compete as an independent body," and found that independent nominating petitions remain an available, "alternative means for political organizations to complete in elections." 987 F.3d at 275-76. The Court of Appeals concluded that, because "[t]he signature requirements set by the State of New York are significantly lower than [those at issue in Jenness], and a reasonably diligent organization could be expected to satisfy New York's signature requirement," the Petition Requirement does not impose a "severe burden." Id.; see

also LaRouche v. Kezer, 990 F.2d 36, 40 (2d Cir. 1993) (concluding that facially a primary ballot petition requirement of "signatures from only one percent of the party's registered voters . . . is not a severe burden and has even been characterized as lenient in similar contexts").⁷ Indeed, it appears undisputed that various other states have both higher overall required number of signatures per petition and number of signatures required as a percentage of the eligible signatories. Hallak Decl. Exs. B, C.

The plaintiffs have attempted to distinguish this reasoning by arguing that the 42-day period within which the signatures for nominating petitions must be gathered results in a necessary "signature-per-day" rate that is too high.

The plaintiffs have failed to sustain their burden of demonstrating a likelihood of success on the merits. The plaintiffs' argument that the Supreme Court in Jenness, the Court of Appeals in Prestia, and other courts have failed to consider the timing within which signatures must be gathered is unpersuasive. Litigants have previously raised the argument that

⁷ While "[c]onstitutional challenges to specific provisions of a State's election laws . . . cannot be resolved by any litmus-paper test that will separate valid from invalid restrictions," and instead must be analyzed based on how such laws actually function, Anderson, 460 U.S. at 789, the Court of Appeals did consider the specific burdens of New York's amended Petition Requirement, when it concluded in SAM Party that "a reasonably diligent organization could be expected to satisfy New York's signature requirement." 987 F.3d at 276.

a "signature-per-day" requirement is too onerous without success. For example, in American Party of Texas v. White, 415 U.S. 767 (1974), the plaintiffs sought to challenge a Texas law requiring nominating petitions to contain signatures obtained over a 55-day period from 1 percent of the voters in the last gubernatorial election. Rejecting the challenge, the Supreme Court noted that the threshold could be met with 100 canvassers collecting an average of 4 signatures a day and that it was "unimpressed" with the plaintiffs' argument because "[h]ard work and sacrifice by dedicated volunteers are the lifeblood of any political organization." Id. at 787.⁸ Similarly, in Storer v. Brown, 415 U.S. 724, 740 (1974), the Supreme Court considered the constitutionality of a California requirement that candidates for President and Vice President "gather[] 325,000 signatures in 24 days," equivalent to 5 percent of the votes cast the prior general election. The election law also required that signatures must come from voters who had not previously voted in a primary—thus further shrinking the pool of available voters. Although the Court remanded the case for a determination of whether the law posed a "severe burden" as applied, the Court rejected the facial challenge noting "[s]tanding alone,

⁸ The Supreme Court also noted that "some cut off period" for circulating nominating petitions "is necessary for the Secretary of State to verify the validity of signatures on the petitions, to print the ballots, and, if necessary, to litigate any challenges." Id. at 787 n.18.

gathering 325,000 signatures in 24 days would not appear to be an impossible burden." Id. The Storer court noted that although the law required gathering signatures at a rate of 13,542 per day, such a threshold could be accomplished "with 1,000 canvassers" gathering 14 signatures per day which "would not appear to require an impractical undertaking for one who desires to be a candidate for President." Id.⁹

The plaintiffs have failed to establish that the level at which the New York State Legislature has set the petition requirement is beyond the capabilities of a "reasonably diligent candidate" or party. Gathering 45,000 signatures (a level set at 0.33 percent of the total registered voters in the state) in 42 days would require a candidate to gather 1,071 signatures per day, a figure representing approximately 0.008 percent of the state's population of registered voters. If, as the Supreme Court assumed in Storer, a reasonably diligent candidate could rely on canvassers gathering signatures at a rate of 14 per day, over 42 days, this could be accomplished with 77 canvassers. Or,

⁹ In Storer, the Supreme Court remanded the case because it was unclear how California's exclusion of voters who had already voted in a primary for the same elected office from those eligible to sign a nominating petition for the general election would reduce the pool of voters eligible to sign a nominating petition. 415 U.S. at 740. In this case, the plaintiffs have made no effort to show that the exclusion of voters who have already signed a nominating petition for the same elected office would meaningfully reduce the pool of eligible voters, and the defendants have maintained that the exclusion would be insignificant, particularly in view of the fact that nominating petitions require the signatures of 45,000 votes out of a total of over 13.55 million eligible voters. Tr. at 34; Brehm Decl. Ex. B.

put differently, 1,000 canvassers, gathering 14 signatures a day (as in Storer) could gather the requisite number of signatures in 4 days. See LaRouche, 990 F.2d at 40-41 (Connecticut party primary ballot petitioning requirement that a candidate must obtain 1 percent of the party's registered voters in a 14 day period is constitutional).

The plaintiff's declarations do not establish that the requirement at issue is beyond the level that a "reasonably diligent candidate could be expected to be able to meet," Libertarian Party of Conn., 977 F.3d at 178, or that it would cut off the "availability of political opportunity." Munro, 479 U.S. at 199. According to the former Green Party 2020 presidential candidate, the "best petitioners have been able to achieve an average of 10-20 signatures per hour." Hawkins Decl. ¶ 12. (This would be a significantly higher yield than the Storer court's estimated 14 signatures per day.)

Representatives from both parties have stated that the Green Party and the Libertarian Party lack sufficient volunteers to gather signatures, and thus must hire paid canvassers, which can be costly and divert from other uses of campaign funds. Such statements emphasize that it will take "hard work and sacrifice by dedicated volunteers" for the Green Party and the Libertarian Party either to increase the number of volunteer canvassers or to raise more funds to pay professional canvassers, but such

work and sacrifice “are the lifeblood of any political organization.” White, 415 U.S. at 787. Such potential need for more volunteers or incurred costs—particularly at the levels that the plaintiffs estimate—“do not constitute exclusion or virtual exclusion from the ballot.” Grimes, 835 F.3d at 575.¹⁰

Thus, considering the Party Qualification Requirement and the Petition Requirement together—as this Court and the Court of

¹⁰ The plaintiffs seek to rely on Rockefeller v. Powers, 78 F.3d 44, 45 (2d Cir. 1996), in which the Court of Appeals found a signature requirement to be a severe burden because of inclement weather, short periods of daylight, and holidays during a 37-day period for gathering signatures, and certain technical requirements, that required parties to gather far more signatures than the stated requirement. The order in Rockefeller was “rendered with considerably less elaboration” than usual, because the appeal was handled on a rapid, expedited basis, because the Republican primary candidate in question had made diligent efforts to achieve primary ballot access, had failed, and the district court had ordered the plaintiff be included on the primary ballot. Id. Subsequently, the Court of Appeals in Prestia clarified that Rockefeller “was based on—and therefore limited to—the special circumstances of that case.” Prestia, 178 F.3d at 87. Such “specific circumstances” are not present in this case, nor is there such a clear record of burden.

Finally, New York’s historic experience of having comparatively many smaller parties and candidates nominated by independent bodies on the ballot stands in contrast to the experience of Michigan, and thus the plaintiffs’ reliance on Graveline v. Benson, 992 F.3d 524, 539 (6th Cir. 2021) is misplaced. In Graveline, the Sixth Circuit Court of Appeals noted that after the relevant Michigan law’s “implementation in 1988, no independent candidate for statewide office has managed to complete a qualifying petition,” despite the fact that “since 1997, at least thirty candidates have formed the required committees to begin collecting signatures to qualify for the ballot as an independent candidate for statewide office.” Id. at 539. In this case, New York does not have an election system that has proven to be so starkly inhospitable to independent and minor party candidates over a similar period. See Brehm Decl. ¶ 69. And under the current Party Qualification Requirement, the WFP and the Conservative Party continue to qualify as parties. Further, if the current Party Qualification Requirement threshold had applied to prior elections, several minor candidates historically would have achieved the required number of votes to have their parties recertified, such as the Ralph Nader for the Green Party in the 2000 presidential election, Howie Hawkins for the Green Party in the 2014 gubernatorial election, or the Independence Party’s candidates for President and Governor in 1996 and 1998. Brehm Decl. Ex. A.

Appeals did in SAM Party, the plaintiffs have failed to demonstrate that either - standing alone or taken together - amounts to a "severe burden" requiring the application of strict scrutiny.¹¹

2.

Because neither the Party Qualification Requirement nor the Petition Requirement places "severe" burdens on the First and Fourteenth Amendment rights of the plaintiffs, 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; see also Burdick, 504 U.S. at 434. New

¹¹ In their papers, the plaintiffs take issue with the requirement under Section 6-140(1)(b) of the New York Election Law that petition signatures must be witnessed by a New York voter. The plaintiffs argue that it is "unconstitutional" citing to Free Libertarian Party, Inc. v. Spano, 314 F. Supp. 3d 444, 461 (E.D.N.Y. 2018). But the order in that case was vacated. See Redpath v. Spano, No. 18-2089, 2020 WL 2747256 (2d Cir. May 7, 2020). And that statutory provision has been upheld. See Germalic v. Comm'rs State Bd. of Elections, N.Y., No. 10-cv-1317, 2011 WL 1303644, at *3 (N.D.N.Y. Apr. 1, 2011) (concluding section 6-140(1)(b) was "narrowly drawn to serve the states compelling interests and provide[d] a reasonable alternative to ease the burden on [the] plaintiff's First and Fourteenth amendment rights"), aff'd on other grounds sub nom. Germalic v. New York Bd. of Elections Comm'rs, 466 F. App'x 54 (2d Cir. 2012). Apart from these passing conclusory comments, the plaintiffs have not provided any justification or authority to support the proposition that the requirement for petition witnesses to be New York voters is unconstitutional. Moreover, at oral argument, the plaintiffs appeared to concede that they are only challenging the provision "as an as-applied in combination challenge" and that the case "is certainly not . . . pled" to demonstrate that section 6-140(1)(b) is independently unconstitutional. Tr. at 15-16.

In addition, at oral argument, the plaintiffs conceded that they "are not challenging" and "would not emphasize the distributional requirement" that 500 signatures be obtained from each of New York's congressional districts," but rather that the provisions "as applied in combination" impose a severe burden. Tr. at 12-13. In view of the fact that the majority of New York's congressional districts are concentrated in the New York City metropolitan area, canvassers would not be required to fan out throughout the state to obtain the necessary signatures.

York has offered several important, non-discriminatory regulatory interests to justify both the Party Qualification Requirement and the Petition Requirement.

First, the amended Party Qualification Requirement helps to 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 Brehm Decl. ¶¶ 38-50 (discussing ballot complexity and voter confusion), ¶¶ 51-54 (discussing how the amended party qualifications help to ensure public campaign funding does not support frivolous intra-party primary campaigns); ¶¶ 55-58 (discussing administrative costs associated with regulating parties and administering party primaries); Hallak Decl. Ex. D ¶¶ 33-39 (discussing ballot overcrowding and risk of voter confusion); see also 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 Conn. 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). 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. Similarly, in furtherance of those objectives, the Commission found the Petition Requirement to be an important "corollary" to the amended Party Qualification Requirement. Id. 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 those 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.").

As this Court and the Court of Appeals concluded in SAM Party, the Party Qualification Requirement is well within the election law requirements upheld in other cases and furthers the reasonable goals of avoiding overcrowded ballots and voter confusion and ensuring that candidates who appear on the ballot enjoy a "modicum of support." SAM Party, 987 F.3d at 277; SAM Party, 483 F. Supp. 3d at 249; see also 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); Green Party of Ark. v. Martin, 649 F.3d 675, 683 (8th Cir. 2011) (upholding a requirement for a political party to obtain 3 percent of the vote in the next general 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).

Moreover, the Party Qualification Requirement—including the need to requalify biennially—is a reasonable method for measuring whether a party continues to enjoy a sufficient “modicum of support.” Courts have regularly recognized the use of popular vote totals in previous elections as an appropriate measure of public support. *See, e.g., Jenness*, 403 U.S. at 439-440; *Green Party of Conn.*, 616 F.3d at 232 (noting that “popular vote totals in the last election are a proper measure of public support”). Further, as New York’s historic experience highlights, the fortunes of minor parties vary dramatically, even across short periods of time. Therefore, the decision to ensure that parties demonstrate a “modicum of support” biennially is a reasonable, nondiscriminatory policy decision in furtherance of valid interests.¹²

¹² While the plaintiffs have suggested that various limits on access to New York’s public campaign financing, including the \$5,000 cap for primary race candidates in smaller party primaries, are sufficient to limit the burdens on the public campaign finance system, the additional limits on hopeless candidates obtaining public funds imposed by the Party Qualification Requirement and Petition Requirement “serve[] the important public interest against providing artificial incentives to splintered parties and unrestrained factionalism.” *Green Party of Conn.*, 616 F.3d at 231.

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

Second, with respect to the Petition Requirement, the same valid interests—ensuring a sufficient modicum of public support, reducing voter confusion and ballot overcrowding, and protecting against the public financing of frivolous candidates—support the policy decisions made by the New York State Legislature. New York has demonstrated that the comparatively low signature requirement has resulted, since 1994, in no fewer than 5 and up to 10 candidates for governor in each gubernatorial election, many from quixotic, one-time nominating bodies without lasting support. Report, at 64-65.¹³ For example, between 1998 and 2020, 15 independent bodies obtained a berthing for their gubernatorial candidates through nominating petitions, including the “Rent Is Too Damn High Party” and the “Stop Common Core Party.” Brehm Decl. ¶ 69. Therefore, the Commission recommended the increased Petition Requirement as a “corollary” to the increased Party Qualification Requirement. Report, at 15. As with the Party Qualification Requirement, the increase in the level of required, demonstrated support was, in part, to account

(“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”); see also *SAM Party*, 987 F.3d at 277 (noting that “even if the State has installed other measures aimed at preventing nonviable candidacies from receiving public funds, it may pursue multiple avenues towards that goal”).

¹³ For example, in the 2014 Gubernatorial Election, which featured 5 candidates cross-nominated across 10 ballot lines, the Sapient Party’s nominee obtained only 4,963 votes, representing less than 0.13 percent of the total votes cast. Brehm Decl. Ex. A.

for a significant increase in the number of eligible voters. Brehm Decl. ¶¶ 66-67. The plaintiffs have failed to demonstrate that New York's decision to raise the number of required signatures was discriminatory, or failed to further a sufficiently weighty legitimate interest. As with the Party Qualification Requirement, the New York Legislature was permitted to act preemptively and was not required to "prove actual voter confusion, ballot overcrowding, or the presence of frivolous candidates as a predicate to the imposition of reasonable ballot access restrictions" or "sustain some level of damage before the legislature [can] take corrective action." Munro, 479 U.S. at 195. Under the less searching scrutiny that non-severe ballot-access restrictions receive, New York's chosen Petition Requirement need not be the best way to avoid ballot overcrowding--it need only be a reasonable way to avoid ballot overcrowding. See De La Fuente v. State, 278 F. Supp. 3d 1146, 1156 (C.D. Cal. 2017), aff'd sub nom. De La Fuente v. Padilla, 930 F.3d 1101 (9th Cir. 2019). Raising the number of signatures required is a reasonable, direct, and narrowly-tailored method for assuring that a candidate enjoys sufficient public support before allowing such candidate to appear on the ballot.

The plaintiffs have failed to cite any persuasive legal authority to demonstrate that it is impermissible for New York

to set the necessary "modicum" of demonstrated support at 0.33 percent of the State's registered voters.

Although political parties must be given the opportunity to develop channels for seizing political opportunity, "[b]allots serve primarily to elect candidates, not as forums for political expression." Timmons, 520 U.S. at 363. The fact that the Libertarian Party and the Green Party may need to increase the number of volunteers they have previously used or hire additional paid canvassers does not establish that the burdens are outweighed by New York's regulatory interests. Cf. 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."). Both the Party Qualification Requirement and Petition Requirement ultimately enacted are not so burdensome that they outweigh New York's valid regulatory interests.

To the extent the plaintiffs seek to argue the Petition Requirement has become more burdensome or severe as result of COVID-19, that proposition is too speculative to provide the basis for a preliminary injunction. For the 2020 election, pursuant to Executive Order 202.46, the signature requirements for independent nominations were reduced for all offices. Brehm Decl. ¶ 72. The petition collection period for the 2022 election

would begin in May of 2022, and the plaintiffs' concerns about COVID-19's potential implications for the 2022 signature collection process are too conjectural or hypothetical to provide the basis for relief.

Because the 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 plaintiffs have failed to make the much higher showing required to demonstrate a likelihood of success on the merits of their facial challenge. Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449 (2008) (upholding an election law restriction and noting "a plaintiff can only succeed in a facial challenge by "establishing 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").

B.

The plaintiffs argue that their interests would be irreparably harmed without an injunction, because the Libertarian Party and the Green Party will continue to remain “independent bodies” without the practical benefits of recognized party status, and because the petition requirements pose significant burdens for them for the 2022 elections.

But, as the Court of Appeals noted in SAM Party, “[t]he presence of irreparable injury to First Amendment rights, however, turns on whether the plaintiff has shown a clear likelihood of success on the merits.” SAM Party, 987 F.3d at 278. Because the plaintiffs have failed to demonstrate a likelihood of success on the merits, they have similarly failed to demonstrate they would be irreparably harmed without a preliminary injunction.

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 challenged provisions may result in practical difficulties for both sets of

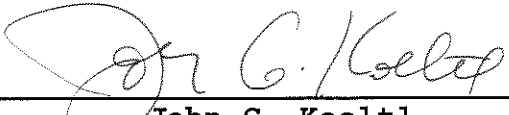
plaintiffs, and "while some voters would surely like to see the [the Libertarian Party and Green Party] automatically included on their ballot in the next cycle, the interest of those voters does not outweigh the broader public interest in administrable elections, ensuring that parties enjoy a modicum of electoral support, and the conservation of taxpayer dollars." SAM Party, 987 F.3d at 278. Further, the plaintiffs have failed to explain why the Libertarian Party and the Green Party deserve to be treated differently from the SAM Party and Independence Party—both formerly recognized parties that failed to satisfy the Party Qualification Requirement, and thus were decertified. 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 plaintiffs' motion for preliminary injunction is **denied**. The Clerk is directed to close docket numbers 46, 50, and 62.

SO ORDERED.

Dated: New York, New York
May 13, 2021



John G. Koeltl
United States District Judge

PART ZZZ

Section 1. The article heading of article 14 of the election law is amended to read as follows:

CAMPAIGN RECEIPTS AND EXPENDITURES;
PUBLIC FINANCING

§ 2. Sections 14-100 through 14-132 of the election law are designated title I and a new title heading is added to read as follows:

CAMPAIGN RECEIPTS AND EXPENDITURES

§ 3. Subdivision 1 of section 14-114 of the election law, as amended by chapter 79 of the laws of 1992 and paragraphs a and b as amended by chapter 659 of the laws of 1994, is amended to read as follows:

1. The following limitations apply to all contributions to candidates for election to any public office or for nomination for any such office, or for election to any party positions, and to all contributions to political committees working directly or indirectly with any candidate to aid or participate in such candidate's nomination or election, other than any contributions to any party committee or constituted committee:

a. In any election for a public office to be voted on by the voters of the entire state, or for nomination to any such office, no contributor may make a contribution to any candidate or political committee, PARTICIPATING IN THE STATE'S PUBLIC CAMPAIGN FINANCING SYSTEM PURSUANT TO TITLE TWO OF THIS ARTICLE and no SUCH candidate or political committee may accept any contribution from any contributor, which is in the aggregate

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gate amount greater than: (i) in the case of any nomination to public office, the product of the total number of enrolled voters in the candidate's party in the state, excluding voters in inactive status, multiplied by \$.005, but such amount shall be not less than four thousand dollars nor more than twelve] EIGHTEEN thousand dollars [as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision, and (ii) in the case of any election to a public office, twenty-five thousand dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision] DIVIDED EQUALLY AMONG THE PRIMARY AND GENERAL ELECTION IN AN ELECTION CYCLE; provided however, that the maximum amount which may be so contributed or accepted, in the aggregate, from any candidate's child, parent, grandparent, brother and sister, and the spouse of any such persons, shall not exceed in the case of any nomination to public office an amount equivalent to the product of the number of enrolled voters in the candidate's party in the state, excluding voters in inactive status, multiplied by \$.025, and in the case of any election for a public office, an amount equivalent to the product of the number of registered voters in the state excluding voters in inactive status, multiplied by \$.025.

b. In any other election for party position or for election to a public office or for nomination for any such office, no contributor may make a contribution to any candidate or political committee PARTICIPATING IN THE STATE'S PUBLIC CAMPAIGN FINANCING SYSTEM PURSUANT TO TITLE TWO OF THIS ARTICLE and no SUCH candidate or political committee may accept any contribution from any contributor, which is in the aggregate amount greater than election for party position, or for nomination to

public office, the product of the total number of enrolled voters in the candidate's party in the district in which he is a candidate, excluding voters in inactive status, multiplied by \$.05, and (ii) in the case of any election for a public office, the product of the total number of registered voters in the district, excluding voters in inactive status, multiplied by \$.05, however in the case of a nomination within the city of New York for the office of mayor, public advocate or comptroller, such amount shall be not less than four thousand dollars nor more than twelve thousand dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision; in the case of an election within the city of New York for the office of mayor, public advocate or comptroller, twenty-five thousand dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision; in the case of a nomination OR ELECTION for state senator, [four] TEN thousand dollars [as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision; in the case of an election for state senator, six thousand two hundred fifty dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision], DIVIDED EQUALLY AMONG THE PRIMARY AND GENERAL ELECTION IN AN ELECTION CYCLE; in the case of an election or nomination for a member of the assembly, [twenty-five hundred] SIX THOUSAND dollars [as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision; but in no event shall any such maximum exceed fifty thousand dollars or be less than one thousand dollars], DIVIDED EQUALLY AMONG THE PRIMARY AND GENERAL ELECTION IN AN ELECTION CYCLE; provided however, that the maximum amount which may be so contributed or accepted, in the aggregate, from any candidate's child, parent, grandparent, brother and sister, and the spouse of any such persons, shall not exceed in the case of any election

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for party position or nomination for public office an amount equivalent to the number of enrolled voters in the candidate's party in the district in which he is a candidate, excluding voters in inactive status, multiplied by \$.25 and in the case of any election to public office, an amount equivalent to the number of registered voters in the district, excluding voters in inactive status, multiplied by \$.25; or twelve hundred fifty dollars, whichever is greater, or in the case of a nomination or election of a state senator, twenty thousand dollars, whichever is greater, or in the case of a nomination or election of a member of the assembly twelve thousand five hundred dollars, whichever is greater, but in no event shall any such maximum exceed one hundred thousand dollars.

c. IN ANY ELECTION FOR A PUBLIC OFFICE TO BE VOTED ON BY THE VOTERS OF THE ENTIRE STATE, OR FOR NOMINATION TO ANY SUCH OFFICE, NO CONTRIBUTOR MAY MAKE A CONTRIBUTION TO ANY CANDIDATE OR POLITICAL COMMITTEE IN CONNECTION WITH A CANDIDATE WHO IS NOT A PARTICIPATING CANDIDATE AS DEFINED IN SUBDIVISION FOURTEEN OF SECTION 14-200-A OF THIS ARTICLE, AND NO SUCH CANDIDATE OR POLITICAL COMMITTEE MAY ACCEPT ANY CONTRIBUTION FROM ANY CONTRIBUTOR, WHICH IS IN THE AGGREGATE AMOUNT GREATER THAN EIGHTEEN THOUSAND DOLLARS, DIVIDED EQUALLY AMONG THE PRIMARY AND GENERAL ELECTION IN AN ELECTION CYCLE; PROVIDED HOWEVER, THAT THE MAXIMUM AMOUNT

WHICH MAY BE SO CONTRIBUTED OR ACCEPTED, IN THE AGGREGATE, FROM ANY CANDIDATE'S CHILD, PARENT, GRANDPARENT, BROTHER AND SISTER, AND THE SPOUSE OF ANY SUCH PERSONS, SHALL NOT EXCEED IN THE CASE OF ANY NOMINATION TO PUBLIC OFFICE AN AMOUNT EQUIVALENT TO THE PRODUCT OF THE NUMBER OF ENROLLED VOTERS IN THE CANDIDATE'S PARTY IN THE STATE, EXCLUDING VOTERS IN INACTIVE STATUS, MULTIPLIED BY \$.025, AND IN THE CASE OF ANY ELECTION FOR A PUBLIC OFFICE, AN AMOUNT EQUIVALENT TO THE PRODUCT OF THE NUMBER OF REGISTERED VOTERS IN THE STATE, EXCLUDING VOTERS IN INACTIVE STATUS, MULTIPLIED BY \$.025.

D. IN ANY NOMINATION OR ELECTION OF A CANDIDATE WHO IS NOT A PARTICIPATING CANDIDATE FOR STATE SENATOR, TEN THOUSAND DOLLARS, DIVIDED EQUALLY AMONG THE PRIMARY AND GENERAL ELECTION IN AN ELECTION CYCLE; IN THE CASE OF AN ELECTION OR NOMINATION FOR A MEMBER OF THE ASSEMBLY, SIX THOUSAND DOLLARS, DIVIDED EQUALLY AMONG THE PRIMARY AND GENERAL ELECTION IN AN ELECTION CYCLE.

E.(1) At the beginning of each fourth calendar year, commencing in nineteen hundred ninety-five, the state board shall determine the percentage of the difference between the most recent available monthly consumer price index for all urban consumers published by the United States bureau of labor statistics and such consumer price index published for the same month four years previously. The amount of each contribution limit fixed in this subdivision shall be adjusted by the amount of such percentage difference to the closest one hundred dollars by the state board which, not later than the first day of February in each such year, shall issue a regulation publishing the amount of each such contribution limit. Each contribution limit as so adjusted shall be the contribution limit in effect for any election held before the next such adjustment.

(2) PROVIDED, HOWEVER, THAT SUCH ADJUSTMENTS SHALL NOT OCCUR FOR CANDIDATES SEEKING STATEWIDE OFFICE, OR THE POSITION OF STATE SENATOR OR MEMBER OF THE ASSEMBLY, WHETHER SUCH CANDIDATE DOES OR DOES NOT PARTICIPATE IN THE PUBLIC FINANCE PROGRAM ESTABLISHED PURSUANT TO TITLE TWO OF THIS ARTICLE.

F. NOTWITHSTANDING ANY OTHER CONTRIBUTION LIMIT IN THIS SECTION, PARTICIPATING CANDIDATES AS DEFINED IN SUBDIVISION FOURTEEN OF SECTION

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14-200-A OF THIS ARTICLE MAY CONTRIBUTE, OUT OF THEIR OWN MONEY, THREE TIMES THE APPLICABLE CONTRIBUTION LIMIT TO THEIR OWN AUTHORIZED COMMITTEE.

§ 4. Article 14 of the election law is amended by adding a new title II to read as follows:

TITLE II

PUBLIC FINANCING

SECTION 14-200. LEGISLATIVE FINDINGS AND INTENT.

14-200-A. DEFINITIONS.

14-201. POLITICAL COMMITTEE REGISTRATION.

14-202. PROOF OF COMPLIANCE.

14-203. ELIGIBILITY.

14-204. LIMITS ON PUBLIC FINANCING.

14-205. PAYMENT OF PUBLIC MATCHING FUNDS.

14-206. USE OF PUBLIC MATCHING FUNDS; QUALIFIED CAMPAIGN

EXPENDITURES.

14-207. COMPOSITION, POWERS, AND DUTIES OF THE PUBLIC CAMPAIGN FINANCE BOARD.

14-208. AUDITS AND REPAYMENTS.

14-209. ENFORCEMENT AND PENALTIES FOR VIOLATIONS AND OTHER PROCEEDINGS.

14-210. REPORTS.

14-211. DEBATES FOR CANDIDATES FOR STATEWIDE OFFICE.

14-212. SEVERABILITY.

§ 14-200. LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE FINDS THAT REFORM OF NEW YORK STATE'S CAMPAIGN FINANCE SYSTEM IS CRUCIAL TO IMPROVING PUBLIC CONFIDENCE IN THE STATE'S DEMOCRATIC PROCESSES AND CONTINUING TO ENSURE A GOVERNMENT THAT IS ACCOUNTABLE TO ALL OF THE VOTERS OF THE STATE REGARDLESS OF WEALTH OR POSITION. THE LEGISLATURE FINDS THAT NEW YORK'S CURRENT SYSTEM OF CAMPAIGN FINANCE, WITH ITS LARGE CONTRIBUTIONS TO CANDIDATES FOR OFFICE AND PARTY COMMITTEES, HAS CREATED THE POTENTIAL FOR AND THE APPEARANCE OF CORRUPTION. THE LEGISLATURE FURTHER FINDS THAT, WHETHER OR NOT THIS SYSTEM CREATES ACTUAL CORRUPTION, THE APPEARANCE OF SUCH CORRUPTION CAN GIVE RISE TO A DISTRUST IN GOVERNMENT AND CITIZEN APATHY THAT UNDERMINES THE DEMOCRATIC OPERATION OF THE POLITICAL PROCESS.

THE LEGISLATURE ALSO FINDS THAT THE HIGH COST OF RUNNING FOR OFFICE IN NEW YORK DISCOURAGES QUALIFIED CANDIDATES FROM RUNNING FOR OFFICE AND CREATES AN ELECTORAL SYSTEM THAT ENCOURAGES CANDIDATES TO SPEND TOO MUCH

TIME RAISING MONEY RATHER THAN ATTENDING TO THE DUTIES OF THEIR OFFICE, REPRESENTING THE NEEDS OF THEIR CONSTITUENTS, AND COMMUNICATING WITH VOTERS.

THE LEGISLATURE AMENDS THIS ARTICLE CREATING A NEW TITLE TO THIS ARTICLE TO REDUCE THE POSSIBILITY AND APPEARANCE THAT SPECIAL INTERESTS EXERCISE UNDUE INFLUENCE OVER STATE OFFICIALS; TO INCREASE THE ACTUAL AND APPARENT RESPONSIVENESS OF ELECTED OFFICIALS TO ALL VOTERS; TO ENCOURAGE QUALIFIED CANDIDATES TO RUN FOR OFFICE; AND TO REDUCE THE PRESSURE ON CANDIDATES TO SPEND LARGE AMOUNTS OF TIME RAISING LARGE CONTRIBUTIONS FOR THEIR CAMPAIGNS.

THE LEGISLATURE ALSO FINDS THAT THE SYSTEM OF VOLUNTARY PUBLIC FINANCING FURTHERS THE GOVERNMENT'S INTEREST IN ENCOURAGING QUALIFIED CANDIDATES TO RUN FOR OFFICE. THE LEGISLATURE FINDS THAT THE VOLUNTARY PUBLIC FUNDING PROGRAM WILL ENLARGE THE PUBLIC DEBATE AND INCREASE PARTICIPATION IN THE DEMOCRATIC PROCESS. IN ADDITION, THE LEGISLATURE FINDS THAT THE VOLUNTARY EXPENDITURE LIMITATIONS AND MATCHING FUND PROGRAM

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REDUCE THE BURDEN ON CANDIDATES AND OFFICEHOLDERS TO SPEND TIME RAISING MONEY FOR THEIR CAMPAIGNS.

THEREFORE, THE LEGISLATURE DECLARES THAT THESE AMENDMENTS FURTHER THE IMPORTANT AND VALID GOVERNMENT INTERESTS OF REDUCING VOTER APATHY, BUILDING CONFIDENCE IN GOVERNMENT, REDUCING THE REALITY AND APPEARANCE OF CORRUPTION, AND ENCOURAGING QUALIFIED CANDIDATES TO RUN FOR OFFICE, WHILE REDUCING CANDIDATES' AND OFFICEHOLDERS' FUNDRAISING BURDENS.

§ 14-200-A. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AUTHORIZED COMMITTEE" MEANS THE SINGLE POLITICAL COMMITTEE DESIG-

NATED BY A CANDIDATE PURSUANT TO THESE RECOMMENDATIONS TO RECEIVE CONTRIBUTIONS AND MAKE EXPENDITURES IN SUPPORT OF THE CANDIDATE'S CAMPAIGN FOR SUCH ELECTION.

2. "PCFB" MEANS THE PUBLIC CAMPAIGN FINANCE BOARD ESTABLISHED IN THIS TITLE, UNLESS OTHERWISE SPECIFIED.

3. "CONTRIBUTION" SHALL HAVE THE SAME MEANING AS APPEARS IN SUBDIVISION NINE OF SECTION 14-100 OF THIS ARTICLE.

4. "CONTRIBUTOR" MEANS ANY PERSON OR ENTITY THAT MAKES A CONTRIBUTION.

5. "COVERED ELECTION" MEANS ANY PRIMARY, GENERAL, OR SPECIAL ELECTION FOR NOMINATION FOR ELECTION, OR ELECTION, TO THE OFFICE OF GOVERNOR, LIEUTENANT GOVERNOR, ATTORNEY GENERAL, STATE COMPTROLLER, STATE SENATOR, OR MEMBER OF THE ASSEMBLY.

6. "ELECTION CYCLE" MEANS THE TWO-YEAR PERIOD STARTING THE DAY AFTER THE LAST GENERAL ELECTION FOR CANDIDATES FOR THE STATE LEGISLATURE AND SHALL MEAN THE FOUR-YEAR PERIOD STARTING AFTER THE DAY AFTER THE LAST GENERAL ELECTION FOR CANDIDATES FOR STATEWIDE OFFICE.

7. "EXPENDITURE" MEANS ANY GIFT, SUBSCRIPTION, ADVANCE, PAYMENT, OR DEPOSIT OF MONEY, OR ANYTHING OF VALUE, OR A CONTRACT TO MAKE ANY GIFT, SUBSCRIPTION, PAYMENT, OR DEPOSIT OF MONEY, OR ANYTHING OF VALUE, MADE IN CONNECTION WITH THE NOMINATION FOR ELECTION, OR ELECTION, OF ANY CANDIDATE. EXPENDITURES MADE BY CONTRACT ARE DEEMED MADE WHEN SUCH FUNDS ARE OBLIGATED.

8. "FUND" MEANS THE NEW YORK STATE CAMPAIGN FINANCE FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-T OF THE STATE FINANCE LAW.

9. "IMMEDIATE FAMILY" MEANS A SPOUSE, DOMESTIC PARTNER, CHILD, SIBLING, OR PARENT.

10. "ITEM WITH SIGNIFICANT INTRINSIC AND ENDURING VALUE" MEANS ANY ITEM, INCLUDING TICKETS TO AN EVENT, THAT ARE VALUED AT TWENTY-FIVE DOLLARS OR MORE.

11. (A) "MATCHABLE CONTRIBUTION" MEANS A CONTRIBUTION NOT LESS THAN FIVE DOLLARS AND NOT MORE THAN TWO HUNDRED FIFTY DOLLARS, FOR A CANDIDATE FOR PUBLIC OFFICE TO BE VOTED ON BY THE VOTERS OF THE ENTIRE STATE OR FOR NOMINATION TO ANY SUCH OFFICE, A CONTRIBUTION FOR ANY COVERED ELECTIONS HELD IN THE SAME ELECTION CYCLE, MADE BY A NATURAL PERSON WHO IS A RESIDENT IN THE STATE OF NEW YORK TO A PARTICIPATING CANDIDATE, AND FOR A CANDIDATE FOR ELECTION TO THE STATE ASSEMBLY OR STATE SENATE OR FOR NOMINATION TO ANY SUCH OFFICE, A CONTRIBUTION FOR ANY COVERED ELECTIONS HELD IN THE SAME ELECTION CYCLE, MADE BY A NATURAL PERSON WHO IS ALSO A RESIDENT OF SUCH STATE ASSEMBLY OR STATE SENATE DISTRICT FROM WHICH SUCH CANDIDATE IS SEEKING NOMINATION OR ELECTION, THAT HAS BEEN REPORTED IN FULL TO THE PCFB IN ACCORDANCE WITH SECTIONS 14-102 AND 14-104 OF THIS ARTICLE BY THE CANDIDATE'S AUTHORIZED COMMITTEE AND HAS BEEN CONTRIBUTED ON OR BEFORE THE DAY OF THE APPLICABLE PRIMARY, GENERAL, RUNOFF, OR SPECIAL ELECTION. ANY CONTRIBUTION, CONTRIBUTIONS, OR A PORTION OF A CONTRIBUTION DETERMINED TO BE INVALID FOR MATCHING FUNDS BY THE PCFB MAY NOT BE TREATED AS A MATCHABLE CONTRIBUTION FOR ANY PURPOSE.

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(B) THE FOLLOWING CONTRIBUTIONS ARE NOT MATCHABLE:

(I) LOANS;

(II) IN-KIND CONTRIBUTIONS OF PROPERTY, GOODS, OR SERVICES;

(III) CONTRIBUTIONS IN THE FORM OF THE PURCHASE PRICE PAID FOR AN ITEM WITH SIGNIFICANT INTRINSIC AND ENDURING VALUE;

(IV) TRANSFERS FROM A PARTY OR CONSTITUTED COMMITTEE;
 (V) ANONYMOUS CONTRIBUTIONS;
 (VI) CONTRIBUTIONS WHOSE SOURCE IS NOT ITEMIZED AS REQUIRED BY THESE RECOMMENDATIONS;
 (VII) CONTRIBUTIONS GATHERED DURING A PREVIOUS ELECTION CYCLE;
 (VIII) ILLEGAL CONTRIBUTIONS;
 (IX) CONTRIBUTIONS FROM MINORS;
 (X) CONTRIBUTIONS FROM VENDORS FOR CAMPAIGNS HIRED BY THE CANDIDATE FOR SUCH ELECTION CYCLE;
 (XI) CONTRIBUTIONS FROM LOBBYISTS REGISTERED PURSUANT TO SUBDIVISION (A) OF SECTION ONE-C OF THE LEGISLATIVE LAW; AND
 (XII) ANY PORTION OF A CONTRIBUTION WHEN THE AGGREGATE CONTRIBUTIONS ARE IN EXCESS OF TWO HUNDRED FIFTY DOLLARS FROM ANY ONE CONTRIBUTOR TO SUCH PARTICIPATING CANDIDATE FOR NOMINATION OR ELECTION.

13. "NONPARTICIPATING CANDIDATE" MEANS A CANDIDATE FOR A COVERED ELECTION WHO FAILS TO FILE A WRITTEN CERTIFICATION IN THE FORM OF AN AFFIDAVIT PURSUANT TO THESE RECOMMENDATION BY THE APPLICABLE DEADLINE.

14. "PARTICIPATING CANDIDATE" MEANS ANY CANDIDATE FOR NOMINATION FOR ELECTION, OR ELECTION, TO THE OFFICE OF GOVERNOR, LIEUTENANT GOVERNOR, ATTORNEY GENERAL, STATE COMPTROLLER, STATE SENATOR, OR MEMBER OF THE ASSEMBLY, WHO FILES A WRITTEN CERTIFICATION IN THE FORM DETERMINED BY THE PCFB.

15. "POST-ELECTION PERIOD" MEANS THE PERIOD FOLLOWING AN ELECTION WHEN A CANDIDATE IS SUBJECT TO AN AUDIT.

16. "QUALIFIED CAMPAIGN EXPENDITURE" MEANS AN EXPENDITURE FOR WHICH PUBLIC MATCHING FUNDS MAY BE USED.

17. "THRESHOLD FOR ELIGIBILITY" MEANS THE AMOUNT OF MATCHABLE CONTRIBUTIONS THAT A CANDIDATE'S AUTHORIZED COMMITTEE MUST RECEIVE IN TOTAL IN ORDER FOR SUCH CANDIDATE TO QUALIFY FOR VOLUNTARY PUBLIC FINANCING UNDER THIS TITLE.

18. "TRANSFER" MEANS ANY EXCHANGE OF FUNDS BETWEEN A PARTY OR CONSTITUTED COMMITTEE AND A CANDIDATE OR ANY OF HIS OR HER AUTHORIZED COMMITTEES.

19. "SURPLUS" MEANS THOSE FUNDS WHERE THE TOTAL SUM OF CONTRIBUTIONS RECEIVED AND PUBLIC MATCHABLE FUNDS RECEIVED BY A PARTICIPATING CANDIDATE AND HIS OR HER AUTHORIZED COMMITTEE EXCEEDS THE TOTAL CAMPAIGN EXPENDITURES OF SUCH CANDIDATE AND AUTHORIZED COMMITTEE FOR ALL COVERED ELECTIONS HELD IN THE SAME CALENDAR YEAR OR FOR A SPECIAL ELECTION TO FILL A VACANCY.

§ 14-201. POLITICAL COMMITTEE REGISTRATION. 1. POLITICAL COMMITTEES, AS DEFINED PURSUANT TO SUBDIVISION ONE OF SECTION 14-100 OF THIS ARTICLE, SHALL REGISTER WITH THE STATE BOARD OF ELECTIONS BEFORE MAKING ANY CONTRIBUTION OR EXPENDITURE. THE STATE BOARD OF ELECTIONS SHALL PUBLISH A CUMULATIVE LIST OF POLITICAL COMMITTEES THAT HAVE REGISTERED, INCLUDING ON ITS WEBPAGE, AND REGULARLY UPDATE IT.

2. ONLY ONE AUTHORIZED COMMITTEE PER CANDIDATE PER ELECTIVE OFFICE SOUGHT. BEFORE RECEIVING ANY CONTRIBUTION OR MAKING ANY EXPENDITURE FOR A COVERED ELECTION, EACH CANDIDATE SHALL NOTIFY THE PCFB AS TO THE EXISTENCE OF HIS OR HER AUTHORIZED COMMITTEE THAT HAS BEEN APPROVED BY SUCH CANDIDATE. EACH CANDIDATE SHALL HAVE ONE AND ONLY ONE AUTHORIZED

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COMMITTEE PER ELECTIVE OFFICE SOUGHT. EACH AUTHORIZED COMMITTEE SHALL

HAVE A TREASURER.

3. (A) IN ADDITION TO EACH AUTHORIZED AND POLITICAL COMMITTEE REPORTING TO THE PCFB EVERY CONTRIBUTION AND LOAN RECEIVED AND EVERY EXPENDITURE MADE IN THE TIME AND MANNER PRESCRIBED BY SECTIONS 14-102, 14-104, AND 14-108 OF THIS ARTICLE, EACH AUTHORIZED AND POLITICAL COMMITTEE FOR PARTICIPATING CANDIDATES SHALL ALSO SUBMIT DISCLOSURE REPORTS ON MARCH FIFTEENTH OF EACH ELECTION YEAR REPORTING TO THE PCFB EVERY CONTRIBUTION AND LOAN RECEIVED AND EVERY EXPENDITURE MADE. FOR CONTRIBUTORS WHO MAKE

AGGREGATE CONTRIBUTIONS OF ONE HUNDRED DOLLARS OR MORE, EACH AUTHORIZED

AND POLITICAL COMMITTEE SHALL REPORT TO THE PCFB THE OCCUPATION AND BUSINESS ADDRESS OF EACH CONTRIBUTOR AND LENDER. THE PCFB SHALL REVISE, PREPARE, AND POST FORMS ON ITS WEBPAGE THAT FACILITATE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

(B) THE PCFB SHALL REVIEW EACH DISCLOSURE REPORT FILED AND SHALL INFORM AUTHORIZED AND POLITICAL COMMITTEES OF RELEVANT QUESTIONS IT HAS CONCERNING: (I) COMPLIANCE WITH REQUIREMENTS OF THIS TITLE AND OF THE RULES ISSUED BY THE PCFB, AND (II) QUALIFICATION FOR RECEIVING PUBLIC MATCHING FUNDS PURSUANT TO THIS TITLE. IN THE COURSE OF THIS REVIEW, IT SHALL GIVE AUTHORIZED AND POLITICAL COMMITTEES AN OPPORTUNITY TO RESPOND TO AND CORRECT POTENTIAL VIOLATIONS AND GIVE CANDIDATES AN OPPORTUNITY TO ADDRESS QUESTIONS IT HAS CONCERNING THEIR MATCHABLE CONTRIBUTION CLAIMS OR OTHER ISSUES CONCERNING ELIGIBILITY FOR RECEIVING PUBLIC MATCHING FUNDS PURSUANT TO THIS TITLE.

(C) CONTRIBUTIONS THAT ARE NOT ITEMIZED IN REPORTS FILED WITH THE PCFB SHALL NOT BE MATCHABLE.

(D) PARTICIPATING CANDIDATES MAY FILE REPORTS OF CONTRIBUTIONS AS FREQUENTLY AS ONCE A WEEK ON MONDAY SO THAT THEIR MATCHING FUNDS MAY BE PAID AT THE EARLIEST ALLOWABLE DATE.

§ 14-202. PROOF OF COMPLIANCE. AUTHORIZED AND POLITICAL COMMITTEES SHALL MAINTAIN SUCH RECORDS OF RECEIPTS AND EXPENDITURES FOR A COVERED ELECTION AS REQUIRED BY THE PCFB. AUTHORIZED AND POLITICAL COMMITTEES SHALL OBTAIN AND FURNISH TO THE PCFB ANY INFORMATION IT MAY REQUEST RELATING TO FINANCIAL TRANSACTIONS OR CONTRIBUTIONS AND FURNISH SUCH DOCUMENTATION AND OTHER PROOF OF COMPLIANCE WITH THIS TITLE AS MAY BE REQUESTED. IN COMPLIANCE WITH SECTION 14-108 OF THIS ARTICLE, AUTHORIZED AND POLITICAL COMMITTEES SHALL MAINTAIN COPIES OF SUCH RECORDS FOR A PERIOD OF FIVE YEARS.

§ 14-203. ELIGIBILITY. 1. TERMS AND CONDITIONS. TO BE ELIGIBLE FOR VOLUNTARY PUBLIC FINANCING UNDER THIS TITLE, A CANDIDATE MUST:

(A) BE A CANDIDATE IN A COVERED ELECTION;

(B) MEET ALL THE REQUIREMENTS OF LAW TO HAVE HIS OR HER NAME ON THE BALLOT, SUBJECT TO THE REQUIREMENTS OF SUBDIVISION THREE OF SECTION 1-104 AND SUBDIVISION ONE OF SECTION 6-142 OF THIS CHAPTER;

(C) IN THE CASE OF A COVERED GENERAL OR SPECIAL ELECTION, BE OPPOSED BY ANOTHER CANDIDATE ON THE BALLOT WHO IS NOT A WRITE-IN CANDIDATE;

(D) SUBMIT A CERTIFICATION IN THE FORM OF AN AFFIDAVIT, IN SUCH FORM AS MAY BE PRESCRIBED BY THE PCFB, THAT SETS FORTH HIS OR HER ACCEPTANCE OF AND AGREEMENT TO COMPLY WITH THE TERMS AND CONDITIONS FOR THE PROVISION OF SUCH FUNDS IN EACH COVERED ELECTION AND SUCH CERTIFICATION SHALL BE SUBMITTED AT LEAST FOUR MONTHS BEFORE A PRIMARY ELECTION AND ON THE LAST DAY IN WHICH A CERTIFICATION OF NOMINATION IS FILED IN A SPECIAL ELECTION PURSUANT TO A SCHEDULE PROMULGATED BY THE PCFB;

(E) BE CERTIFIED AS A PARTICIPATING CANDIDATE BY THE PCFB;
(F) NOT MAKE, AND NOT HAVE MADE, EXPENDITURES FROM OR USE HIS OR HER PERSONAL FUNDS OR PROPERTY OR THE PERSONAL FUNDS OR PROPERTY JOINTLY

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HELD WITH HIS OR HER SPOUSE, OR UNEMANCIPATED CHILDREN IN CONNECTION WITH HIS OR HER NOMINATION FOR ELECTION OR ELECTION TO A COVERED OFFICE, BUT MAY MAKE A CONTRIBUTION TO HIS OR HER AUTHORIZED COMMITTEE IN AN AMOUNT THAT DOES NOT EXCEED THREE TIMES THE APPLICABLE CONTRIBUTION LIMIT FROM AN INDIVIDUAL CONTRIBUTOR TO CANDIDATES FOR THE OFFICE THAT HE OR SHE IS SEEKING;

(G) MEET THE THRESHOLD FOR ELIGIBILITY SET FORTH IN SUBDIVISION TWO OF THIS SECTION;

(H) CONTINUE TO ABIDE BY ALL REQUIREMENTS DURING THE POST-ELECTION PERIOD; AND

(I) NOT HAVE ACCEPTED CONTRIBUTIONS IN AMOUNTS EXCEEDING THE CONTRIBUTION LIMITS SET FORTH FOR CANDIDATES IN PARAGRAPHS A AND B OF SUBDIVISION ONE OF SECTION 14-114 OF THIS ARTICLE DURING THE ELECTION CYCLE FOR WHICH THE CANDIDATE SEEKS CERTIFICATION;

(I) PROVIDED HOWEVER, THAT, IF A CANDIDATE ACCEPTED CONTRIBUTIONS EXCEEDING SUCH LIMITS, SUCH ACCEPTANCE SHALL NOT PREVENT THE CANDIDATE FROM BEING CERTIFIED BY THE PCFB IF THE CANDIDATE IN A REASONABLE TIME, AS DETERMINED BY RULE, PAYS TO THE FUND OR RETURNS TO THE CONTRIBUTOR THE PORTION OF ANY CONTRIBUTION THAT EXCEEDED THE APPLICABLE CONTRIBUTION LIMIT.

(II) IF THE CANDIDATE IS UNABLE TO RETURN SUCH FUNDS IN A REASONABLE TIME, AS DETERMINED BY RULE, BECAUSE THEY HAVE ALREADY BEEN SPENT, ACCEPTANCE OF CONTRIBUTIONS EXCEEDING THE LIMITS SHALL NOT PREVENT THE CANDIDATE FROM BEING CERTIFIED BY THE PCFB IF THE CANDIDATE SUBMITS AN AFFIDAVIT AGREEING TO PAY TO THE FUND ALL PORTIONS OF ANY CONTRIBUTIONS THAT EXCEEDED THE LIMIT NO LATER THAN THIRTY DAYS BEFORE THE GENERAL ELECTION. IF A CANDIDATE PROVIDES THE PCFB WITH SUCH AN AFFIDAVIT, ANY DISBURSEMENT OF PUBLIC FUNDS TO THE CANDIDATE SHALL BE REDUCED BY NO MORE THAN TWENTY-FIVE PERCENT UNTIL THE TOTAL AMOUNT OWED BY THE CANDIDATE IS REPAYED.

(III) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO REQUIRE A CANDIDATE WHO RETAINS FUNDS RAISED DURING ANY PREVIOUS ELECTION CYCLE TO FORFEIT SUCH FUNDS. FUNDS RAISED DURING A PREVIOUS ELECTION CYCLE MAY BE RETAINED AND USED BY THE CANDIDATE FOR THE CANDIDATE'S CAMPAIGN IN THE NEXT ELECTION CYCLE BUT FUNDS SHALL NOT QUALIFY FOR SATISFYING THE THRESHOLD FOR PARTICIPATING IN THE PUBLIC CAMPAIGN FINANCE PROGRAM ESTABLISHED IN THIS TITLE NOR SHALL THEY BE ELIGIBLE TO BE MATCHED. THE PCFB SHALL ADOPT REGULATIONS TO ENSURE THAT CONTRIBUTIONS THAT WOULD SATISFY THE APPLICABLE CONTRIBUTION LIMITS AUTHORIZED IN THIS TITLE SHALL BE TRANSFERRED INTO THE APPROPRIATE CAMPAIGN ACCOUNT.

(IV) CONTRIBUTIONS RECEIVED AND EXPENDITURES MADE BY THE CANDIDATE OR AN AUTHORIZED COMMITTEE OF THE CANDIDATE PRIOR TO THE EFFECTIVE DATE OF THIS TITLE SHALL NOT CONSTITUTE A VIOLATION OF THIS TITLE. UNEXPENDED CONTRIBUTIONS SHALL BE TREATED THE SAME AS CAMPAIGN SURPLUSES UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH. NOTHING IN THIS RECOMMENDATION SHALL BE CONSTRUED TO LIMIT, IN ANY WAY, ANY CANDIDATE OR PUBLIC OFFICIAL FROM EXPENDING ANY PORTION OF PRE-EXISTING CAMPAIGN FUNDS FOR ANY LAWFUL PURPOSE OTHER THAN THOSE RELATED TO HIS OR HER CAMPAIGN.

(V) A CANDIDATE WHO HAS RAISED MATCHABLE CONTRIBUTIONS BUT, IN THE CASE OF A COVERED PRIMARY, GENERAL OR SPECIAL ELECTION, IS NOT OPPOSED BY ANOTHER CANDIDATE ON THE BALLOT WHO IS NOT A WRITE-IN CANDIDATE, OR WHO CHOOSES NOT TO ACCEPT MATCHABLE FUNDS, MAY RETAIN SUCH CONTRIBUTIONS

AND APPLY THEM IN ACCORD WITH THIS TITLE TO THE CANDIDATE'S NEXT CAMPAIGN, SHOULD THERE BE ONE, IN THE NEXT ELECTION CYCLE.

2. THRESHOLD FOR ELIGIBILITY. (A) THE THRESHOLD FOR ELIGIBILITY FOR PUBLIC FUNDING FOR PARTICIPATING CANDIDATES SHALL BE IN THE CASE OF:

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(I) GOVERNOR, NOT LESS THAN FIVE HUNDRED THOUSAND DOLLARS IN CONTRIBUTIONS INCLUDING AT LEAST FIVE THOUSAND MATCHABLE CONTRIBUTIONS SHALL BE COUNTED TOWARD THIS QUALIFYING THRESHOLD;

(II) LIEUTENANT GOVERNOR, ATTORNEY GENERAL AND COMPTROLLER, NOT LESS THAN ONE HUNDRED THOUSAND DOLLARS IN CONTRIBUTIONS INCLUDING AT LEAST ONE THOUSAND MATCHABLE CONTRIBUTIONS SHALL BE COUNTED TOWARD THIS QUALIFYING THRESHOLD;

(III) STATE SENATOR, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, NOT LESS THAN TWELVE THOUSAND DOLLARS IN CONTRIBUTIONS INCLUDING AT LEAST ONE HUNDRED FIFTY MATCHABLE CONTRIBUTIONS SHALL BE COUNTED TOWARD THIS QUALIFYING THRESHOLD; AND

(IV) MEMBER OF THE ASSEMBLY, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, NOT LESS THAN SIX THOUSAND DOLLARS IN CONTRIBUTIONS INCLUDING AT LEAST SEVENTY-FIVE MATCHABLE CONTRIBUTIONS SHALL BE COUNTED TOWARD THIS QUALIFYING THRESHOLD.

(B) HOWEVER, SOLELY FOR PURPOSES OF ACHIEVING THE MONETARY THRESHOLDS IN PARAGRAPH (A) OF THIS SUBDIVISION, THE FIRST TWO HUNDRED FIFTY DOLLARS OF ANY CONTRIBUTION OF MORE THAN TWO HUNDRED FIFTY DOLLARS TO A CANDIDATE OR A CANDIDATE'S COMMITTEE WHICH WOULD OTHERWISE BE MATCHABLE

EXCEPT THAT IT COMES FROM A CONTRIBUTOR WHO HAS CONTRIBUTED MORE THAN TWO HUNDRED FIFTY DOLLARS TO SUCH CANDIDATE OR CANDIDATE'S COMMITTEE, IS DEEMED TO BE A MATCHABLE CONTRIBUTION AND SHALL COUNT TOWARD SATISFYING SUCH MONETARY THRESHOLD BUT SHALL NOT OTHERWISE BE CONSIDERED A MATCHABLE CONTRIBUTION.

(C) WITH RESPECT TO THE MINIMUM DOLLAR THRESHOLD FOR PARTICIPATING CANDIDATES FOR STATE SENATE AND STATE ASSEMBLY, IN SUCH DISTRICTS WHERE AVERAGE MEDIAN INCOME ("AMI") IS BELOW THE AMI AS DETERMINED BY THE UNITED STATES CENSUS BUREAU THREE YEARS BEFORE SUCH ELECTION FOR WHICH PUBLIC FUNDS ARE SOUGHT, SUCH MINIMUM DOLLAR THRESHOLD FOR ELIGIBILITY SHALL BE REDUCED BY ONE-THIRD. THE PCFB SHALL MAKE PUBLIC WHICH DISTRICTS ARE SUBJECT TO SUCH REDUCTION NO LATER THAN TWO YEARS BEFORE THE FIRST PRIMARY ELECTION FOR WHICH FUNDING IS SOUGHT.

(D) ANY PARTICIPATING CANDIDATE MEETING THE THRESHOLD FOR ELIGIBILITY IN A PRIMARY ELECTION FOR ONE OF THE FOREGOING OFFICES SHALL BE APPLIED TO SATISFY THE THRESHOLD FOR ELIGIBILITY FOR SUCH OFFICE IN ANY OTHER SUBSEQUENT ELECTION HELD IN THE SAME CALENDAR YEAR. ANY PARTICIPATING CANDIDATE WHO IS NOMINATED IN A PRIMARY ELECTION AND HAS PARTICIPATED IN THE PUBLIC FINANCING PROGRAM SET FORTH IN THIS TITLE, MUST PARTICIPATE IN THE GENERAL ELECTION FOR SUCH OFFICE.

§ 14-204. LIMITS ON PUBLIC FINANCING. THE FOLLOWING LIMITATIONS APPLY TO THE TOTAL AMOUNTS OF PUBLIC FUNDS THAT MAY BE PROVIDED TO A PARTICIPATING CANDIDATE'S AUTHORIZED COMMITTEE FOR AN ELECTION CYCLE:

1. IN ANY PRIMARY ELECTION, RECEIPT OF PUBLIC FUNDS BY PARTICIPATING CANDIDATES AND BY THEIR PARTICIPATING COMMITTEES SHALL NOT EXCEED:

- | | |
|--|-------------|
| (A) FOR GOVERNOR | \$3,500,000 |
| (B) FOR LIEUTENANT GOVERNOR, ATTORNEY GENERAL OR COMPTROLLER | \$3,500,000 |
| (C) FOR STATE SENATOR | \$375,000 |
| (D) FOR MEMBER OF THE ASSEMBLY | \$175,000 |

2. IN ANY GENERAL OR SPECIAL ELECTION, RECEIPT OF PUBLIC FUNDS BY A PARTICIPATING CANDIDATE'S AUTHORIZED COMMITTEES SHALL NOT EXCEED:

- | | |
|---|-------------|
| (A) FOR GOVERNOR AND LIEUTENANT GOVERNOR (COMBINED) | \$3,500,000 |
| (B) FOR ATTORNEY GENERAL | \$3,500,000 |
| (C) FOR COMPTROLLER | \$3,500,000 |
| (D) FOR STATE SENATOR | \$375,000 |
| (E) FOR MEMBER OF THE ASSEMBLY | \$175,000 |

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3. NO PARTICIPATING CANDIDATE FOR NOMINATION FOR AN OFFICE WHO IS NOT OPPOSED BY A CANDIDATE ON THE BALLOT IN A PRIMARY ELECTION SHALL BE ENTITLED TO PAYMENT OF PUBLIC MATCHING FUNDS, EXCEPT THAT, WHERE THERE IS A CONTEST IN SUCH PRIMARY ELECTION FOR THE NOMINATION OF AT LEAST ONE OF THE TWO POLITICAL PARTIES WITH THE HIGHEST AND SECOND HIGHEST NUMBER OF ENROLLED MEMBERS FOR SUCH OFFICE, A PARTICIPATING CANDIDATE WHO IS UNOPPOSED IN THE PRIMARY ELECTION MAY RECEIVE PUBLIC FUNDS BEFORE THE PRIMARY ELECTION, FOR EXPENSES INCURRED ON OR BEFORE THE DATE OF SUCH PRIMARY ELECTION, IN AN AMOUNT EQUAL TO UP TO HALF THE SUM SET FORTH IN PARAGRAPH ONE OF THIS SECTION.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AMOUNT OF PRIVATE FUNDS A CANDIDATE MAY RECEIVE SUBJECT TO THE CONTRIBUTION LIMITS CONTAINED IN SECTION 14-114 OF THIS ARTICLE. ANY CONTRIBUTIONS SO RECEIVED WHICH ARE NOT EXPENDED IN THE GENERAL ELECTION MAY BE APPLIED TO THE NEXT COVERED ELECTION FOR AN OFFICE FOR WHICH SUCH CANDIDATE SEEKS NOMINATION OR ELECTION.

5. A CANDIDATE ONLY ON THE BALLOT IN ONE OR MORE PRIMARY ELECTIONS IN WHICH THE NUMBER OF PERSONS ELIGIBLE TO VOTE FOR PARTY NOMINEES IN EACH SUCH ELECTION TOTALS FEWER THAN ONE THOUSAND SHALL NOT RECEIVE PUBLIC FUNDS IN EXCESS OF FIVE THOUSAND DOLLARS FOR QUALIFIED CAMPAIGN EXPENDITURES IN SUCH ELECTION OR ELECTIONS. FOR THE PURPOSES OF THIS SECTION, THE NUMBER OF PERSONS ELIGIBLE TO VOTE FOR PARTY NOMINEES IN A PRIMARY ELECTION SHALL BE AS DETERMINED BY THE STATE BOARD OF ELECTIONS FOR THE CALENDAR YEAR OF THE PRIMARY ELECTION. A CANDIDATE FOR OFFICE ON THE BALLOT IN MORE THAN ONE PRIMARY FOR SUCH OFFICE, SHALL BE DEEMED, FOR PURPOSES OF THIS RECOMMENDATION, TO BE A SINGLE CANDIDATE.

§ 14-205. PAYMENT OF PUBLIC MATCHING FUNDS. 1. DETERMINATION OF ELIGIBILITY. NO PUBLIC MATCHING FUNDS SHALL BE PAID TO AN AUTHORIZED COMMITTEE UNLESS THE PCFB DETERMINES THAT THE PARTICIPATING CANDIDATE HAS MET THE ELIGIBILITY REQUIREMENTS OF THIS TITLE. PAYMENT SHALL NOT EXCEED THE AMOUNTS SPECIFIED IN SUBDIVISION TWO OF THIS SECTION, AND SHALL BE MADE ONLY IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE. SUCH PAYMENT MAY BE MADE ONLY TO THE PARTICIPATING CANDIDATE'S AUTHORIZED COMMITTEE. NO PUBLIC MATCHING FUNDS SHALL BE USED EXCEPT AS REIMBURSEMENT OR PAYMENT FOR QUALIFIED CAMPAIGN EXPENDITURES ACTUALLY AND LAWFULLY INCURRED OR TO

REPAY LOANS USED TO PAY QUALIFIED CAMPAIGN EXPENDITURES.

2. CALCULATION OF PAYMENT. (A) IN ANY ELECTION FOR A PUBLIC OFFICE TO BE VOTED ON BY THE VOTERS OF THE ENTIRE STATE OR FOR NOMINATION TO ANY SUCH OFFICE, IF THE THRESHOLD FOR ELIGIBILITY IS MET, THE PARTICIPATING CANDIDATE'S AUTHORIZED COMMITTEE SHALL RECEIVE PAYMENT FOR QUALIFIED CAMPAIGN EXPENDITURES OF SIX DOLLARS OF PUBLIC MATCHING FUNDS FOR EACH ONE DOLLAR OF MATCHABLE CONTRIBUTIONS, OBTAINED AND REPORTED TO THE PCFB IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE. THE MAXIMUM PAYMENT OF PUBLIC MATCHING FUNDS SHALL BE LIMITED TO THE AMOUNTS SET FORTH IN THIS SECTION FOR THE COVERED ELECTION.

(B) IN ANY ELECTION FOR STATE SENATE OR STATE ASSEMBLY OR FOR NOMINATION TO ANY SUCH OFFICE, IF THE THRESHOLD FOR ELIGIBILITY IS MET, THE PARTICIPATING CANDIDATE'S AUTHORIZED COMMITTEE SHALL RECEIVE PAYMENT FOR QUALIFIED CAMPAIGN EXPENDITURES FOR MATCHABLE CONTRIBUTIONS OF ELIGIBLE PRIVATE FUNDS PER CONTRIBUTOR, OBTAINED, AND REPORTED TO THE PCFB HEREIN, OF: TWELVE DOLLARS OF PUBLIC MATCHING FUNDS FOR EACH OF THE FIRST FIFTY DOLLARS OF MATCHABLE CONTRIBUTIONS; NINE DOLLARS OF PUBLIC MATCHING FUNDS FOR EACH OF THE NEXT ONE HUNDRED DOLLARS OF PUBLIC MATCHABLE CONTRIBUTIONS; AND EIGHT DOLLARS FOR THE EACH OF THE NEXT ONE HUNDRED DOLLARS OF PUBLIC MATCHABLE CONTRIBUTIONS. THE MAXIMUM PAYMENT OF PUBLIC

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MATCHING FUNDS SHALL BE LIMITED TO THE AMOUNTS SET FORTH IN THIS SECTION FOR THE COVERED ELECTION.

3. TIMING OF PAYMENT. THE PCFB SHALL MAKE ANY PAYMENT OF PUBLIC MATCHING FUNDS TO PARTICIPATING CANDIDATES AS SOON AS IS PRACTICABLE. BUT IN ALL CASES, IT SHALL VERIFY ELIGIBILITY FOR PUBLIC MATCHING FUNDS WITHIN FOUR DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF RECEIVING A CAMPAIGN CONTRIBUTION REPORT FILED IN COMPLIANCE WITH SECTION 14-104 OF THIS ARTICLE. WITHIN TWO DAYS OF DETERMINING THAT A CANDIDATE FOR A COVERED OFFICE IS ELIGIBLE FOR PUBLIC MATCHING FUNDS, IT SHALL AUTHORIZE PAYMENT OF THE APPLICABLE MATCHING FUNDS OWED TO THE CANDIDATE. THE PCFB SHALL SCHEDULE AT LEAST THREE PAYMENT DATES IN THE THIRTY DAYS PRIOR TO A COVERED PRIMARY, GENERAL, OR SPECIAL ELECTION. IF ANY OF SUCH PAYMENTS WOULD REQUIRE PAYMENT ON A WEEKEND OR FEDERAL HOLIDAY, PAYMENT SHALL BE MADE ON THE NEXT BUSINESS DAY.

4. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE AMOUNT OF PUBLIC FUNDS PAYABLE TO A PARTICIPATING CANDIDATE ON THE BALLOT IN ANY COVERED ELECTION SHALL NOT EXCEED ONE-QUARTER OF THE MAXIMUM PUBLIC FUNDS PAYMENT OTHERWISE APPLICABLE AND NO PARTICIPATING CANDIDATE SHALL BE ELIGIBLE TO RECEIVE A DISBURSEMENT OF PUBLIC FUNDS PRIOR TO TWO WEEKS AFTER THE LAST DAY TO FILE DESIGNATING PETITIONS FOR A PRIMARY ELECTION UNLESS THE PARTICIPATING CANDIDATE IS OPPOSED BY A COMPETITIVE CANDIDATE. THE PCFB SHALL, BY REGULATION, SET FORTH OBJECTIVE STANDARDS TO DETERMINE WHETHER A CANDIDATE IS COMPETITIVE AND THE PROCEDURES FOR QUALIFYING FOR THE PAYMENT OF PUBLIC FUNDS.

5. ELECTRONIC FUNDS TRANSFER. THE PCFB SHALL, IN CONSULTATION WITH THE OFFICE OF THE COMPTROLLER, PROMULGATE RULES TO FACILITATE ELECTRONIC FUNDS TRANSFERS DIRECTLY FROM THE CAMPAIGN FINANCE FUND INTO AN AUTHORIZED COMMITTEE'S BANK ACCOUNT.

6. IRREGULARLY SCHEDULED ELECTIONS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE PCFB SHALL PROMULGATE RULES TO PROVIDE FOR

THE PROMPT ISSUANCE OF PUBLIC MATCHING FUNDS TO ELIGIBLE PARTICIPATING CANDIDATES FOR QUALIFIED CAMPAIGN EXPENDITURES IN THE CASE OF ANY OTHER COVERED ELECTION HELD ON A DAY DIFFERENT FROM THE DAY ORIGINALLY SCHEDULED, INCLUDING SPECIAL ELECTIONS. PROVIDED, HOWEVER IN ALL CASES, THE PCFB SHALL: (A) WITHIN FOUR DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF RECEIVING A REPORT OF CONTRIBUTIONS FROM A CANDIDATE FOR A COVERED OFFICE CLAIMING ELIGIBILITY FOR PUBLIC MATCHING FUNDS, VERIFY THAT CANDIDATE'S ELIGIBILITY FOR PUBLIC MATCHING FUNDS; AND (B) WITHIN TWO DAYS OF DETERMINING THAT THE CANDIDATE FOR A COVERED OFFICE IS ELIGIBLE FOR PUBLIC MATCHING FUNDS, IT SHALL AUTHORIZE PAYMENT OF THE APPLICABLE MATCHING FUNDS OWED TO THE CANDIDATE.

§ 14-206. USE OF PUBLIC MATCHING FUNDS; QUALIFIED CAMPAIGN EXPENDITURES. 1. PUBLIC MATCHING FUNDS PROVIDED PURSUANT TO THIS TITLE MAY BE USED ONLY BY AN AUTHORIZED COMMITTEE FOR EXPENDITURES TO FURTHER THE PARTICIPATING CANDIDATE'S NOMINATION FOR ELECTION OR ELECTION, INCLUDING PAYING FOR DEBTS INCURRED WITHIN ONE YEAR PRIOR TO AN ELECTION TO FURTHER THE PARTICIPATING CANDIDATE'S NOMINATION FOR ELECTION OR ELECTION.

2. SUCH PUBLIC MATCHING FUNDS MAY NOT BE USED FOR:

- (A) AN EXPENDITURE IN VIOLATION OF ANY LAW;
- (B) AN EXPENDITURE IN EXCESS OF THE FAIR MARKET VALUE OF SERVICES, MATERIALS, FACILITIES, OR OTHER THINGS OF VALUE RECEIVED IN EXCHANGE;
- (C) AN EXPENDITURE MADE AFTER THE CANDIDATE HAS BEEN FINALLY DISQUALIFIED FROM THE BALLOT;

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(D) AN EXPENDITURE MADE AFTER THE ONLY REMAINING OPPONENT OF THE CANDIDATE HAS BEEN FINALLY DISQUALIFIED FROM THE GENERAL OR SPECIAL ELECTION BALLOT;

(E) AN EXPENDITURE MADE BY CASH PAYMENT;

(F) A CONTRIBUTION OR LOAN OR TRANSFER MADE TO OR EXPENDITURE TO SUPPORT ANOTHER CANDIDATE OR POLITICAL COMMITTEE OR PARTY COMMITTEE OR CONSTITUTED COMMITTEE;

(G) AN EXPENDITURE TO SUPPORT OR OPPOSE A CANDIDATE FOR AN OFFICE OTHER THAN THAT WHICH THE PARTICIPATING CANDIDATE SEEKS;

(H) GIFTS, EXCEPT BROCHURES, BUTTONS, SIGNS, TEE SHIRTS AND OTHER PRINTED CAMPAIGN MATERIAL;

(I) LEGAL FEES TO DEFEND AGAINST A CRIMINAL CHARGE;

(J) ANY EXPENDITURE MADE TO CHALLENGE THE VALIDITY OF ANY PETITION OF DESIGNATION OR NOMINATION OR ANY CERTIFICATE OF NOMINATION, ACCEPTANCE, AUTHORIZATION, DECLINATION, OR SUBSTITUTION;

(K) PAYMENTS MADE TO THE CANDIDATE OR A SPOUSE, DOMESTIC PARTNER, CHILD, GRANDCHILD, PARENT, GRANDPARENT, BROTHER OR SISTER OF THE CANDIDATE OR SPOUSE OR DOMESTIC PARTNER OF SUCH CHILD, GRANDCHILD, PARENT, GRANDPARENT, BROTHER OR SISTER, OR TO A BUSINESS ENTITY IN WHICH THE CANDIDATE OR ANY SUCH PERSON HAS A TEN PERCENT OR GREATER OWNERSHIP INTEREST;

(L) AN EXPENDITURE MADE PRIMARILY FOR THE PURPOSE OF EXPRESSLY ADVOCATING A VOTE FOR OR AGAINST A BALLOT PROPOSAL, OTHER THAN EXPENDITURES MADE ALSO TO FURTHER THE PARTICIPATING CANDIDATE'S NOMINATION FOR ELECTION OR ELECTION;

(M) PAYMENT OF ANY SETTLEMENT, PENALTY OR FINE IMPOSED PURSUANT TO FEDERAL, STATE OR LOCAL LAW;

(N) PAYMENTS MADE THROUGH ADVANCES, EXCEPT IN THE CASE OF INDIVIDUAL PURCHASES LESS THAN TWO HUNDRED FIFTY DOLLARS; OR

(O) EXPENDITURES TO FACILITATE, SUPPORT, OR OTHERWISE ASSIST IN THE EXECUTION OR PERFORMANCE OF THE DUTIES OF PUBLIC OFFICE.

§ 14-207. COMPOSITION, POWERS, AND DUTIES OF THE PUBLIC CAMPAIGN FINANCE BOARD. 1. THERE SHALL BE A PUBLIC CAMPAIGN FINANCE BOARD WITHIN THE STATE BOARD OF ELECTIONS THAT SHALL BE COMPRISED OF THE FOLLOWING COMMISSIONERS: THE FOUR STATE BOARD OF ELECTIONS COMMISSIONERS AND THREE

ADDITIONAL COMMISSIONERS, ONE JOINTLY APPOINTED BY THE LEGISLATIVE LEADERS OF ONE MAJOR POLITICAL PARTY IN EACH HOUSE OF THE LEGISLATURE, ONE JOINTLY APPOINTED BY THE LEGISLATIVE LEADERS OF THE OTHER MAJOR POLITICAL PARTY IN EACH HOUSE OF THE LEGISLATURE, AND ONE OF WHOM SHALL BE APPOINTED BY THE GOVERNOR. EACH COMMISSIONER MUST BE A NEW YORK STATE RESIDENT AND REGISTERED VOTER, AND MAY NOT CURRENTLY BE, OR WITHIN THE PREVIOUS FIVE YEARS HAVE BEEN, AN OFFICER OF A POLITICAL PARTY OR POLITICAL COMMITTEE AS DEFINED IN THE ELECTION LAW, OR A REGISTERED LOBBYIST. THE CHAIR OF THE PCFB SHALL BE DESIGNATED BY THE PCFB FROM AMONG THE THREE ADDITIONAL COMMISSIONERS. EACH OF THE THREE ADDITIONAL COMMISSIONERS SHALL RECEIVE A PER DIEM OF THREE HUNDRED FIFTY DOLLARS FOR WORK ACTUALLY PERFORMED NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS IN ANY ONE

CALENDAR YEAR. THEY SHALL BE CONSIDERED PUBLIC OFFICERS FOR PURPOSES OF SECTIONS SEVENTY-THREE-A AND SEVENTY-FOUR OF THE PUBLIC OFFICERS LAW. THE THREE COMMISSIONERS SO APPOINTED PURSUANT TO THIS RECOMMENDATION WILL BE APPOINTED FOR A TERM OF FIVE YEARS TO COMMENCE ON JULY FIRST, TWO THOUSAND TWENTY AND MAY BE REMOVED BY HIS OR HER APPOINTING AUTHORITY

SOLELY FOR SUBSTANTIAL NEGLECT OF DUTY, GROSS MISCONDUCT IN OFFICE, INABILITY TO DISCHARGE THE POWER OR DUTIES OF OFFICE, AFTER WRITTEN NOTICE AND OPPORTUNITY TO BE HEARD. DURING THE PERIOD OF HIS OR HER TERM AS A COMMISSIONER APPOINTED HEREUNDER, EACH SUCH COMMISSIONER IS BARRED

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FROM MAKING, OR SOLICITING FROM OTHER PERSONS, ANY CONTRIBUTIONS TO CANDIDATES FOR ELECTION TO THE OFFICES OF GOVERNOR, LIEUTENANT GOVERNOR, ATTORNEY GENERAL, COMPTROLLER, MEMBER OF THE ASSEMBLY, OR STATE SENATOR. ANY VACANCY OCCURRING ON THE PCFB SHALL BE FILLED WITHIN THIRTY DAYS OF ITS OCCURRENCE IN THE SAME MANNER AS THE MEMBER WHOSE VACANCY IS BEING FILLED WAS APPOINTED. A PERSON APPOINTED TO FILL A VACANCY OCCURRING OTHER THAN BY EXPIRATION OF A TERM OF OFFICE SHALL BE APPOINTED FOR THE UNEXPIRED TERM OF THE MEMBER HE OR SHE SUCCEEDS. FOUR MEMBERS OF THE PCFB SHALL CONSTITUTE A QUORUM, AND THE PCFB SHALL HAVE THE POWER TO ACT BY MAJORITY VOTE OF THE TOTAL NUMBER OF MEMBERS OF THE COMMISSION WITHOUT VACANCY. ALL MEMBERS OF THE PCFB SHALL BE APPOINTED NO LATER THAN THE FIRST DAY OF JULY, TWO THOUSAND TWENTY AND THE PCFB SHALL PROMULGATE SUCH REGULATIONS AS ARE NEEDED NO LATER THAN THE FIRST DAY OF JULY, TWO THOUSAND TWENTY-ONE.

2. THE PCFB AND STATE BOARD OF ELECTIONS MAY UTILIZE EXISTING STATE BOARD OF ELECTIONS STAFF AND HIRE SUCH OTHER STAFF AS ARE NECESSARY TO CARRY OUT ITS DUTIES. IT MAY EXPAND ITS STAFFING, AS NEEDED, TO PROVIDE ADDITIONAL CANDIDATE LIAISONS TO ASSIST CANDIDATES IN COMPLYING WITH THE

TERMS OF THIS PUBLIC CAMPAIGN FINANCE SYSTEM AS PROVIDED FOR IN THESE RECOMMENDATIONS, AS WELL AS AUDITORS, TRAINERS, ATTORNEYS, TECHNICAL STAFF AND OTHER SUCH STAFF AS THE PCFB DETERMINES IS NECESSARY TO ADMINISTER THIS SYSTEM. ANNUALLY, ON OR BEFORE THE FIRST OF EVERY YEAR, THE PCFB SHALL SUBMIT TO THE GOVERNOR AND THE DIVISION OF THE BUDGET A REQUEST FOR APPROPRIATIONS FOR THE NEXT STATE FISCAL YEAR TO FULLY SUPPORT THE ADMINISTRATION OF THE PUBLIC CAMPAIGN FINANCE PROGRAM ESTABLISHED IN THIS TITLE.

3. THE PCFB SHALL DEVELOP A PROGRAM FOR INFORMING CANDIDATES AND THE PUBLIC AS TO THE PURPOSE AND EFFECT OF THE PROVISIONS OF THIS TITLE, INCLUDING BY MEANS OF A WEBPAGE. THE PCFB SHALL PREPARE IN PLAIN LANGUAGE AND MAKE AVAILABLE EDUCATIONAL MATERIALS, INCLUDING COMPLIANCE MANUALS AND SUMMARIES AND EXPLANATIONS OF THE PURPOSES AND PROVISIONS OF THIS TITLE. THE PCFB SHALL PROVIDE COMPLIANCE COUNSELING AND GUIDANCE TO CANDIDATES SEEKING TO PARTICIPATE IN PUBLIC FINANCING AS PROVIDED FOR IN THIS TITLE, AS WELL AS TO SUCH CANDIDATES WHO PARTICIPATE. THE PCFB SHALL PREPARE OR HAVE PREPARED AND MAKE AVAILABLE MATERIALS, INCLUDING, TO THE EXTENT FEASIBLE, COMPUTER SOFTWARE, TO FACILITATE THE TASK OF COMPLIANCE WITH THE DISCLOSURE AND RECORD KEEPING REQUIREMENTS OF THIS TITLE.

4. THE PCFB SHALL HAVE THE AUTHORITY TO PROMULGATE SUCH RULES AND REGULATIONS AND PROVIDE SUCH FORMS AS IT DEEMS NECESSARY FOR THE ADMINISTRATION OF THIS TITLE.

5. THE PCFB SHALL PROVIDE AN INTERACTIVE, SEARCHABLE COMPUTER DATABASE THAT SHALL CONTAIN ALL INFORMATION NECESSARY FOR THE PROPER ADMINISTRATION OF THIS TITLE, INCLUDING INFORMATION ON CONTRIBUTIONS TO AND EXPENDITURES BY CANDIDATES AND THEIR AUTHORIZED COMMITTEES, INDEPENDENT EXPENDITURES IN SUPPORT OR OPPOSITION OF CANDIDATES FOR COVERED OFFICES, AND DISTRIBUTIONS OF MONEYS FROM THE FUND. SUCH DATABASE SHALL BE ACCESSIBLE TO THE PUBLIC ON THE PCFB'S WEBPAGE.

6. ANY ADVICE PROVIDED BY PCFB STAFF TO A PARTICIPATING OR NON PARTICIPATING CANDIDATE WITH REGARD TO AN ACTION SHALL BE PRESUMPTIVE EVIDENCE THAT SUCH ACTION, IF TAKEN IN RELIANCE ON SUCH ADVICE, SHOULD NOT BE SUBJECT TO A PENALTY OR REPAYMENT OBLIGATION WHERE SUCH CANDIDATE OR SUCH CANDIDATE'S COMMITTEE HAS CONFIRMED SUCH ADVICE IN WRITING TO SUCH PCFB STAFF BY REGISTERED OR CERTIFIED MAIL TO THE CORRECT ADDRESS, OR BY ELECTRONIC OR FACSIMILE TRANSMISSION WITH EVIDENCE OF RECEIPT, DESCRIBING THE ACTION TO BE TAKEN PURSUANT TO THE ADVICE GIVEN AND THE PCFB OR

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ITS STAFF HAS NOT RESPONDED TO SUCH WRITTEN CONFIRMATION WITHIN SEVEN BUSINESS DAYS DISAVOWING OR ALTERING SUCH ADVICE, PROVIDED THAT THE PCFB'S RESPONSE SHALL BE BY REGISTERED OR CERTIFIED MAIL TO THE CORRECT ADDRESS, OR BY ELECTRONIC OR FACSIMILE TRANSMISSION WITH EVIDENCE OF RECEIPT.

7. THE PCFB AND ITS PROCEEDINGS SHALL BE SUBJECT TO ARTICLES SIX AND SEVEN OF THE PUBLIC OFFICERS LAW.

8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW INCLUDING, BUT NOT LIMITED TO, SUBDIVISION ONE OF SECTION 3-104 OF THIS CHAPTER, THE PCFB SHALL HAVE SOLE AUTHORITY TO INVESTIGATE ALL REFERRALS AND COMPLAINTS RELATING TO THE ADMINISTRATION OF THE PROGRAM ESTABLISHED HEREUNDER AND VIOLATIONS OF ANY OF ITS PROVISIONS, AND IT SHALL HAVE SOLE AUTHORITY TO

ADMINISTER THE PROGRAM ESTABLISHED IN THIS TITLE AND TO ENFORCE SUCH PROVISIONS OF THIS PROGRAM EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE.

9. THE PCFB MAY TAKE SUCH OTHER ACTIONS AS ARE NECESSARY AND PROPER TO CARRY OUT THE PURPOSES OF THIS RECOMMENDATION.

§ 14-208. AUDITS AND REPAYMENTS. 1. AUDITS. (A) THE PCFB SHALL AUDIT AND EXAMINE ALL MATTERS RELATING TO THE PROPER ADMINISTRATION OF THIS TITLE AND SHALL COMPLETE ALL SUCH AUDITS NO LATER THAN ONE AND ONE-HALF YEARS AFTER THE ELECTION IN QUESTION. THIS DEADLINE SHALL NOT APPLY IN CASES INVOLVING POTENTIAL CAMPAIGN-RELATED FRAUD, KNOWING AND WILLFUL VIOLATIONS OF THIS ARTICLE, OR CRIMINAL ACTIVITY.

(B) EVERY PARTICIPATING CANDIDATE FOR STATEWIDE OFFICE WHO RECEIVES PUBLIC FUNDS AS PROVIDED IN THIS TITLE, AND EVERY CANDIDATE FOR ANY OTHER OFFICE WHO RECEIVES FIVE HUNDRED THOUSAND DOLLARS OR GREATER IN PUBLIC FUNDS AS PROVIDED IN THIS TITLE, SHALL BE AUDITED BY THE PCFB ALONG WITH ALL OTHER CANDIDATES IN EACH SUCH RACE. SUCH AUDITS SHALL BE COMPLETED WITHIN ONE AND ONE-HALF YEARS OF THE ELECTION IN QUESTION.

(C) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE PCFB SHALL SELECT NOT MORE THAN ONE-THIRD OF ALL PARTICIPATING CANDIDATES IN COVERED ELECTIONS FOR AUDIT THROUGH A LOTTERY WHICH SHALL BE COMPLETED WITHIN ONE YEAR OF THE ELECTION IN QUESTION. A SEPARATE LOTTERY SHALL BE CONDUCTED FOR EACH OFFICE. THE PCFB SHALL SELECT SENATE AND ASSEMBLY DISTRICTS TO BE AUDITED, AUDITING EVERY CANDIDATE IN EACH SELECTED DISTRICT, WHILE ENSURING THAT THE NUMBER OF AUDITED CANDIDATES WITHIN THOSE DISTRICTS DOES NOT EXCEED FIFTY PERCENT OF ALL PARTICIPATING CANDIDATES FOR THE RELEVANT OFFICE. THE LOTTERY FOR SENATE AND ASSEMBLY ELECTIONS SHALL BE WEIGHTED TO INCREASE THE LIKELIHOOD THAT A DISTRICT FOR THE RELEVANT OFFICE IS AUDITED BASED ON HOW FREQUENTLY IT HAS NOT BEEN SELECTED FOR AUDITING DURING THE PAST THREE ELECTION CYCLES. THE PCFB SHALL PROMULGATE RULES CONCERNING THE METHOD OF WEIGHTING THE SENATE AND ASSEMBLY LOTTERIES, INCLUDING PROVISIONS FOR THE FIRST THREE ELECTION CYCLES FOR EACH OFFICE.

(D) THE COST OF COMPLYING WITH A POST-ELECTION AUDIT SHALL BE BORNE BY THE CANDIDATE'S AUTHORIZED COMMITTEE USING PUBLIC FUNDS, PRIVATE FUNDS, OR ANY COMBINATION OF SUCH FUNDS. CANDIDATES WHO RUN IN ANY PRIMARY OR GENERAL ELECTION MUST MAINTAIN A RESERVE OF THREE PERCENT OF THE PUBLIC FUNDS RECEIVED TO COMPLY WITH THE POST-ELECTION AUDIT.

(E) THE PCFB SHALL ISSUE TO EACH CAMPAIGN AUDITED A FINAL AUDIT REPORT THAT DETAILS ITS FINDINGS.

2. REPAYMENTS. (A) IF THE PCFB DETERMINES THAT ANY PORTION OF THE PAYMENT MADE TO A CANDIDATE'S AUTHORIZED COMMITTEE FROM THE FUND WAS IN EXCESS OF THE AGGREGATE AMOUNT OF PAYMENTS THAT SUCH CANDIDATE WAS ELIGIBLE TO RECEIVE PURSUANT TO THIS TITLE, IT SHALL NOTIFY SUCH COMMITTEE AND SUCH COMMITTEE SHALL PAY TO THE PCFB AN AMOUNT EQUAL TO THE AMOUNT OF EXCESS PAYMENTS. SUCH COMMITTEE SHALL FIRST UTILIZE THE

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SURPLUS FOR REPAYMENT OF SUCH SUMS AND THEN SUCH OTHER FUNDS AS IT MAY HAVE. PROVIDED, HOWEVER, THAT IF THE ERRONEOUS PAYMENT WAS THE RESULT OF AN ERROR BY THE PCFB, THEN THE ERRONEOUS PAYMENT WILL BE DEDUCTED FROM ANY FUTURE PAYMENT, IF ANY, AND IF NO FUTURE PAYMENT IS TO BE MADE THEN NEITHER THE CANDIDATE NOR THE COMMITTEE SHALL BE LIABLE TO REPAY THE EXCESS AMOUNT TO THE PCFB. THE CANDIDATE AND THE CANDIDATE'S AUTHORIZED COMMITTEE ARE JOINTLY AND SEVERALLY LIABLE FOR ANY REPAYMENTS TO THE

PCFB.

(B) IF THE PCFB DETERMINES THAT ANY PORTION OF THE PAYMENT MADE TO A CANDIDATE'S AUTHORIZED COMMITTEE FROM THE FUND WAS USED FOR PURPOSES OTHER THAN QUALIFIED CAMPAIGN EXPENDITURES AND SUCH EXPENDITURES WERE NOT APPROVED BY THE PCFB, IT SHALL NOTIFY SUCH COMMITTEE OF THE AMOUNT SO DISQUALIFIED AND SUCH COMMITTEE SHALL PAY TO THE PCFB AN AMOUNT EQUAL TO SUCH DISQUALIFIED AMOUNT. THE CANDIDATE, THE TREASURER, AND THE CANDIDATE'S AUTHORIZED COMMITTEE ARE JOINTLY AND SEVERALLY LIABLE FOR ANY REPAYMENTS TO THE PCFB.

(C) IF THE TOTAL SUM OF CONTRIBUTIONS RECEIVED AND PUBLIC MATCHING PAYMENTS FROM THE FUND RECEIVED BY A PARTICIPATING CANDIDATE AND HIS OR HER AUTHORIZED COMMITTEE EXCEED THE TOTAL CAMPAIGN EXPENDITURES OF SUCH CANDIDATE AND AUTHORIZED COMMITTEE FOR ALL COVERED ELECTIONS HELD IN THE SAME CALENDAR YEAR OR FOR A SPECIAL ELECTION TO FILL A VACANCY, SUCH CANDIDATE AND COMMITTEE SHALL USE SUCH SURPLUS FUNDS TO REIMBURSE THE FUND FOR PAYMENTS RECEIVED BY SUCH AUTHORIZED COMMITTEE FROM THE FUND DURING SUCH CALENDAR YEAR OR FOR SUCH SPECIAL ELECTION. PARTICIPATING CANDIDATES SHALL MAKE SUCH PAYMENTS NOT LATER THAN TWENTY-SEVEN DAYS AFTER ALL LIABILITIES FOR THE ELECTION HAVE BEEN PAID AND IN ANY EVENT, NOT LATER THAN THE DAY ON WHICH THE PCFB ISSUES ITS FINAL AUDIT REPORT FOR THE PARTICIPATING CANDIDATE'S AUTHORIZED COMMITTEE; PROVIDED, HOWEVER, THAT ALL UNSPENT PUBLIC CAMPAIGN FUNDS FOR A PARTICIPATING CANDIDATE SHALL BE IMMEDIATELY DUE AND PAYABLE TO THE PCFB UPON A DETERMINATION BY THE PCFB THAT THE PARTICIPANT HAS DELAYED THE POST-ELECTION AUDIT. A PARTICIPATING CANDIDATE MAY MAKE POST-ELECTION EXPENDITURES WITH PUBLIC FUNDS ONLY FOR ROUTINE ACTIVITIES INVOLVING NOMINAL COST ASSOCIATED WITH WINDING UP A CAMPAIGN AND RESPONDING TO THE POST-ELECTION AUDIT. NOTHING IN THIS TITLE SHALL BE CONSTRUED TO PREVENT A CANDIDATE OR HIS OR HER AUTHORIZED COMMITTEE FROM USING CAMPAIGN CONTRIBUTIONS RECEIVED FROM PRIVATE CONTRIBUTORS FOR OTHERWISE LAWFUL EXPENDITURES.

3. RULES AND REGULATIONS. (A) THE PCFB SHALL PROMULGATE REGULATIONS FOR THE CERTIFICATION OF THE AMOUNT OF FUNDS PAYABLE BY THE COMPTROLLER FROM THE FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-T OF THE STATE FINANCE LAW, TO A PARTICIPATING CANDIDATE THAT HAS QUALIFIED TO RECEIVE SUCH PAYMENT. THESE REGULATIONS SHALL INCLUDE THE PROMULGATION AND DISTRIBUTION OF FORMS ON WHICH CONTRIBUTIONS AND EXPENDITURES ARE TO BE REPORTED, THE PERIODS DURING WHICH SUCH REPORTS MUST BE FILED, AND THE VERIFICATION REQUIRED. THE PCFB SHALL INSTITUTE PROCEDURES WHICH WILL MAKE POSSIBLE PAYMENT BY THE FUND WITHIN FOUR BUSINESS DAYS AFTER RECEIPT OF THE REQUIRED FORMS AND VERIFICATIONS.

(B) ALL RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS RECOMMENDATION SHALL BE PROMULGATED PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT. THE PCFB'S DETERMINATIONS PURSUANT TO SUCH REGULATIONS AND THESE RECOMMENDATIONS SHALL BE DEEMED FINAL.

§ 14-209. ENFORCEMENT AND PENALTIES FOR VIOLATIONS AND OTHER PROCEEDINGS. 1. CIVIL PENALTIES. VIOLATIONS OF ANY PROVISIONS REGARDING PUBLIC CAMPAIGN FINANCING STATED IN THIS TITLE OR REGULATION PROMULGATED PURSUANT TO THIS TITLE SHALL BE SUBJECT TO A CIVIL PENALTY IN AN AMOUNT NOT IN EXCESS OF FIFTEEN THOUSAND DOLLARS AND SUCH OTHER LESSER FINES AS

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THE PCFB MAY PROMULGATE IN REGULATION. CANDIDATES MAY CONTEST ALLEGED FAILURES TO FILE, LATE REPORTS AND REPORTS WITH NOTICED DEFICIENCIES AND

HAVE AN OPPORTUNITY TO BE HEARD BY THE PCFB. THE PCFB SHALL PROMULGATE A REGULATION SETTING FORTH A SCHEDULE OF FINES FOR SUCH INFRACTIONS INCLUDING THOSE THAT IT MAY ASSESS DIRECTLY ON VIOLATORS. THE PCFB SHALL INVESTIGATE REFERRALS AND COMPLAINTS. AFTER INVESTIGATION, IT MAY RECOMMEND DISMISSAL, SETTLEMENT, CIVIL ACTION, OR REFERRAL TO LAW ENFORCEMENT. THE PCFB MAY ASSESS PENALTIES AND IT IS AUTHORIZED TO COMMENCE A CIVIL ACTION IN COURT TO ENFORCE ALL PENALTIES AND RECOVER MONEY DUE.

2. NOTICE OF VIOLATION AND OPPORTUNITY TO BE HEARD. THE PCFB SHALL:

(A) DETERMINE WHETHER A VIOLATION OF ANY PROVISION OF THIS TITLE OR REGULATION PROMULGATED HEREUNDER HAS BEEN COMMITTED;

(B) SERVE WRITTEN NOTICE UPON EACH PERSON OR ENTITY IT HAS REASON TO BELIEVE HAS COMMITTED A VIOLATION AND SUCH WRITTEN NOTICE SHALL DESCRIBE WITH PARTICULARITY THE NATURE OF THE ALLEGED VIOLATION INCLUDING A WRITTEN REFERENCE TO A SPECIFIC LAW OR REGULATION ALLEGED TO HAVE BEEN VIOLATED;

(C) PROVIDE SUCH PERSON OR ENTITY AN OPPORTUNITY TO BE HEARD PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT AND ANY REGULATIONS OF THE PCFB; AND

(D) IF APPROPRIATE, ASSESS PENALTIES FOR VIOLATIONS, FOLLOWING SUCH NOTICE AND OPPORTUNITY TO BE HEARD.

3. CRIMINAL CONDUCT. ANY PERSON WHO KNOWINGLY AND WILLFULLY FURNISHES OR SUBMITS FALSE STATEMENTS OR INFORMATION TO THE PCFB IN CONNECTION WITH ITS ADMINISTRATION OF THIS TITLE SHALL BE GUILTY OF A MISDEMEANOR IN ADDITION TO ANY OTHER PENALTY AS MAY BE IMPOSED UNDER THIS CHAPTER OR PURSUANT TO ANY OTHER LAW. THE ATTORNEY GENERAL, UPON REFERRAL FROM THE PCFB, SHALL HAVE EXCLUSIVE AUTHORITY TO PROSECUTE ANY SUCH CRIMINAL VIOLATION. THE PCFB SHALL SEEK TO RECOVER ANY PUBLIC MATCHING FUNDS OBTAINED AS A RESULT OF SUCH CRIMINAL CONDUCT.

4. COURT PROCEEDINGS. PROCEEDINGS AS TO PUBLIC FINANCING BROUGHT UNDER THIS TITLE SHALL HAVE PREFERENCE OVER ALL OTHER CAUSES IN ALL COURTS.

(A) THE DETERMINATION OF ELIGIBILITY PURSUANT TO THIS TITLE AND ANY QUESTION OR ISSUE RELATING TO PAYMENTS FOR CAMPAIGN EXPENDITURES PURSUANT TO THIS TITLE MAY BE CONTESTED IN A PROCEEDING INSTITUTED IN THE SUPREME COURT, ALBANY COUNTY BY ANY AGGRIEVED CANDIDATE.

(B) A PROCEEDING WITH RESPECT TO SUCH A DETERMINATION OF ELIGIBILITY OR PAYMENT FOR QUALIFIED CAMPAIGN EXPENDITURES PURSUANT TO THIS CHAPTER SHALL BE INSTITUTED WITHIN FOURTEEN DAYS AFTER SUCH DETERMINATION WAS MADE. THE PCFB SHALL BE MADE A PARTY TO ANY SUCH PROCEEDING.

(C) UPON THE PCFB'S FAILURE TO RECEIVE THE AMOUNT DUE FROM A PARTICIPATING CANDIDATE OR SUCH CANDIDATE'S AUTHORIZED COMMITTEE AFTER THE ISSUANCE OF WRITTEN NOTICE OF SUCH AMOUNT DUE, AS REQUIRED BY THIS TITLE, THE PCFB IS AUTHORIZED TO INSTITUTE A SPECIAL PROCEEDING OR CIVIL ACTION IN SUPREME COURT, ALBANY COUNTY TO OBTAIN A JUDGMENT FOR ANY AMOUNTS DETERMINED TO BE PAYABLE TO THE PCFB AS A RESULT OF AN EXAMINATION AND AUDIT MADE PURSUANT TO THIS TITLE OR TO OBTAIN SUCH AMOUNTS DIRECTLY FROM THE CANDIDATE OR AUTHORIZED COMMITTEE AFTER A HEARING AT THE PCFB.

(D) THE PCFB SHALL SETTLE OR, IN ITS SOLE DISCRETION, INSTITUTE A SPECIAL PROCEEDING OR CIVIL ACTION IN SUPREME COURT, ALBANY COUNTY TO OBTAIN A JUDGMENT FOR CIVIL PENALTIES DETERMINED TO BE PAYABLE TO THE PCFB PURSUANT TO THIS TITLE OR TO IMPOSE SUCH PENALTY DIRECTLY AFTER A HEARING AT THE PCFB.

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§ 14-210. REPORTS. THE PCFB SHALL REVIEW AND EVALUATE THE EFFECT OF THIS TITLE UPON THE CONDUCT OF ELECTION CAMPAIGNS AND SHALL SUBMIT A REPORT TO THE LEGISLATURE ON OR BEFORE JANUARY FIRST, TWO THOUSAND TWENTY-FIVE AND EVERY SECOND YEAR THEREAFTER, AND AT ANY OTHER TIME UPON THE REQUEST OF THE GOVERNOR AND AT SUCH OTHER TIMES AS THE PCFB DEEMS APPROPRIATE. THESE REPORTS SHALL INCLUDE:

1. A LIST OF THE PARTICIPATING AND NONPARTICIPATING CANDIDATES IN COVERED ELECTIONS AND THE VOTES RECEIVED BY EACH CANDIDATE IN THOSE ELECTIONS;
2. THE AMOUNT OF CONTRIBUTIONS AND LOANS RECEIVED, AND EXPENDITURES MADE ON BEHALF OF THESE CANDIDATES;
3. THE AMOUNT OF PUBLIC MATCHING FUNDS EACH PARTICIPATING CANDIDATE RECEIVED, SPENT, AND REPAID PURSUANT TO THIS PROGRAM;
4. ANALYSIS OF THE EFFECT OF THIS TITLE ON POLITICAL CAMPAIGNS, INCLUDING ITS EFFECT ON THE SOURCES AND AMOUNTS OF PRIVATE FINANCING, THE LEVEL OF CAMPAIGN EXPENDITURES, VOTER PARTICIPATION, THE NUMBER OF CANDIDATES, THE CANDIDATES' ABILITY TO CAMPAIGN EFFECTIVELY FOR PUBLIC OFFICE, AND THE DIVERSITY OF CANDIDATES SEEKING AND ELECTED TO OFFICE; AND
5. RECOMMENDATIONS FOR FURTHER LEGISLATIVE AND REGULATORY ENACTMENTS, INCLUDING CHANGES IN CONTRIBUTION LIMITS, THRESHOLDS FOR ELIGIBILITY, AND ANY OTHER FEATURES OF THE SYSTEM.

§ 14-211. DEBATES FOR CANDIDATES FOR STATEWIDE OFFICE. THE PCFB SHALL PROMULGATE REGULATIONS TO FACILITATE DEBATES AMONG PARTICIPATING CANDIDATES WHO SEEK ELECTION TO STATEWIDE OFFICE. PARTICIPATING CANDIDATES ARE REQUIRED TO PARTICIPATE IN ONE DEBATE BEFORE EACH ELECTION FOR WHICH THE CANDIDATE RECEIVES PUBLIC FUNDS, UNLESS THE PARTICIPATING CANDIDATE IS RUNNING UNOPPOSED. NONPARTICIPATING CANDIDATES MAY PARTICIPATE IN SUCH DEBATES.

§ 14-212. SEVERABILITY. IF ANY CLAUSE, SENTENCE, OR OTHER PORTION OF PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION 14-203 OF THIS TITLE BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, THEN SUBPARAGRAPHS (III) AND (IV) OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 14-203 OF THIS TITLE SHALL READ AS FOLLOWS:

(III) STATE SENATOR, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, NOT LESS THAN TEN THOUSAND DOLLARS IN MATCHABLE CONTRIBUTIONS INCLUDING AT LEAST ONE HUNDRED AND FIFTY MATCHABLE CONTRIBUTIONS IN AN AMOUNT GREATER THAN FIVE DOLLARS AND NO GREATER THAN THE LIMITS IN THIS CHAPTER, OF WHICH THE FIRST TWO HUNDRED FIFTY DOLLARS SHALL BE COUNTED TOWARD THIS QUALIFYING THRESHOLD; AND

(IV) MEMBER OF THE ASSEMBLY, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, NOT LESS THAN FIVE THOUSAND DOLLARS IN MATCHABLE CONTRIBUTIONS INCLUDING AT LEAST SEVENTY-FIVE MATCHABLE CONTRIBUTIONS IN AN AMOUNT GREATER THAN FIVE DOLLARS AND NO GREATER THAN THE LIMITS IN THIS CHAPTER, OF WHICH THE FIRST TWO HUNDRED FIFTY DOLLARS SHALL BE COUNTED TOWARD THIS QUALIFYING THRESHOLD.

§ 5. The state finance law is amended by adding a new section 92-t to read as follows:

§ 92-T. NEW YORK STATE CAMPAIGN FINANCE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A FUND TO BE KNOWN AS THE NEW YORK STATE CAMPAIGN FINANCE FUND.

2. SUCH FUND SHALL CONSIST OF ALL REVENUES RECEIVED FROM THE NEW YORK STATE CAMPAIGN FINANCE FUND CHECK-OFF PURSUANT TO SECTION SIX HUNDRED THIRTY-H OF THE TAX LAW, FROM THE ABANDONED PROPERTY FUND PURSUANT TO SECTION NINETY-FIVE OF THIS ARTICLE, FROM THE GENERAL FUND, AND FROM ALL

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OTHER MONEYS CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW. SUCH FUND SHALL ALSO RECEIVE CONTRIBUTIONS FROM

PRIVATE INDIVIDUALS, ORGANIZATIONS, OR OTHER PERSONS TO FULFILL THE PURPOSES OF THE PUBLIC FINANCING SYSTEM.

3. MONEYS OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE, MAY BE EXPENDED FOR THE PURPOSES OF MAKING PAYMENTS TO CANDIDATES PURSUANT TO TITLE TWO OF ARTICLE FOURTEEN OF THE ELECTION LAW AND FOR ADMINISTRATIVE EXPENSES RELATED TO THE IMPLEMENTATION OF ARTICLE FOURTEEN OF THE ELECTION LAW. MONEYS SHALL BE PAID OUT OF THE FUND BY THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE STATE BOARD OF ELECTIONS, OR ITS DULY DESIGNATED REPRESENTATIVE, IN THE MANNER PRESCRIBED BY LAW, NOT MORE THAN FIVE WORKING DAYS AFTER SUCH VOUCHER IS RECEIVED BY THE STATE COMPTROLLER.

4. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, IF, IN ANY STATE FISCAL YEAR, THE STATE CAMPAIGN FINANCE FUND LACKS THE AMOUNT OF MONEY TO PAY ALL CLAIMS VOUCHERED BY ELIGIBLE CANDIDATES AND CERTIFIED OR APPROVED BY THE STATE BOARD OF ELECTIONS, ANY SUCH DEFICIENCY SHALL BE PAID BY THE STATE COMPTROLLER, FROM FUNDS DEPOSITED IN THE GENERAL FUND OF THE STATE NOT MORE THAN FOUR WORKING DAYS AFTER SUCH VOUCHER IS RECEIVED BY THE STATE COMPTROLLER.

5. COMMENCING IN TWO THOUSAND TWENTY-FIVE, IF THE SURPLUS IN THE FUND ON APRIL FIRST OF THE YEAR AFTER A YEAR IN WHICH A GOVERNOR IS ELECTED EXCEEDS TWENTY-FIVE PERCENT OF THE DISBURSEMENTS FROM THE FUND OVER THE PREVIOUS FOUR YEARS, THE EXCESS SHALL REVERT TO THE GENERAL FUND OF THE STATE.

6. NO PUBLIC FUNDS SHALL BE PAID TO ANY PARTICIPATING CANDIDATES IN A PRIMARY ELECTION ANY EARLIER THAN THIRTY DAYS AFTER DESIGNATING PETITIONS OR CERTIFICATES OF NOMINATION HAVE BEEN FILED AND NOT LATER THAN THIRTY DAYS AFTER SUCH PRIMARY ELECTION.

7. NO PUBLIC FUNDS SHALL BE PAID TO ANY PARTICIPATING CANDIDATES IN A GENERAL ELECTION ANY EARLIER THAN THE DAY AFTER THE DAY OF THE PRIMARY ELECTION HELD TO NOMINATE CANDIDATES FOR SUCH ELECTION.

8. NO PUBLIC FUNDS SHALL BE PAID TO ANY PARTICIPATING CANDIDATES IN A SPECIAL ELECTION ANY EARLIER THAN THE DAY AFTER THE LAST DAY TO FILE CERTIFICATES OF PARTY NOMINATION FOR SUCH SPECIAL ELECTION.

9. NO PUBLIC FUNDS SHALL BE PAID TO ANY PARTICIPATING CANDIDATE WHO HAS BEEN DISQUALIFIED OR WHOSE DESIGNATING PETITIONS HAVE BEEN DECLARED INVALID BY THE APPROPRIATE BOARD OF ELECTIONS OR A COURT OF COMPETENT JURISDICTION UNTIL AND UNLESS SUCH FINDING IS REVERSED BY A HIGHER COURT IN A FINAL JUDGMENT. NO PAYMENT FROM THE FUND IN THE POSSESSION OF SUCH A CANDIDATE OR SUCH CANDIDATE'S PARTICIPATING COMMITTEE ON THE DATE OF SUCH DISQUALIFICATION OR INVALIDATION MAY THEREAFTER BE EXPENDED FOR ANY PURPOSE EXCEPT THE PAYMENT OF LIABILITIES INCURRED BEFORE SUCH DATE. ALL SUCH MONEYS SHALL BE REPAID TO THE FUND.

§ 6. Section 95 of the state finance law is amended by adding a new subdivision 5 to read as follows:

5. (A) AS OFTEN AS NECESSARY, THE CO-CHAIRS OF THE STATE BOARD OF ELECTIONS SHALL CERTIFY THE AMOUNT SUCH CO-CHAIRS HAVE DETERMINED NECESSARY TO FUND ESTIMATED PAYMENTS FROM THE FUND ESTABLISHED BY SECTION NINETY-TWO-T OF THIS ARTICLE FOR THE PRIMARY, GENERAL OR SPECIAL ELECTION.

(B) NOTWITHSTANDING ANY PROVISION OF THIS SECTION AUTHORIZING THE TRANSFER OF ANY MONEYS IN THE ABANDONED PROPERTY FUND TO THE GENERAL FUND, THE COMPTROLLER, AFTER RECEIVING AMOUNTS SUFFICIENT TO PAY CLAIMS AGAINST THE ABANDONED PROPERTY FUND, SHALL, BASED UPON A CERTIFICATION OF THE STATE BOARD OF ELECTIONS PURSUANT TO PARAGRAPH (A) OF THIS SUBDI-

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VISION, AND AT THE DIRECTION OF THE DIRECTOR OF THE BUDGET, TRANSFER THE REQUESTED AMOUNT FROM REMAINING AVAILABLE MONIES IN THE ABANDONED PROPERTY FUND TO THE CAMPAIGN FINANCE FUND ESTABLISHED BY SECTION NINETY-TWO-T OF THIS ARTICLE.

§ 7. The tax law is amended by adding a new section 630-h to read as follows:

§ 630-H. NEW YORK STATE CAMPAIGN FINANCE FUND CHECK-OFF. (A) FOR EACH TAXABLE YEAR BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND TWENTY, EVERY RESIDENT TAXPAYER WHOSE NEW YORK STATE INCOME TAX LIABILITY FOR THE TAXABLE YEAR FOR WHICH THE RETURN IS FILED IS FORTY DOLLARS OR MORE MAY DESIGNATE ON SUCH RETURN THAT FORTY DOLLARS BE PAID INTO THE NEW YORK STATE CAMPAIGN FINANCE FUND ESTABLISHED BY SECTION NINETY-TWO-T OF THE STATE FINANCE LAW. WHERE A HUSBAND AND WIFE FILE A JOINT RETURN AND HAVE A NEW YORK STATE INCOME TAX LIABILITY FOR THE TAXABLE YEAR FOR WHICH THE RETURN IS FILED IS EIGHTY DOLLARS OR MORE, OR FILE SEPARATE RETURNS ON A SINGLE FORM, EACH SUCH TAXPAYER MAY MAKE SEPARATE DESIGNATIONS ON SUCH RETURN OF FORTY DOLLARS TO BE PAID INTO THE NEW YORK STATE CAMPAIGN FINANCE FUND. THE CONTRIBUTION SHALL NOT REDUCE THE AMOUNT OF STATE TAX OWED BY SUCH TAXPAYER.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL REVENUE CONTRIBUTED PURSUANT TO THIS SECTION SHALL BE CREDITED TO THE NEW YORK STATE CAMPAIGN FINANCE FUND, ESTABLISHED PURSUANT TO SECTION NINETY-TWO-T OF THE STATE FINANCE LAW.

(C) THE COMMISSIONER SHALL INCLUDE SPACE ON THE PERSONAL INCOME TAX RETURN TO ENABLE A TAXPAYER TO MAKE SUCH CONTRIBUTION FOR A TAX YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TWENTY.

§ 8. Paragraph (a) of subdivision 9-A of section 3-102 of the election law, as amended by chapter 406 of the laws of 2005, is amended to read as follows:

(a) develop an electronic reporting system to process the statements of campaign receipts, contributions, transfers and expenditures required to be filed with any board of elections pursuant to the provisions of sections 14-102 [and], 14-104 AND 14-201 of this chapter;

§ 9. Subdivision 1 of section 6-142 of the election law, as amended by chapter 79 of the laws of 1992, is amended to read as follows:

1. An independent nominating petition for candidates to be voted for by all the voters of the state must be signed by at least [fifteen] FORTY-FIVE thousand voters, OR ONE PERCENT OF THE TOTAL NUMBER OF VOTES, EXCLUDING BLANK AND VOID BALLOTS, CAST FOR THE OFFICE OF GOVERNOR AT THE LAST GUBERNATORIAL ELECTION, WHICHEVER IS LESS, of whom at least [one]

FIVE hundred, OR ONE PERCENT OF ENROLLED VOTERS, WHICHEVER IS LESS, shall reside in each of one-half of the congressional districts of the State.

§ 10. Subdivision 3 of section 1-104 of the election law is amended to read as follows:

3. The term "party" means any political organization which [at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor], EXCLUDING BLANK AND VOID BALLOTS, AT THE LAST PRECEDING ELECTION FOR GOVERNOR RECEIVED, 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 A YEAR WHEN A PRESIDENT IS ELECTED.

§ 11. Severability. The component clauses, sentences, subdivisions, paragraphs, sections, and parts of this law shall be interpreted as

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being non-severable from the other components herein. If any clause, sentence, subdivision, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall invalidate the remainder thereof, and shall not be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 12. This act shall take effect immediately; provided, however that sections one, two, three and four of this act shall take effect on November 9, 2022 and shall apply to participants in the primary and general elections to be held in 2024; and provided further, that the terms and appointments of the members of the public campaign finance board as established by section four of this act, and the final date for regulations to be promulgated by such board, shall take place in accordance with dates as prescribed in section four of this act.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgement shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions has not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through ZZZ of this act shall be as specifically set forth in the last section of such Parts.