UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Carlanda D. Meadors, et al.,

Plaintiffs-Appellees,

vs.

Erie County Board of Elections,

Defendant-Appellant,

and

India B. Walton,

Intervenor-Appellant.

Appeal Nos.
21-2137 and 21-2145

Appellees' Response in Opposition to the Intervenor-Appellant's Emergency Motion for a Stay Pending Appeal

Plaintiffs-Appellees Carlanda D. Meadors and others (hereinafter the "Voters") respectfully submit this response in opposition to Intervenor-Appellant India B. Walton's emergency motion for a stay pending its appeal of the district court's preliminary injunction of September 3, 2021. The Voters oppose the motion for two reasons. First, Walton's motion is not properly before this Court because she has failed

to comply with the procedural requirements for seeking a stay. Second, Walton cannot establish that equity favors a stay in this case.

Background

This is an as-applied constitutional challenge to New York's petition deadline for independent candidates. The law at issue is Section 6-158.9 of the New York Election Law, which requires independent candidates to file their nominating petition at least 23 weeks before a general election—a date that fell this year in late May.

Before 2019, New York's petition deadline for independent candidates was never more than 77 days before the general election. (Verified Compl. ¶¶ 11-15, ECF 1.)[1] In 2019, however, the Legislature changed the deadline to "not later than twenty-three weeks preceding" a general election. Act of January 24, 2019, ch. 5, § 13, 2019 N.Y. Laws 9, 14 (codified at N.Y. Elec. Law § 6-158.9). That date falls in late May, 161 days before the general election; 28 days before the non-presidential primary election; and 107 days before the deadline by which county

[1] All ECF citations refer to the refer to the document number on the *district court's* docket.

boards of election are required to determine the candidates who will appear on the general-election ballot. (Verified Compl. ¶ 16.)

In 2021, the general election is scheduled for November 2. The petition deadline for independent candidates therefore fell on May 25. The non-presidential primary election was held on June 22. And the deadline for county boards of election to determine the candidates who will appear on the general-election ballot is September 9. (Verified Compl. ¶ 19.)

The Voters are five individual supporters of current Buffalo Mayor Byron W. Brown, who is running for re-election as an independent candidate. Brown first sought re-election in 2021 as the nominee of the Democratic Party but was defeated in the primary election. Brown's supporters then launched an effort to nominate him as an independent candidate for mayor in the general election. Brown's supporters gathered signatures of eligible voters in the City of Buffalo and filed their nominating petition containing more than the requisite number of signatures with the Erie County Board of Elections on August 17. The petition would have entitled Brown to a place on the ballot if it had been filed on or before May 25, and it would have been timely under all

of New York's petition deadlines in force before 2019. (Verified Compl. ¶¶ 19-24.)

The Erie County Board of Elections rejected the nominating petition on Friday, August 27, because the petition had not been filed by the deadline set out in Section 6-158.9 of the New York Election Law. The Voters filed this case in the district court on the following business day and immediately sought a temporary restraining order. Walton, who defeated Brown in the Democratic primary and will otherwise face no opposition on the general-election ballot, moved to intervene as a defendant.

The district court heard the motions on Friday, September 3. The court first granted intervention (Hr'g Tr. 10:24-25, ECF 31)[2] and then, after almost two hours of argument and a short recess, granted the Voters' motion in an oral ruling from the bench (*id.* 79:19-86:1). With the consent of all parties, the court also converted the temporary restraining order into a preliminary injunction for purposes of appeal. (*Id.* 86:19-89:22.) Before adjourning, the court asked the parties

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[2] The hearing transcript is also attached to Walton's motion in Appeal No. 21-2137 at Doc. 17.

whether they wished to raise anything else. (*Id.* 89:25-91:3.) The district court entered text orders memorializing its rulings later that same day. (Order, ECF 27; Order, ECF 28.)

Walton filed a notice of appeal in the district court on Tuesday, September 7. (Notice of Appeal, ECF 30.) Later that same day, she filed this emergency motion asking the Court to stay the district court's injunction "no later than September 16." (Mot. Stay at 7, Doc. 17.)[3]

Argument

I. Walton's motion is procedurally barred.

Requests for a stay pending appeal are governed by Rule 8(a) of the Federal Rules of Appellate Procedure, which provides that a party seeking a stay "must ordinarily move first in the district court." Fed. R. App. P. 8(a)(1). A motion for relief may be made to the court of appeals, but the movant must "(i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief

[3] All Doc. citations refer to the document number in Appeal No. 21-2137 unless otherwise noted. The page number cited refers to the page number of the PDF document that appears in the header, not the page number at the bottom of the document.

requested ...." Fed. R. App. P. 8(a)(2)(A). Stay motions that fail to comply with this requirement are routinely denied on that basis. *See, e.g.*, *Hirschfeld v. Bd of Elections*, 984 F.2d 35, 38 (2d Cir. 1993) (denying a motion for a stay where the applicant made no genuine effort to comply with Rule 8); *see also Whole Woman's Health v. Paxton*, 972 F.3d 649, 654 (5th Cir. 2020); *Baker v. Adams Cnty./Ohio Valley Sch. Bd.*, 310 F.3d 927, 930–31 (6th Cir. 2002); *SEC v. Dunlap*, 253 F.3d 768, 774 (4th Cir. 2001); *Chem. Weapons Working Grp. v. Dept. of the Army*, 101 F.3d 1360, 1361 (10th Cir. 1996); *Ruiz v. Estelle*, 650 F.2d 555, 567 (5th Cir. June 26, 1981) (per curiam).

Here, Walton concedes that she did not move first in the district court, but she contends in a single sentence that doing so would have been impracticable "[i]n light of Judge Sinatra's decision concerning Plaintiffs' likelihood of success, his conversion of the TRO to a preliminary injunction for purposes of immediate appeal, and the upcoming ballot certification (September 9) and mailing (September 17) deadlines." (Mot. Stay at 8 n.3.) This bald assertion falls far short of the "show[ing]" of impracticability required by Rule 8(a).

Walton has not explained, for example, why she could not have moved for a stay in open court at the end of the hearing on the plaintiffs' motion when the judge asked whether the parties wanted to raise any other issues. Walton also has not explained why, even after she waited for four days to seek a stay, the district court would not have been able to rule promptly on a stay motion. *See, e.g.*, *Gould v. Shalala*, 30 F.3d 714, 718 n.4 (6th Cir. 1994) (finding impracticability where the district judge was away from his chambers over a holiday). Walton has identified no cases in which simply having two weeks to obtain relief is, by itself, sufficient to establish impracticability, and the Voters are aware of none.

Walton also suggests that it would have been futile to move first in the district court because of its ruling on the Voters' likelihood of success. While a showing of futility can establish impracticability under Rule 8(a), courts construe futility quite narrowly to avoid creating an exception that swallows the rule. Because "the district court should have the opportunity to rule on the reasons and evidence presented in support of a stay," a movant generally cannot establish futility if it presents any facts or arguments in support of a stay that have not

already presented to the district court. *Ruiz*, 650 F.2d at 567; *accord Chemical Weapons*, 101 F.3d at 1362.

Here, Walton has done both. Her motion is based in part on the transcript of the hearing in the parallel state proceeding, which occurred after the hearing in district court and was therefore not available to the district court when it ruled. She also raises new arguments that she did not raise in the district court, including a laches defense, and she cites many cases that she did not cite to the district court. There is simply no telling how the district court would rule if presented with the same facts and arguments presented to this Court, and, for that reason, Walton cannot establish that it would have been futile to give the district court that opportunity. Walton's rationale for failing to comply with the requirements of Rule 8(a) amounts to a presumption of bad faith on the part of the district court when of course the appropriate presumption is "just the opposite." *Whole Woman's Health*, 972 F.3d at 654.

Under these circumstances, Walton has not shown that it would have been impracticable to move first in the district court. This Court

should therefore reach the same conclusion as in *Hirschfeld* and deny Walton's motion without even considering its merits.

II. The equities favor the voters.

A stay pending appeal is "extraordinary" relief. *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (Stevens, J., in chambers). The legal standard requires a court to consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009); *see also Hassoun v. Searls*, 968 F.3d 190, 195 (2d Cir. 2020). "The first two factors are the most critical, but a stay is not a matter of right, even if irreparable injury might otherwise result[;] it is an exercise of judicial discretion, and the party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Uniformed Fire Officers Ass'n v. de Blasio*, 973 F.3d 41, 48 (2d Cir. 2020) (cleaned up); *see also Maldonado-Padilla v. Holder*, 651 F.3d 325, 328 (2d Cir. 2011) (Jacobs, J., in chambers) (explaining that "a stay is an intrusion into the

ordinary process of administration and judicial review," which requires "the party requesting a stay [to] bear[ ] the burden of showing that the circumstances justify an exercise of the Court's discretion" (cleaned up)). Walton cannot make that showing here.

1. Walton is not likely to succeed on appeal.

The appeal is about a preliminary injunction. A district court "has wide discretion" in deciding whether to grant a preliminary injunction, and "this Court reviews the district court's determination only for abuse of discretion." *New York by James v. Griepp*, ____ F.4th _____, 2021 WL 3777611 at *2 (2d Cir. Aug. 26, 2021). Walton offers two arguments on the merits of her appeal, neither of which makes a strong showing that the district court abused its discretion here.

A. Laches

Walton claims that the district court erred when it rejected the Board of Elections' argument that the doctrine of laches bars the Voters' request for injunctive relief. Laches may apply "where it is clear that a plaintiff unreasonably delayed in initiating an action and a defendant was prejudiced by the delay." *Robins Island Pres. Fund v. Southold Dev. Corp.*, 959 F.2d 409, 423 (2d Cir. 1992). But "[t]he existence of laches is

a factual question that requires the court to weigh the equities of each case." *Leopard Marine & Trading, Ltd. v. Easy St., Ltd.*, 896 F.3d 174, 193-94 (2d Cir. 2018) (cleaned up). Because of the case-specific nature of the doctrine, this Court reviews a district court's rulings on laches for an abuse of discretion. *Id.* at 194. Abuse of discretion is a high standard and is met only when the district court "based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence or rendered a decision that cannot be located within the range of permissible decisions." *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008) (quotation marks omitted).

Here, Walton does not even argue that the district court abused its discretion. She identifies no error of law and no clearly erroneous factual finding. She points to no evidence in the record to establish either undue delay or prejudice to any party.

What the record does show, however, is that the Voters filed their suit exactly one business day after the Board of Elections rejected Brown's petition. That is less than the three days that took place between the date on which Ohio election officials rejected John Anderson's petition and the date he and his supporters filed suit in the

seminal case in this area of the law. *See Anderson v. Celebrezze,* 460 U.S. 780, 783 (1983); *see also Williams v. Rhodes*, 393 U.S. 23, 26-27 (1968) (candidate granted relief where his petition was submitted approximately six months after the challenged deadline). The Voters' claims would not have been ripe before the Board acted.

The record also shows that Brown filed his petition by the mid-August deadline that had been in use for many years, well before the deadline under state law for finalizing the ballots. Counsel for the Board of Elections even conceded at oral argument that it was not yet late in the election process. (Hr'g Tr. 27:13-17.)

Under these circumstances, the district court's rejection of the Board's laches defense lies within the range of permissible decisions, and Walton hasn't made a strong showing that she is likely to succeed on her laches argument here.

B. First and Fourteenth Amendments

Walton also claims that the Voters' First and Fourteenth Amendment claim is meritless. The parties agree that the applicable standard for this claim is the balancing test set out by the Supreme Court in *Anderson v. Celebrezze*:

> [A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Anderson, 460 U.S. at 789. Under this test, the level of scrutiny varies on a sliding scale with the extent of the asserted injury. When, at the low end of the scale, the law "imposes only 'reasonable, nondiscriminatory restrictions' upon First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 788, 788-89 n.9). But when the law places discriminatory or "severe" burdens on the rights of political parties, candidates, or voters, "the regulation must be 'narrowly drawn to advance a state interest of compelling importance." *Id.* at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). *See, e.g.*, *Libertarian Party of Conn. v. Lamont*, 977 F.3d 173, 177 (2d Cir. 2020) (discussing "the *Anderson-Burdick* framework").

The plaintiff bears the burden of proof on the first step in the *Anderson* test, and the defendant bears the burden on the second and third. *Burson v. Freeman*, 504 U.S. 191, 199 (1992); *Lopez Torres v. New York State Bd. of Elections,* 462 F.3d 161, 203 (2d Cir. 2006), *rev'd on other grounds* 552 U.S. 196 (2008).

Applying the *Anderson-Burdick* framework, the district court found that New York's early filing deadline, as applied to Brown, imposes a severe burden on the Voters' First and Fourteenth Amendment rights. (Hr'g Tr. 80:24-83:14.) The court also found that the proffered state interests are not compelling here and that, even if they were, New York's early filing deadline is not narrowly tailored to advance those interests. (*Id.* 83:15-84:8.) For those reasons, the district court concluded that the Voters had established a likelihood of success on the merits. (*Id.* 80:23-24.)

On appeal, this Court applies the clear-error standard to a district court's findings under the *Anderson-Burdick* framework, including its ultimate finding of severity and all findings underlying that determination. *Lopez Torres*, 462 F.3d at 195; *Green Party of New York*

State v. New York State Bd. of Elections, 389 F.3d 411, 418-21 (2d Cir. 2004).

On this record, there is ample evidence to support the district court's findings. Indeed, the facts here parallel those in *Anderson*, where the Supreme Court found that Ohio's deadline for independent candidates 75 days before the major parties' primary election (a date that fell on March 20), 460 U.S. at 783 n.1, deserved strict scrutiny. *Id.* at 790-795. Brown, like John Anderson, is a genuine candidate "whose positions on the issues could command widespread community support." *Anderson*, 460 U.S. at 792. But New York's early filing deadline—four weeks before the state's primary elections and almost six months before the general election—cut off that opportunity before it began, "den[ying] the 'disaffected' not only a choice of leadership but a choice on the issues as well." *Anderson*, 460 U.S. at 792 (quoting *Williams*, 393 U.S. at 33). In practical terms, New York's deadline effectively precludes candidacies that respond to newly emerging issues, to shifts in the positions supported by the major parties, or to major-party nominees whose views lie outside the political mainstream. And it gives major parties the advantage of continued flexibility that is denied to all

others. As the district court correctly observed, "[t]he deadline here has the same effect as the deadline in *Anderson*." (Hr'g Tr. 83:8-9.)

Following *Anderson*, courts have routinely struck down early filing deadlines for independent candidates—particularly those deadlines that fall more than a day before the major parties select their nominees. Relying explicitly on the concerns about early deadlines expressed in *Anderson*, the Ninth Circuit found that Arizona's deadline for independent candidates 90 days before the state's primaries—a date that fell in early June—imposed "severe" burdens that warranted strict scrutiny. *Nader v. Brewer*, 531 F.3d 1028, 1039 (9th Cir. 2008). The district court had held that *Anderson* was not controlling because some of facts present in *Anderson* were not present there. *Id.* at 1038. But the Ninth Circuit reversed, concluding that the Supreme Court's concerns in *Anderson* controlled even though those facts were not present in the specific election at issue. *Id.*

In *Cromer v. South Carolina*, 917 F.2d 819, 823-24 (4th Cir. 1990), the Fourth Circuit also relied heavily on *Anderson* in striking down South Carolina's March 30 filing deadline for independent candidates for the state legislature. Although the burden of filing a simple notice of

candidacy was minimal, the court found that the character and magnitude of the injury to the voters was "practically total" because of the timing. *Id.* at 824. "It effectively cuts off the opportunity for such candidacies to develop at a time that pre-dates the period during which the reasons for their emergence are most likely to occur." *Id.*

In *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876 (3d Cir. 1997), the Third Circuit addressed New Jersey's filing deadline for independent and third-party candidates 54 days before the primary election. In reversing the district court's denial of a preliminary injunction, the court noted that the deadline imposed "a substantial burden on both candidates and voters" that outweighed the state's asserted justifications. *Id.* at 880 n.3; *see also id.* at 881. "*Anderson* suggests that a state must be able to point to a particularly strong countervailing interest in order to justify a filing deadline that requires alternative candidates to file nominating petitions before the major political parties have chosen their candidates for the general election." *Id.* at 880 n.3.

Other cases abound. *See, e.g.*, *New Alliance Party of Ala. v. Hand,* 933 F.2d 1568, 1570 (11th Cir. 1991) (per curiam) (striking down an

independent-candidate deadline two months before the major parties' primaries); *Populist Party v. Herscher*, 746 F.2d 656, 661 (10th Cir. 1984) ("The June 1 deadline … appears to run counter to the views in *Anderson*"); *Moore v. Martin*, Civ. No. 4:14-cv-65, 2018 WL 10320761 at *3 (E.D. Ark. Jan. 31, 2018) (March 1 deadline unconstitutional); *Nader 2000 Primary Cmte., Inc. v. Hazeltine*, 110 F. Supp. 2d 1201, 1208 (D.S.D. 2000) (deadline on "the third Tuesday" in June is unconstitutional under *Anderson*).

Walton nonetheless argues that other courts have "upheld statutes with a similar time interval between the independent registration deadline and the party primary." (Mot. Stay at 12.) Even if that were true, it would not establish clear error here. But it is not a fair characterization of the four cases on which she relies: *Jenness v. Fortson*, 403 U.S. 431 (1971); *Rainbow Coalition of Oklahoma v. Oklahoma State Election Board*, 844 F.2d 740 (10th Cir. 1988); *McLain v. Meier*, 851 F.2d 1045, 1047 (8th Cir. 1988); and *Stevenson v. State Board of Elections*, 794 F.2d 1176 (7th Cir. 1986).

In *Jenness*, the plaintiffs did not challenge the petition deadline. *See Mandel v. Bradley*, 432 U.S. 173 at 181 n.* (1977) (Stevens, J.,

dissenting) (noting that the constitutionality of the petition deadline "was neither raised nor decided by the Court in *Jenness*"). Rather, they challenged only Georgia's filing fee and signature requirement. *See Jenness*, 403 U.S. at 432. It is thus misleading to assert that the Supreme Court "upheld" Georgia's deadline. It did nothing of the sort.

Similarly, *Rainbow Coalition* did not involve the petition deadline for independent candidates to obtain ballot access for the general election. Rather, it concerned the petition deadline for third parties to obtain recognition as a political party. *See Rainbow Coal.*, 844 F.2d at 741. The Tenth Circuit upheld that deadline, which was before the party primaries, largely because Oklahoma law required newly recognized political parties to hold a primary election at the same time as other parties. *See id.* at 744-45. That is simply not the case here. *Rainbow Coalition* thus says nothing about the constitutionality of an early deadline for an independent candidate.

McLain also involved a third-party deadline in a state that required those parties to participate in the primary. *See McLain*, 851 F.2d at 1047. The Eighth Circuit upheld a third-party deadline that was 55 days before the primary election. *Id.* at 1051. *McLain* did address

North Dakota's filing deadline for independent candidates, but that deadline was 55 days before the *general election*. *Id.* at 1047. That deadline is significantly later than the deadline here, so *McLain* offers Walton no help.

Lastly, *Stevenson* also addressed a vastly different statutory scheme. Under the Illinois law at issue in that case, an independent candidate could obtain ballot access either by filing an independent nominating petition 323 days before the general election *or* by filing a petition to establish a new political party 92 days before the general election. *See Stevenson v. State Bd. of Elections*, 638 F. Supp. 547, 552 (E.D. Ill. 1986). The plaintiff challenged only the former deadline, but the district court upheld the statutory scheme as a whole because of the availability of the latter deadline. *See id.* at 553-55. The district court also upheld the law in part by distinguishing *Anderson* on the ground that it involved a presidential election rather than a state or local election. *See id.* at 555. But courts have since rejected that distinction. *See, e.g.*, *Cowen v. Georgia Sec'y of State*, 960 F.3d 1339, 1344 (11th Cir. 2020). And New York's law offers no alternative route to the ballot with

a deadline later than the independent-candidate deadline. *Stevenson* thus does not establish clear error here.

Walton also relies on *Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir. 2005), for the proposition that courts will uphold early filing deadlines when, as here, major-party candidates have to file something even earlier than independent candidates do. (Mot. Stay at 15-16.) But that reliance is misplaced, because the deadline at issue in *Lawrence* was one day before the primary election. *See Lawrence*, 430 F.3d at 370. *Lawrence* does not suggest that a deadline that is substantially before the primary would pass constitutional muster.

Walton has ultimately identified no cases in which a federal court has upheld a similar statute—one that cuts off all opportunity for an independent candidate to appear on the general-election ballot almost six months before the general election and substantially before the major-parties' primary. That does not add up to clear error.

Lastly, Walton points to several other factors that she claims mitigate the burden on the Voters. (Mot. Stay at 21-23.) These include the fact that other independent candidates have been able to obtain ballot access under the challenged statute and the fact that New York's

petition laws are "quite liberal." (*Id.* at 22.) But this misapprehends the Voters' injury. The injury is not that the petition requirements are themselves burdensome. It is the premature cutting-off of opportunity. *See, e.g.*, *Cromer*, 917 F.2d at 824 (finding a severe burden despite a *de minimis* filing requirement).

None of Walton's arguments establish that the district court's finding of a severe burden here is clear error, and she does not even address the district court's analysis of the second and third steps of the *Anderson* test. She has therefore failed to make a strong showing of likely success.

2. Walton has not established irreparable harm.

Walton asserts that she will suffer irreparable harm in three ways if Brown's name appears on the ballot. (Mot. Stay at 26-27.) First, she claims that the appearance of Brown's name would deny her right "to a fair and orderly election under existing state law." (*Id.* at 26.) Second, she claims that the appearance of Brown's name would constitute irreparable harm per se because he would be running against her. (*Id.* at 27.) Third, she claims that the appearance of Brown's name would create significant voter confusion. (*Id.*)

Here, of course, the injunction from which Walton seeks a stay does not remove her from the ballot. She will remain on the ballot in any event and can thus repair any harm by competing for votes. She cites no authority or evidence for her assertion that the mere presence of Brown's name would deny her a fair election, and she has no right to run under an unconstitutional election law. She also has no cognizable right to run free of competition. Indeed, laws that "threaten to reduce diversity and competition in the marketplace of ideas" are antithetical to our democratic process. *Anderson*, 460 U.S. at 794. The final harm she asserts, voter confusion, is one that goes to the public interest. *Cf. Hirschfeld*, 984 F.2d at 39 n.2. Walton does not claim that she, herself, would be confused in any way by the presence of Brown's name on the ballot or that voter confusion about the presence of Brown's name would cause voters to cast their ballots against her.

Under these circumstances, she has not established irreparable harm.

3. The Voters will suffer substantial harm if the stay is granted.

Walton does not address the third stay factor, which is "whether issuance of the stay will substantially injure the other parties

interested in the proceeding." *Nken v. Holder*, 556 U.S. at 434. But the harm here is obvious. If a stay is issued, the Board of Elections will not print Brown's name on the ballot, and his supporters—and anyone else dissatisfied with the Democratic Party's nominee—will see no other candidates on the ballot when they go to vote. Their right to associate will have been diminished, and it cannot later be undone.

The reason for this is simple: you can't unring a bell. A court simply cannot undo, by a special election or otherwise, all the effects of an invalid election. Tremendous practical advantages accrue to those who win even tainted elections, and a court simply has no way to re-level the playing field. If the election goes forward while this appeal remains unresolved, the rights of the Voters will have been permanently damaged. *Cf. Hirschfeld*, 984 F.2d at 39.

4. A stay would not serve the public interest.

The public interest in this case is clear. "[S]ecuring First Amendment Rights is in the public interest." *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). The public also has a vital interest in a broad selection of candidates, *Hirschfeld*, 984 F.2d at 39, and a stay would mean that Buffalonians would have but one choice.

Walton claims that a stay here would serve the public interest in having elections run according to rules created by election authorities rather than the courts. (Mot Stay at 27.) That may be true, of course, but the public interest in adhering to existing election laws is highly attenuated where those laws are constitutionally suspect.

Conclusion

The Court should deny Walton's motion for a stay.

Dated: September 10, 2021

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