21-1464;22-44

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

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PRELIMINARY STATEMENT

Plaintiffs-Appellants hereby incorporate by reference and rely on all the briefing they filed in favor of their now consolidated appeal of the district court's denial of their motion for preliminary injunction. ("PI Brief.") In this brief challenging the district court's grant of summary judgment to Defendants-Appellees, Plaintiffs-Appellants will focus on the more recent procedural background and on the district court's errors in granting summary judgment.

This Court should reverse the District Court's Opinions and Order granting summary judgment because the District Court wholly failed to faithfully apply the standards for summary judgment and the *Anderson-Burdick* analysis that should apply. These two issues are interrelated and contain in themselves various specific errors or failures to consider. We therefore request that this Court issue an opinion that both corrects key mistakes in the opinion below and gives general guidance for how to apply the *Anderson-Burdick* analysis to give teeth to this Court's unheeded admonishment that the analysis's "lesser scrutiny is not 'pure rational basis review.' . . . Rather, "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.'" *SAM Party I*, (quoting *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 108 (2d Cir. 2008)).

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 December 22, 2021. Plaintiffs-Appellants filed a notice of appeal on January 8, 2022. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 because this appeal is from a final decision of a district court.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred by granting summary judgment to the Defendants when it, among other things:

And did not address or credit Plaintiffs' facts and arguments in support of harm, including unrebutted testimony regarding the burden of petitioning;
Did not require Defendants to demonstrate that the extent of the increases to the voter and petition thresholds were necessary;
Did not require Defendants to produce evidence that the increases to the thresholds actually serve the proffered state interests and how?

2. Whether the District Court properly conducted an *Anderson-Burdick* analysis when it, among other things:

Found no virtual exclusion of minor parties solely because of fusion parties' ability to access the ballot;
Assessed each threshold separately and on the basis of mere percentages of the vote or speculation regarding feasibility;
Did not assess the strength of the State's justifications;
Did not assess the burden or harm imposed on Plaintiffs-Appellants and their voters; and
Did not adequately weigh the State's justifications against the burden imposed?

3. Did the court err in granting summary judgment on the plaintiffs' due process process claims?

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 LaVenia, 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.

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 I*"). 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 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.

Plaintiff-Appellants appealed *LPNY I* to this Court. The Notice of Appeal was filed on June 11, 2021 with the district court. [ECF No. 81.] Plaintiffs-Appellants filed our opening brief in support of the appeal on August 6, 2021.

Despite the urgency, Defendants-Appellants filed their opposition only on November 5, 2021. On November 24, 2021, we wrote this Court to withdraw our request for oral argument in the interest of expediency. On November 26, 2021, Plaintiffs-Appellants filed their reply.

Before a decision on the preliminary injunction, Defendants-Appellees had filed for summary judgment on April 9, 2021, primarily in response to and relying on *SAM Party of New York v. Kosinski*, 987 F.3d 267 (2d Cir. 2021) ("*SAM Party II*"), which was decided on February 10, 2021. [ECF Nos. 68-71.] Plaintiffs-Appellants filed their opposition on July 30, 2021. [ECF Nos. 84-86.] Defendants-Appellees filed their reply on September 24, 2021. [ECF No. 94.] The district court held oral argument on December 21, 2021 alongside the SAM and WFP actions where Defendants-Appellees had simultaneously moved for summary judgment. *See SAM Party of New York v. Kosinski*, No. 1:20-cv-00323 (S.D.N.Y.) ("SAM Action"); *Hurley v. Kosinski*, No. 1:20-cv-04148 (S.D.N.Y.) ("WFP Action"). The next day, on December 22, 2021, the district court issued its Opinion and Order granting Defendants-Appellants summary judgment in all the related cases, including this one. ("*LPNY II*.") Plaintiffs-Appellants filed a notice of appeal of *LPNY II* on January 7, 2021. On January 27, 2021, this Court granted our motion to consolidate the appeals of *LPNY I* and *II*.

Factual Background

Plaintiffs-Appellants hereby incorporate the facts presented on its motion for preliminary injunction. (PI Brief, pp. 16-28.) On summary judgment, Defendants-Appellees did not press any particular facts that were not presented in opposition to the motion for preliminary injunction. Plaintiffs-Appellants therefore continued to rely on the unopposed affidavits they produced in support of their motion for preliminary injunction explaining the financial and practical burdens they face on petitioning. Notably, Defendants-Appellants have not attempted to challenge these claims. Plaintiffs-Appellants also provided a more detailed historical record of non-fusion party performance in gubernatorial and presidential elections that we refer this Court to. Defendants-Appellants did assert certain new arguments for the interests the threshold increases purportedly serve, in response to which Plaintiffs-Appellants referred to items that can be judicially noticed. (Opp., pp. 27-28.)

SUMMARY OF ARGUMENT

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 will ever again attain universal ballot access to pose a legitimate national threat. Therefore, not only do 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, but the extent of the increases are also unconstitutional when weighing their harm on Plaintiffs-Appellants and their voters against the weakness of the state's interests.

In holding otherwise and granting Defendants-Appellees' motion for summary judgment, the district court wholly failed to honor the standards for summary judgment and the *Anderson-Burdick* analysis. *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992); *Yang v.*

Kosinski, 960 F.3d 119, 129 (2d Cir. 2020); *Molinari v. Bloomberg*, 564 F.3d 587, 602 (2d Cir. 2009) (discussing the standard under "*Anderson* and its progeny [that] deal with election and voting rights laws that restrict speech or ballot access"). Instead, the District Court improperly relied on this Court's inherently preliminary decision on a motion for preliminary injunction in *SAM Party of New York v. Kosinski*, 987 F.3d 267 (2d Cir. 2021) ("*SAM Party II*"), and refused to properly find and assess the harm to Plaintiffs-Appellants and their voters, find and assess the strength of Defendants' purported interests (or lack thereof), or hold Defendants to any burden of showing the necessity of the extent of the ballot obstacles at play. This is manifestly improper.

As Plaintiffs-Appellants have repeatedly tried to point out to the district court, 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 increased party qualification threshold then functions in combination with an already difficult and incredibly short petition process and 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 non-fusion minor parties off the statewide ballot in perpetuity. The district court has refused not only to consider this interplay, but to question the necessity of creating it.

It is therefore up to this Court to not only promptly reverse the district court's grant of summary judgment and direct the district court to enter a preliminary injunction so Plaintiffs-Appellants can fully participate in upcoming 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. Were the district court's opinion to stand, *Anderson-Burdick* would be reduced in this Circuit, for all intents and purposes, to the same level of scrutiny as rational basis review—and in its most vital context, ballot access.

STANDARD OF REVIEW

This Court reviews "a district court's grant of summary judgment *de novo*." *Borley v. United States*, 22 F.4th 75, 78 (2d Cir. 2021).

> Summary judgment is proper only when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute of fact exists when there is sufficient evidence on which the jury could reasonably find for the plaintiff. We therefore must view all facts in this case in the light most favorable to the non-movant, resolving all ambiguities in her favor. Put another way, summary judgment is appropriate only where the record taken as a whole could not lead a rational trier of fact to find for the non-movant.

Id. (cleaned up).

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 (cleaned up).

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT.

In granting summary judgment, the District Court claimed, incredibly, that [t]he factual record remains substantially unchanged from the time of the Court's preliminary injunction decisions" and therefore the Court could rely on its previous conclusion form its denial of preliminary injunctions "that the challenged amendments to the New York Election Law do not impose severe burdens on the plaintiffs, and that the State's proffered interests are sufficient to justify the amendments." (*LPNY*, 18–19.) The District Court also relied in part on this Court's opinion in *SAM Party II*, which was at the preliminary injunction phase, involved a very limited challenge to the new voter threshold's requirement that it be newly applied to presidential elections, and did not include Plaintiffs-Appellants or the majority of their claims and arguments—notably, nowhere is there any indication that anyone considered the fact that on a signature-per-day basis, the

increased petition threshold is an extreme outlier among the states to attain recognized party status. *See SAM Party II*, 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."); *id.* at 276 (in assessing whether the petition process mollifies the harm from the presidential election requirement, the Court considered only the absolute number of petition signatures as a proportion of the electorate).

Whether or not the factual record was substantially unchanged is arguable, but the ***burden*** on Defendants-Appellees to succeed could not have been more different. At the preliminary injunction stage, the burden was entirely on Plaintiffs-Appellants to "establish (1) that [they are] likely to succeed on the merits, (2) that [they are] likely to suffer irreparable harm if the injunction is not granted, (3) that the balance of the equities tips in [their] favor, and (4) that the injunction serves the public interest." *SAM Party II*, 9. On summary judgment, not only is the burden flipped onto Defendants-Appellees, but they must show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). These different factual burdens are exactly why it is up to courts to resist defendants who try to leverage a win on

preliminary injunction into a grant of summary judgment—a duty that the district court failed to implement:

> The standards used to determine the motion for a preliminary injunction were necessarily quite different from those which must be applied to the motion at bar. Plaintiffs' failure to make out the clear and convincing showing which would entitle them to a preliminary injunction is not in any way determinative of the present motion nor does it mean that there are no issues of fact to be tried. Indeed, if substantial issues of fact requiring a trial have been raised this in itself is usually ground for denial of a motion for a preliminary injunction. Successfully resisting a motion for a preliminary injunction does not entitle a party to summary judgment without a trial.

Afran Transp. Co V Nat'l Mar. Union, 175 F. Supp. 285, 287 (S.D.N.Y.), *opinion adhered to on reargument*, 177 F. Supp. 610 (S.D.N.Y. 1959); *see also Pugh v. Goord*, 345 F.3d 121, 125 (2d Cir. 2003) ("Appellants were required to establish the likelihood of success on the merits, but the loss of a motion for preliminary injunction means only temporary lethality. While appellants may have been appropriately denied injunctive relief, that did not require the court to resolve the entire matter." (cleaned up)); *Hisps. for Fair & Equitable Reapportionment (H-FERA) v. Griffin*, 958 F.2d 24, 26 (2d Cir. 1992) ("Loss of a motion for preliminary injunction means only temporary lethality. Final judgment is not then a possibility.").

A. The District Court failed to require that Defendants demonstrate that the extent of the increases to the voter and petition thresholds were necessary.

Though we believe that the threshold increases should be subject to strict scrutiny, as the harm they impose is severe, under the "more flexible" prong of the *Anderson-Burdick* analysis, Defendants-Appellees had to establish at the very least "the legitimacy and strength of each [asserted state] interest and the extent to which those interests make it necessary to burden [Plaintiffs-Appellants and their voters'] rights." *Yang*, 960 F.3d at 129. "Rather than applying any 'litmus test' that would neatly separate valid from invalid restrictions," the Supreme Court "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." *Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610, 1616 (2008).

Contrary to this burden on them, Defendants-Appellants made cursory gestures toward substantiating some interests and on others they provided nothing but argument. They thus provided no valid basis on which the District Court could "make the 'hard judgment' that our adversary system demands." *Id*. In fact, the factual record is somewhat light because Defendants-Appellees never truly attempted to show the nature of the state's interests, their extent, and their justifications. If they had, we would have been in a position to supplement the record in response and have the District Court conduct the factual weighing

determinations that the *Anderson-Burdick* analysis requires. Is there a factual basis or analysis for whether third parties would impose costs on the public finance regime? Is there a real trend of increased ballot clutter? Are ballots actually confusing because of too many minor parties? What is the specific state interest in setting the voter threshold at 2% or 130,000 votes? What is the specific state interest in raising the petition threshold? Is the answer to these latter questions solely the purported rationale to keep pace with voter registration numbers? How strong is that last rationale when the Commission Report provided a contrary one based on turnout, not registration? And overall is the harm to Plaintiffs-Appellants and minor party participation in the State necessitated by these frankly weak justifications? Plaintiffs-Appellants should be allowed to pose these questions at trial to show Defendants-Appellants' failure to defend the State's interests and the weak bases for the interests they have asserted in argument. *See Lexington Children's Ctr. v. Dist. Council 1707*, No. 04 CIV.1532(PKC), 2004 WL 540475, at *9 (S.D.N.Y. Mar. 17, 2004) ("[Defendant] has not presented the Court with any arguments as to the absence of genuine questions of material fact. Though the continued viability of this action is unclear, [plaintiff's] inability to justify a preliminary injunction does not merit summary judgment in [defendant's] favor.").

B. The District Court failed to address or credit Plaintiffs' facts and arguments, including unrebutted testimony regarding the burden of petitioning.

Because Plaintiffs-Appellants would have the burden at trial regarding harm, to succeed on summary judgment, Defendants-Appellees must show that "the evidentiary materials of record, if reduced to admissible evidence, would be insufficient to carry the non-movant's burden of proof at trial." *UP State Tower Co., LLC v. Town of Southport*, 468 F. Supp. 3d 583, 589 (W.D.N.Y. 2020).

Over the course of the litigation so far, Plaintiffs-Appellants have produced testimony and identified many facts for judicial notice in support of their case for severe and discriminatory harm, including that:

The recent history of non-fusion party performance in New York State shows that the increased voter threshold was set at a level no such contemporary party could meet, especially for the 2020 election. A37-38.

Governor Cuomo stated to the press that he intended to eliminate all but what he considered the "legitimate" parties, namely the Conservative and Working Families Parties, which operate statewide solely as fusion parties cross-endorsing major party candidates. Alan Chartock, *Gov. Cuomo On WAMC's Roundtable 11/5/20,* WAMC 26 (Nov. 5, 2020), https://www.wamc.org/post/gov-cuomo-wamcs-roundtable-11520; ECF No. 46-6, p.25.

The circumstances surrounding passage are uniquely suspicious—lending support to Governor Cuomo's admitted (and illegitimate) intent to eliminate the parties he subjectively dubbed not "legitimate." The threshold increases in Part ZZZ were introduced by the former Governor and passed over a matter of days as part of an emergency pandemic budget bill that the Legislature was not capable of seriously debating or voting down. They were also inextricably and inexplicably tied to a campaign finance program and had no business being in a budget bill, in arguable violation of the New York Constitution. A31–36; A45–46; A61–62.

The specific level and unique structure of the voter threshold (*i.e.*, that it takes the higher of an absolute number or a percentage) is untethered to ensuring a modicum of support or other state interest and is only plausibly calibrated to make sure that minor parties are eliminated in case of low turnout, particularly in gubernatorial elections such as that of 2014. A40–41.

The Commission Report's stated rationale for reaching the specific level of the voter threshold to adjust several times over for increased statewide voter turnout since 1936 (which has not, in fact, increased by more than a fraction) was self-contradictory and incomplete (with no rationale provided for the 2% figure or the "whichever is higher" condition). A41–42.

The long-term history of non-fusion minor party performance in New York State shows that the voter threshold virtually eliminates all such parties. In the last

century, only the American Labor Party in 1948-1952 and the Independence Party in 1996-2000 running billionaires Ross Perot and Tom Golisano would have met the increased voter qualification threshold in consecutive presidential and gubernatorial elections to qualify as a party for a full four-year term—and neither party had to overcome the increased petition threshold at the time. Other one-time successes would have had much of their resources sapped by the impossible petition threshold and, less speculatively, would not have been sustained. ECF No. 46-6, pp. 40–43.

The increased voter threshold is near the top in terms of percentage of the vote required relative to other states, when discounting those which allow alternative routes to party status (unlike New York). Declaration of Richard Winger, *SAM Party*, No. 1:20-cv-00323, ECF No. 67, ¶¶ 16–19.

Even before the increases to the thresholds, New York was one of the most severe in the nation for attaining party status. The Libertarian Party had gained status as a qualified party in 41 states and DC before it attained such status in New York in 2018. Declaration of Richard Winger, ECF No. 84-2, p.4.

The increased petition threshold is the third highest in the nation in absolute terms when the easier method in each state is compared for the 2024 presidential election. Declaration of Richard Winger, ECF No. 84-2, p.6 & Appendix A.

The increased petition threshold is ***by far*** the most demanding among states in terms of valid signatures to be collected per day in order to attain party status—

requiring the collection of over 1,071 valid signatures per day over a short 42-day period. The next most difficult is 278 signatures per day—*almost four times* less than that of New York. *See* 10 Ill. Comp. Stat. Ann. 5/7-2, 5/10-3, 5/10-4; ECF No. 46-6, pp. 35–39.

At least for president in 2024, New York has the nation's third earliest petition deadline, when the easier method in each state is compared. Declaration of Richard Winger, ECF No. 84-2, p.10 & Appendix B.

New York has the shortest period for collecting the signatures of any state except Minnesota and Rhode Island, and even Minnesota and Rhode Island have a longer period for independent candidates for president, and also both states have unlimited time periods in which to circulate the party petition. Declaration of Richard Winger, ECF No. 84-2, pp. 10–11.

Courts nationwide have found similarly time-constrained petition requirements to attain party status unconstitutional. *See Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 405 (8th Cir. 2020) (reducing Arkansas signature requirement for a party petition from 3% of the gubernatorial vote to 10,000 and thus from approximately 297.2 signatures per day to 111.1); *Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340, 1373 (N.D. Ga. 2016) (reducing Georgia signature threshold for an independent candidate petition through which a party would gain status from 1% of registered voters to 7,500 and thus from approximately 385.3 signatures per day to 41.7), *aff'd*, 674 F. App'x 974

(11th Cir. 2017); *Constitution Party of Pa. v. Aichele*, No. 12-2726, ECF No. 115 (E.D. Pa. Feb. 1, 2018) (reducing Pennsylvania signature threshold for an independent candidate petition through which a party would gain status from 2% of votes cast in previous election to 5,000 and thus from approximately 600.3 signatures per day to 30). Many courts have also found such brief collection periods for large numbers of petition signatures unconstitutional in the special election context. *See 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); *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); *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).

Plaintiffs-Appellants have produced testimony establishing the great sums and effort that GPNY and LPNY have dedicated to petitioning efforts under the prior threshold and, based on this experience, they have established without challenge that GPNY and LPNY do not have the volunteer or financial capacity to meet the increased threshold going forward. A94–96, A116–127. Note that LPNY had successfully petitioned to appear in every gubernatorial and presidential election from 1974 to 2018, save that of 1986 when it did not participate.

Examples of remarkable statewide petitioning efforts in the past, including even well-financed and positioned major party challengers, have rarely ever approached the 90,000 facial signatures a successful petitioning campaign would have to submit to resist a challenge. ECF No. 84, p.25.

The petition threshold's five-fold increase to its geographical distribution requirement, a requirement only found among five states, further exacerbates the difficulty since, as testimony confirms, in addition to directly imposing inefficiencies to signature collection, it diverts a great deal of volunteer time and effort to ensuring compliance by identifying and tracking the congressional districts of signers. A123; Declaration of Richard Winger, ECF No. 84-2, p.10.

New York's petition regime has widely recognized restrictive aspects that exacerbate its difficulty, such as demanding strict adherence to formalities and the requirements that a voter may only sign one primary or general election

petition for the same office and the unique requirement among all states that a petition witness must be a New York resident (which disproportionally impedes national movements such as the Green and Libertarian Parties). A122–24; Declaration of Richard Winger, ECF No. 84-2, p.10.

There is also no obvious reason to now revise the thresholds. The previous thresholds functioned well to create a minor party ecosystem in which in recent years a healthy number (1) failed to meet the petition threshold, (2) met the petition threshold but failed to meet the voter threshold, (3) met the petition threshold and met the voter threshold, (4) earned ballot access, but failed to meet the voter threshold, and (5) earned ballot access and met the voter threshold to retain it. A37–40. The fact that several parties in recent years fell into each of these buckets, including those who made it onto the ballot, but failed spectacularly, is not a marker of parties participating without a modicum of support, but of the system working as it should to allow parties to develop while screening them at appropriate stages. The recent number of ballot lines running non-major party candidates for presidential and gubernatorial elections has been steady at two to three since 2012, which is far lower than the historical peak and below average for the past century. *See* Exhibit B, below, of which this Court can take judicial notice.

The result is that the increased thresholds deal a one-two punch *to get all non-fusion parties off the ballot in 2020* with the voter threshold and to keep them

off with an impossible petition threshold. The predictable outcome of all this is that in the future, New York voters will only be given the option in statewide races to choose only between two candidates, although they may appear over one or two ballot lines. And as a corollary, it is likely that no minor party will ever again attain universal ballot access for its presidential candidate.

Defendants-Appellees and the District Court, however, did not grapple with the vast majority of these facts and conclusions, much less establish why this would all be insufficient to sustain Plaintiffs-Appellants' case if proven at trial. Instead, the District Court primarily made three findings in support of its decision: "(1) New York is one of many states that certify parties based only on their performances in a specific election, (2) two New York minor parties retained party status under the amended law based on their performances in the 2020 presidential election, and (3) courts have upheld vote thresholds that are equivalent to or more demanding than the one at issue here." *LPNY II*, 21 n.8. The District Court similarly held dispositive that the petition threshold is "in line with other states' requirements" when compared by proportion of the population. *LPNY II*, 23–24. However, each of these findings is flawed. (1) While is true that ten other states use statewide candidate performance as an exclusive basis for party status, the District Court refused to consider this fact in its analysis of all the other factors or its comparisons to the other 49 states and DC. (2) The Working Families Party and

the Conservative Parties, the sole survivors of the 2020 election, compete in statewide and presidential elections solely by cross-nominating major party candidates; Plaintiffs-Appellants tried to show the Trial Court numerous times that these fusion parties do not vindicate the core constitutional rights at issue. ECF No. 84, p.19; ECF No. 61, p.8; *see, e.g.*, *Williams v. Rhodes*, 393 U.S. 23, 39 (1968) (emphasizing that the rights of minor parties and their voters are founded on the constitutional concern that "[a]ll political ideas cannot and should not be channeled into the programs of our two major parties."). (3) The mere fact that other courts have upheld equivalent thresholds, a fact we do not concede, cannot be dispositive. The *Anderson-Burdick* test prohibits such a litmus-paper test. *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*, 960 F.3d at 129 & n.37 (citing *Anderson*); *Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 145–46 (2d Cir. 2000).

Furthermore, even when the District Court considered a select few of Plaintiffs-Appellants' points above, it did so improperly in isolation and its logic was flawed and in no way dispositive. The District Court dismissed all the aspects regarding the severity of the voter threshold as compared to other states by claiming that they "go[] only to where in the middle of the pack New York's party

and ballot access thresholds lie" and even though the District Court seemingly acknowledged that they create a dispute, "[s]uch disputes are not germane to the analysis of whether New York's scheme virtually excludes minor parties from the ballot." *LPNY II*, 22–23. This statement is wholly incorrect. As this Court stated in *SAM Party II*, "[t]o gauge whether minor parties have been so burdened, we look at the 'combined effect of [New York's] ballot-access restrictions.'" 987 F.3d at 275.

Regarding the incredibly and uniquely difficult aspect of the petition threshold to collect over 1,000 *valid* signatures per day, the District Court dismissed the concern almost entirely based on speculation in pre-*Anderson* Supreme Court cases. The District Court cited to *Am. Party of Tex. v. White*, 415 U.S. 767 (1974), and *Storer v. Brown*, 415 U.S. 724, 740 (1974), but failed to acknowledge that the signature-per-day threshold in *White* case was "only" around 400 and that the *Storer* court concerned itself with what would be practical "for one who desires to be a candidate for President," not to be a recognized party—a core constitutional concern. Furthermore, Plaintiffs-Appellants provided many citations to other cases that found such signature-per-day aspects unconstitutional when conducting a non-speculative evidentiary analysis, yet this was ignored. *White* and *Storer* do not stand for any kind of hard-fast rule that signatures-per-day

do not matter, much less one strong enough to exclude claims on summary judgment.

C. The District Court failed to require Defendants to produce evidence that the increases to the thresholds actually serve the proffered state interests and how.

As part of the *Anderson-Burdick* analysis, even if obstacles to the ballot do not impose severe harm, "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.' " *Price*, 540 F.3d at 108. However, "[e]ven if the state proffers a legitimate state interest, it stills needs to produce 'evidence that [the state's actions] serves that purpose.'" *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989); *see, e.g.*, *Arizona Green Party v. Reagan*, 838 F.3d 983, 991 (9th Cir. 2016).

In this case, the District Court did not hold Defendants-Appellees to any evidentiary burden. Rather, it simply stated that "the State need not pursue the least restrictive means available" and found that "[t]he State has sufficiently demonstrated that its proffered interests are furthered by the challenged amendments, and that those interests require any incidental burdens on the plaintiffs." *LPNY II*, p.31. This is an incredibly broad holding that one would expect to be supported by a powerful record. Yet if one looks at the "evidence"

provided, this is quickly proven false. Indeed, the District Court's language implies that it merely found that "[i]ncreasing the party qualification and nominating petition thresholds are reasonable steps" to pursue these interests and never intended to scrutinize the necessity of raising those thresholds as much as they did. *LPNY II*, pp. 31–32. This is plainly error.

Defendants-Appellees relied entirely on the Declaration of Robert A. Brehm. First, in support of the interests of "ballot crowding and voter confusion," Mr. Brehm cited to various aspects of the ballot that make accommodating "a large number of candidates for a given race, or with a large number of parties with their own dedicated ballot lines" "difficult." ECF No. 69, ¶ 37. However, nowhere did Mr. Brehm explain why the thresholds had to be set where they were or why the ballot design necessitates that no non-fusion party appear (which would support the District Court's conclusion that the interest ***requires*** these burdens). Furthermore, most of these aspects are self-imposed by New York State's terrible ballot design, which, of course, the Legislature could have changed, instead of limiting ballot access. *See* ECF No. 84, pp. 27–28. We note that "[t]he mere incantation of a talismanic phrase such as 'voter confusion' cannot transform a specious interest into a compelling one." *Republican Party of State of Conn. v. Tashjian*, 770 F.2d 265, 284 (2d Cir. 1985), *aff'd sub nom. Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986).

Second, Mr. Brehm reiterated the interest of minimizing costs to the new public campaign finance program, but he did so in incredibly broad and generic statements backed up by zero evidence, data, or examples. ECF No. 69, ¶ 41.

Third, Mr. Brehm cited to administrative costs when an independent body qualifies as a party, but (1) the Commission did not include this interest in its Report, which Defendants-Appellees have admitted the Legislature was implementing, and (2) provided only one example of a primary for the SAM Party, but with no cost figures and no context. ECF No. 69, ¶¶ 46–47. Mr. Brehm states that with each new party, there are more costs, but he does not even attempt to explain how many parties would be manageable so as to explain the necessity of the new thresholds. ECF No. 69, ¶¶ 48–49. Furthermore, the Supreme Court has stated that these costs cannot justify limiting ballot access:

> [T]he possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major-party should come into existence in Connecticut, thus requiring the State to fund a third major party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford.

Tashjian, 479 U.S. at 218.

Fourth, with regard to ensuring parties have a modicum of support, Mr. Brehm claims that "[u]nder the previous 15,000 signature requirement a multitude

of independent body candidates gained access to the general election ballot, but were unable to demonstrate significant electoral support." ECF No. 69, ¶ 60. We find it hard to see why the fact that certain parties met the petition threshold but then failed to meet the voter threshold is a legitimate consideration. Rather, that seems to be the point to having both thresholds. Also, Mr. Brehm provided no explanation or claim as to how many parties would be appropriate. He also mentioned but did not address that the petition threshold was reduced from 20,000 to 15,000 signatures in 1992. ECF No. 69, ¶ 57.

The *only* "interest" that Defendants-Appellees or the District Court have ever provided for the ***extent*** of the increases to the thresholds is to "preserve proportionality between the thresholds required for ballot access and the number of registered voters in the State." *LPNY II*, pp. 32–33; *see* ECF No. 69, ¶¶ 19, 57–58. Specifically, Mr. Brehm alleges that there were 4,966,819 registered voters in New York in 1935 when the voter threshold was set to 50,000 votes and as of November 2020 there were 13,555,547. *Id.*, ¶ 19. He also alleges that from 1922 when the petition threshold was set to 15,000 (ignoring entirely the fact that it was set to 20,000 in 1971 and reduced again in 1992), there were 2,545,805 voters in New York enrolled in parties and now there are 9,873,767. *Id.*, ¶ 58. Yet there are many flaws to this "interest."

First, it is more akin to a rationale, not an interest—Defendants-Appellees offer no defense of proportionality as a good in itself; is it that they think voters expect such increases for proportionality like they expect raises for inflation from their employer? And any sense of proportionality is entirely derivative of the legitimacy and interests of the original thresholds, but those were never tested nor subject to *Anderson-Burdick* in 1935 or 1922, the dates that Defendants-Appellees find arbitrarily relevant.

Second, this rationale is a *post-hoc* invention. In its Report, the Commission offered a rationale that sought to extrapolate from the 1930s, but, importantly, ***not*** based on voter registration. Rather, the Commission focused on voter turnout. *See Campaign Finance Reform Commission Final Report* (Dec. 1, 2019), https://campaignfinancereform.ny.gov/system/files/documents/2019/12/campaignfinancereformfinalreport.pdf, at 41–42. In reality, however, as the Commission's own rationale shows, the 50,000 signature threshold represented only a 1.27% threshold as applied to the 1934 election, and compared to the 2016 election, voter turnout has increased less than two times, producing a hypothetical threshold of only 99,085 votes. *Id*. at 42. Only by triple-counting the increase from 1934 to 1935 could the Commission reach 130,000 votes. *Id*.; *see* A41–42. Probably because this explanation is incredibly strained, Defendants-Appellants seek to rely on increases in voter registration instead, which have been greater.

However, Defendants-Appellants cannot rewrite history and provide a new rationale, especially if the "interest" is the Legislature's purported belief in "proportionality," which is far too manipulable if not at least clearly tied to a specific rationale. Third, Plaintiffs-Appellants have consistently resisted the propriety of using voter registration as a comparator – it should be enough that minor parties can gather a modicum of support from the engaged public; it is more than unreasonable to demand that minor parties go out and engage the unengaged, especially now that New York State has adopted automatic voter registration. *See* New York Automatic Voter Registration Act of 2020, Senate Bill S8806. Fourth, the case for proportionality completely breaks down for the petition threshold because (1) it was ***not*** set last in 1922—it was raised to 20,000 in 1971 and reduced in 1992 so as not to embarrass New York by excluding Ross Perot (*see* ECF No. 84, p.26), and (2) Mr. Brehm provides no justification for using voters in New York enrolled in parties as the base of comparison. It is wholly unclear why that would be relevant to an ***independent*** nominating petition threshold. Finally, it is crucial to point out that this rationale is so weak that it cannot by any means be so conclusive as to override any constitutional concerns presented by Plaintiffs-Appellants on summary judgment.

II. THE DISTRICT COURT ERRED IN VARIOUS WAYS WHEN APPLYING THE *ANDERSON-BURDICK* ANALYSIS

For all of the above reasons, summary judgment was wholly unwarranted. Defendants-Appellants in no way created a record that would discount every single one of Plaintiffs-Appellants' legitimate complaints so as to create no genuine dispute as to any material fact.

In addition, in reaching this decision, the District Court made numerous errors in applying the *Anderson-Burdick* analysis. It would be futile for this Court to reverse on summary judgment without providing guidance to the District Court on how it should properly apply the framework.

A. The District Court Improperly Found no Virtual Exclusion of Minor Parties – or Any Valid Harm to Plaintiffs-Appellants -- Solely Because of Fusion Parties' Ability To Access The Ballot

If a court were not to find severe harm, the first stage of the *Anderson-Burdick* framework's more "flexible analysis" is for the court to "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." Here, the District Court failed to actually establish the character and magnitude of the injury. In so doing, it was able to find that there was no virtual exclusion from the ballot because of the continued existence of the Working Families and Conservative fusion parties. *LPNY II*, at *20.

The District Court should have first assessed the harm to Plaintiffs-Appellants, but it did not. This was error. *Cf. Unity Party v. Wallace*, 707 F.2d 59, 62 (2d Cir. 1983) (undertaking an analysis of "the likely effect of New York's restriction in light of appellants' contentions that it significantly burdened their fundamental rights to politically associate and to vote for the candidate of their choice," to include whether there is "evidence in the record that compliance is time-consuming, complex or imposes any financial hardship").

Furthermore, if the District Court did assess the constitutional injury and the harm to Plaintiffs-Appellants, their voters, or minor parties in general, it would have (and should have) determined that fusion party performance is not relevant to the analysis. The exact constitutional injury at issue consists of " 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). According to the Supreme Court, the first right of association is primarily vindicated by allowing people to associate to advance ***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 availability of fusion primarily benefits minor parties only marginally by granting the minor party and its voters the ability to signal *to major party candidates*, on a fusion basis, an ideological preference. 520 U.S. 351, 362–63 (1997). If fusion is the ***only*** way a minor party can survive, it would never be able to run its own candidates in existential presidential and gubernatorial elections. Indeed, since the major parties would know that minor parties have no

option, minor parties would have little to no agency, fearful that the major party candidates deny them a cross-endorsement. *In New York, that means the voters may forever have a choice between two major party candidates, though over three or four ballot lines that serve as no more than labels.* Such a situation would make a farce of the Supreme Court's constitutional concern that "[a]ll political ideas cannot and should not be channeled into the programs of our two major parties." *Williams*, 393 U.S. at 39.

B. The District Court Improperly Assessed Each Threshold Separately and on the Basis of Mere Percentages of the Vote or Speculation Regarding Feasibility

Second, this Court should reaffirm that the District Court must analyze all of Plaintiffs-Appellants' cited difficulties together in the context of actual performance and the overall election scheme.

As we touched on above and explained in our PI Brief, the District Court analyzed each exclusionary aspect of the increased thresholds separately *in seriatum* and not in the context of New York's overall election scheme. Isolating the voter threshold and ignoring entirely how it operates in practice (aside from allowing the Working Families and Conservative Parties to survive), the District Court rejected all of Plaintiffs-Appellants arguments based on the fact that "courts have upheld vote thresholds that are equivalent to or more demanding than the one at issue here." *LPNY II*, at 21 n.8. Similarly, despite all of the factors that

Plaintiffs-Appellants cited to for their conclusion that the petition threshold is impossible to meet, including but not limited to New York's various restrictions, an incredibly tight timeframe, a five-fold increase in the geographic distributional requirement, and LPNY and GPNY's own experiences and practical and financial difficulties, the District Court found that "[t]his argument fails" solely because the Supreme Court found a 5% threshold constitutional in *Jenness v. Fortson*, 403 U.S. 431, 440 (1971), and "[f]ederal appellate courts have followed suit." *Id.*, at 22–23 (citing cases that have upheld high percentage thresholds).

Not only is this incorrect and an extreme oversimplification, but it fails to heed the *Anderson-Burdick* analysis, which is meant to be fact-specific and not based on a "litmus-paper test." *See Anderson*, 460 U.S. at 789 ("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*, 960 F.3d at 129 & n.37 (citing *Anderson*); *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. *Timmons*, 520 U.S. at 359; *Burson v. Freeman*, 504 U.S. 191, 210-11 (1992); *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 192

(1989); *Tashjian*, 479 U.S. at 214; *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986); *Clements*, 457 U.S. at 963.

When a party presents a substantial challenge (beyond criticizing the mere percentage itself), such as Plaintiffs-Appellants have done here, a court cannot simply point to precedent and compare percentages to dismiss it. *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*, 415 U.S. at 737 ("[A] number of facially valid election laws may operate in tandem to produce impermissible barriers to constitutional rights."). Plaintiffs-Appellants cited to numerous district courts and Courts of Appeals that analyzed context and found requirements unconstitutional lower than the presumptively constitutional 5% threshold (ECF No. 84, p.), yet the District Court did not even acknowledge them.

Moreover, as mentioned above, the District Court dismissed many of the difficulties in the interplay between the increased thresholds and New York's electoral system through either superficial interpretative moves or taking up certain ones and dismissing them in isolation. *See, e.g.*, *LPNY II*, pp. 20 (rejecting virtual exclusion based on the fact that two fusion parties have survived), 21 n.8 (rejecting the significance of New York being one of only 11 states that use specific election performance for party qualification and do not offer other methods because it is one of "many"), 22 (rejecting difficulty of biennial qualification because 18 states do it), 22 (rejecting 2% as high for a voter threshold because "some states" require 3 to 20%), 22–23 (rejecting petition threshold as impossible to meet on the sole basis of quantity, *i.e.*, because Supreme Court and federal courts have upheld high thresholds, is in line with other states' requirements, and 17 states have stricter requirements in terms of proportion of population), 24–26 (dismissing petition threshold's worst-in-the-nation signature-per-day burden because pre-*Anderson* Supreme Court cases have language speculating that this is not difficult).

This is an improper divide-and-conquer approach that fails to vindicate the judicial role envisioned in *Anderson*. There is no institutional actor other than the judiciary that has an interest in preventing the major parties, who are in charge of state governments, from unduly excluding minor parties. This case, if it were upheld, would simply be a guide for those major parties in designing a wholly

restrictive system in overall effect, but in any single metric (or at least enough of them), it is at least not the worst.

There are many ways to more fairly analyze the overall effect of new ballot obstacles, but one important method that the Supreme Court has endorsed is to look at historical performance. *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. . ."). Here, by merely pointing to the surviving fusion parties, the District Court found an excuse not to consider how non-fusion minor parties would perform under the increased thresholds. The reality is that the thresholds were deliberately set far beyond the capability of non-fusion minor parties in the 2020 election, as Governor Cuomo admitted, and even if non-fusion minor parties were not subject to the incredibly difficult petition threshold, the increased voter threshold would have produced only a handful of two-year periods of qualification and exactly two four-year periods over the last century. *See* Exhibit B, below.

C. The District Court Did Not Assess the Strength of the State's Justifications

The District Court must establish and analyze "the legitimacy and strength of each [asserted state] interest." *Yang*, 960 F.3d at 129. Yet, the District Court decided that it need not do so. Instead it remarked that "New York has offered several important, non-discriminatory regulatory interests" and incorrectly concluded that "[t]he plaintiffs do not question the importance of the interests proffered by the State. Rather, the plaintiffs challenge whether the proffered interests are genuine and whether there are empirically verifiable problems." *LPNY II*, pp. 28, 30-31. In reality, Plaintiffs-Appellants recognized that many of Defendants-Appellants' proffered interests are theoretically legitimate, but that they are incredibly weak in this case. While the District Court cited to authority that a state need not offer "elaborate, empirical verification" of its justifications, *id*., it nevertheless must clearly establish and weigh their strength. *See 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.'").

The District Court is correct that the more "flexible" prong of *Anderson-Burdick* does not impose strict scrutiny, but it is also emphatically not supposed to

be understood as rational basis either! *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) ("However slight that burden may appear, . . . it must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'"); *Norman v. Reed*, 502 U.S. 279, 288–89 (1992) ("To the degree that a State would thwart [constitutional] interest[s] by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation.").

In applying its review, as much it was, the District Court merely found the interests "important," "non-discriminatory," and "furthered by the challenged amendments." LPNY II, pp. 28, 30-31. It also refused to demand any kind of empirical justification or any tailoring, since the State "'may pursue multiple avenues' to achieve its stated goals, *SAM Party II*, 987 F.3d at 277, and the State need not pursue the least restrictive means available." *Id.*, pp. 30-31; *see id.* at 35-36 (denying that the law requires any questioning of whether the state could have used less intrusive means). In analyzing the various interests, the District Court called them "rational," "reasonable," and "justified under the 'quite deferential' review." *Id.* at 29-33.

This is remarkably and worryingly similar to how rational basis review is described:

> This form of review is highly deferential. "Rational-basis review in equal protection analysis is not a license for courts to judge the

> wisdom, fairness, or logic of legislative choices." Moreover, "[a] State ... has no obligation to produce evidence to sustain the rationality of a statutory classification." Rather, "[a] statute is presumed constitutional," and "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it,"
>
> Rational basis review, however, does require some scrutiny of state and local government activity. "[W]hile rational basis review is indulgent and respectful, it is not meant to be 'toothless.' Instead, rational basis review "imposes a requirement of some rationality in the nature of the class singled out."

Winston v. City of Syracuse, 887 F.3d 553, 560 (2d Cir. 2018) (citations removed). Similarly here, the District Court is being affirmatively deferential, refusing to scrutinize legislative decisions, and finding that the restrictions are merely reasonable or rational.

This deferential approach is also contrary to Circuit precedent. In *Price*, this Court demonstrated that it is appropriate to question and challenge the state's proffered interests without any deference. There, this Court found the state's interests to be "contrived," unarticulated, undercut by other factors and availabilities, addrsssing fears that are "extraordinarily unlikely," "flimsy," "exceptionally and extraordinarily weak," and of "such infinitesimal weight that they do not justify the burdens imposed." 540 F.3d at 110-12.

This Court should clarify that the second prong of *Anderson-Burdick* has more teeth than the not-toothless scrutiny of rational basis review. A proper review

would have found that the interests, as discussed above, are extraordinarily weak and pretextual.

D. The District Court Did Not Adequately Weigh the State's Justifications Against the Burden Imposed

Finally, 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"). "Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'" Anderson, 460 U.S. at 789–90. By not insisting on this showing, the District Court simply neglected to make the hard judgments. It should not be permitted to take an easy way out.

III. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON THE PLAINTIFF'S DUE PROCESS/FIRST AMENDMENT CAUSES OF ACTION.

The complaint alleges two causes of action for violation of due process and the First Amendment. Complaint, paragraphs 157-165. The defendants made a cursory reference to these causes of action but made no serious motion for

summary judgment with respect to them, a fact noted in Plaintiff's answering papers. See, Order, p. 37, note 17. The Court erred in granting summary judgment with respect to these two causes of action.

CONCLUSION

The defendants failed to prove there are no issues of fact and they have failed to prove they are entitled to judgment as a matter of law as to any facts that are not disputed. The defendants failed to show that the provisions complained of in the total context of state law, are not a severe burden.

Plaintiffs presented affidavits showing that the new threshold requirements do constitute a severe burden. The defendants have by and large ignored these allegations and essentially said, oh well, you need to try and spend money you don't have and all will be fine.

The truth is, these parties struggled to maintain permanent ballot status under the old 50,000 vote rule. The LP started trying for permanent status in 1974 and finally got it in 2018. The Greens got ballot status in 1998 when a celebrity, Al Lewis was the candidate.

Several other third party candidates who got 50,000 votes were also either celebrities or billionaires, Ralph Nader, Ross Perot and Tom Golisano.

Under the new rules, all the non-fusion parties were wiped out in 2020. In the future, it is likely that reform-minded, ideological parties will be foreclosed from ballot status and only fusion parties, celebrities and billionaires will achieve permanent ballot status.

To sum up, the defendants have failed to prove as a matter of law that they are entitled to summary judgment on any relevant issue in the case and have failed to move against our due process claims so the case must be tried.

For the foregoing reasons, this Court should reverse the District Court's grant of summary judgment to Defendants-Appellees.

Respectfully submitted.

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Exhibit A – Jurisdictions by Lowest Number of Signatures Per Day for Party Qualification

#	State	Requirement for Party Qualification	Other Equivalent Process	Reference	Time Period	Signatures per Day
1	New York (new)	Candidate petition with 45,000 voters (or 1% of last gubernatorial vote, whichever is less)		N.Y. Elec. Law §§ 1-104, 6-138, 6-158	42 days	1,071.4
	New York	Candidate petition with 15,000 voters		N.Y. Elec. Law §§ 1-104, 6-138, 6-158	42 days	357.1
2	Illinois	Party petition with 1% of voters at the last statewide general election, or 25,000, whichever is less		10 Ill. Comp. Stat. Ann. 5/7-2, 5/10-3, 5/10-4	90 days	278
3	Michigan	Party petition with 1% of gubernatorial vote (42,505 from 2018)	Statewide candidates may qualify as party candidates with candidate petition of 12,000 voters (E.D. Mich.)	Mich. Comp. Laws Ann. §§ 168.544f, 168.560a, 168.590b, 168.685; *Graveline v. Benson*, 430 F. Supp. 3d 297, 318 (E.D. Mich. 2019)	180 days	236.1* (suspect under *Gravelin e*)

4	Oklahoma	Party petition with 3% of gubernatorial or presidential vote (46,821 for 2020)		Okla. Stat. Ann. tit. 26, §§ 1-108, 1-109	1 year	128.3
5	Kansas	Party petition with 2% of gubernatorial vote (21,112 from 2018)		Kan. Stat. Ann. §§ 25-302a, 25-3602	180 days	117.3
6	Arkansas	Party petition with 3% of gubernatorial vote (26,746 from 2018) (statute) or 10,000 voters (8th Cir.)		Ark. Code Ann. § 7-7-205; *Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 405 (8th Cir. 2020)	90 days	297.2 (statute) / 111.1 (8th Cir.)
7	Virginia	Candidate petition with 10,000 voters		Va. Code Ann. §§ 24.2-506, 24.2-507	January 1 to second Tuesday in June. (158 days for 2021.)	63.3
8	Louisiana	Candidate petition with 5,000 voters	Party status can be through enrollment of at least 1,000 voters and registration fee. Candidate to qualify can pay a fee.	La. Stat. Ann. §§ 18:441, 18:465, 18:1254	90 days	55.6
9	Massachusetts	Candidate petition with 10,000 voters	Enrollment of 1% of voters.	Mass. Gen. Laws Ann. ch. 50, §§ 1, 6, 7	190 days	52.6
10	Idaho	Party petition with 2% of presidential vote (17,348 from 2020)		Idaho Code Ann. § 34-501	One year	47.5
11	Wisconsin	Party petition with 10,000 voters / candidate petition with 2,000 voters		Wis. Stat. Ann. §§ 5.62, 8.20; EL-171 https://elections.wi.gov/sites/elections.wi.gov/files/2019-02/EL-171%20Petition%20for%20Ballot%20Status%20%28Rev%202019-02%29.pdf	90 days (party) / 47 days (governor) or July 1 to first Tuesday in August (35 days in 2020; president) (candidate)	111.1 (party) / 42.6-57.1 (candidate)

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

17	Minnesota	Party petition with 1% of voters in preceding election (32,930 from 2020) / candidate petition with 2,000 voters		Minn. Stat. Ann. §§ 200.02, 204B.08, 204B.09	For party petition, one year. For candidate, 92 days.	90.2 (party) / 21.7 (candidate)
18	District of Columbia	Candidate petition with 3,000 voters or 1.5% of voters (3,370 from 2018 mayor), whichever is less		D.C. Mun. Regs. tit. 3, § 1603	144 days	20.8
19	North Dakota	Party petition with 7,000 voters		N.D. Cent. Code Ann. §§ 16.1-11-30, 1-01-50	1 year	19.2
20	New Hampshire	Party petition with 3% of total votes cast at previous general election (24,435 from 2020) / candidate petition with 3,000 voters		N.H. Rev. Stat. Ann. §§ 652:11, 655:40, 655:41, 655:42	January 1 through the Friday after the first Wednesday of June. (For 2020: 157 days.)	155.6 (party) / 19.1 (candidate)
21	Rhode Island	Party petition with 5% of gubernatorial or presidential vote (25,888 for 2020) / candidate petition with 1,000 voters		17 R.I. Gen. Laws Ann. §§ 17-1-2, 17-12-15, 17-14-4, 17-14-7	January 1 to August 1 (June 1 if for primary) (213 days) (party) / 65 days (candidate)	121.5 (party) / 15.4 (candidate)
22	Maine	Candidate petition with 4,000 voters	Party status can be through enrollment of at least 5,000 voters	Me. Rev. Stat. tit. 21-A, §§ 302-04	For petition, not before Jan. 1 of the election year to June 1 (152 days) (governor) or Aug. 1 (213 days) (president). For enrollment, approx. one year.	26.3/18.8 (petition) / 13.7 (enrollment)
23	Maryland	Party petition with 10,000 voters		Md. Code Ann., Elec. Law § 4-102	Two years	13.7
24	Wyoming	Party petition with 2% of U.S. representative vote (5,418 for 2020)		Wyo. Stat. Ann. §§ 22-1-102, 22-4-402	April 1 of year preceding general to June 1 (428 days)	12.7

25	North Carolina	Party petition with 0.25% of gubernatorial vote (13,757 from 2020) / candidate petition with 1.5% of gubernatorial vote (82,542 from 2020)	Party can file documentation showing candidate nominated on general election ballot on 70% of states in Presidential year	N.C. Gen. Stat. Ann. §§ 163-96, 163-122; https://ballotpedia.org/Ballot_access_requirements_for_political_parties_in_North_Carolina	Anytime within presidential cycle, due June 1. (1,248 days if from Jan. 1, 2021).	11.0 (party) / 66.1 (candidate)
26	Utah	Party petition with 2,000 voters		Utah Code Ann. §§ 20A-8-101, 20A-8-103; United Utah Party v. Cox, 268 F. Supp. 3d 1227, 1235 (D. Utah 2017)	Late November of election year to November 30 of year before election (approx. 1 year).	~5.5
27	Tennessee	Party petition with 2.5% of gubernatorial vote (56,083 for 2020) / candidate petition with 25 votes		Tenn. Code Ann. §§ 2-1-104, 2-5-101, 2-5-102	No start date for party. 60 days for candidate (90 days for president).	~0 (party) / 0.42, 0.28 (candidate)
28	Alabama	Party petition with 3% of gubernatorial vote (51,588 from 2018)		Alabama Code § 17-6-22; *Swanson v. Worley*, 490 F.3d 894, 898 n.4 (11th Cir. 2007)	No start time.	~0
29	Alaska	Candidate petition with 1% of vote from previous general election (3,614 from 2020)	3% gov/sen/rep vote as enrollment (10,842 from 2020)	Alaska Stat. Ann. §§ 15.25.160, 15.80.008, 15.80.010	June 1 through primary date. For 2018: 81 days	44.6 / ~0 (enrollment)
30	Arizona	Party petition with 1.33% of gubernatorial vote (31,686 from 2018)		Ariz. Rev. Stat. Ann. §§ 16-801, 16-803	No start time. Arizona Green Party v. Bennett, 20 F. Supp. 3d 740, 748–49 (D. Ariz. 2014), aff'd sub nom. Arizona Green Party v. Reagan, 838 F.3d 983 (9th Cir. 2016)	~0

31	California	Party petition with 10% gubernatorial vote (1,246,423 from 2018) / candidate petition with 65 voters (and fee or 7,000 voter petition)	Enrollment of 0.33% of voters (72,757)	California Elections Code Section 5000-5006, 5100, 5151, 8060-8070 https://www.sos.ca.gov/elections/political-parties/political-party-qualification	~1,326 days (135 days before primary, after earlier primary) (party) / 25 days (candidate) / no start date (enrollment)	940.0 (party) / 2.6 (candidate) / ~0 (enrollment)
32	Colorado	Party petition with 10,000 voter signatures	1,000 enrolled voters	Colo. Rev. Stat. Ann. §§ 1-4-1302, 1-4-1303	No start time.	~0
33	Delaware	0.1% of total voters enrolled (~743)		Del. Code Ann. tit. 15, § 3001	No start time.	~0
34	Florida	Only formalities required.		Fla. Stat. Ann. § 103.091	N/A	0
35	Hawaii	Party petition with 0.1% of registered voters eligible to vote in last election (833 from 2020)		Haw. Rev. Stat. Ann. § 11-62	No start time.	~0
36	Indiana	Candidate petition with 2% of votes cast for Sec'y of State (44,936)		Ind. Code Ann. § 3-8-6-3	No start time. Hall v. Simcox, 766 F.2d 1171, 1176 (7th Cir. 1985)	~0
37	Iowa	Candidate petition with 1,500 voters	Convention method with 250 electors from 25 counties for statewide candidates	Iowa Code Ann. §§ 43.2, 45.1	No start time.	~0
38	Mississippi	Only formalities required.		Miss. Code. Ann. §§ 23-15-1051-69	N/A	0
39	Missouri	Party petition with 10,000 voters		Mo. Ann. Stat. §§ 115.315, 115.329	No start date.	~0
40	Montana	Party petition with 5,000 voters		Mont. Code Ann. § 13-10-601	No start date.	~0
41	Nebraska	Party petition with 1% of gubernatorial vote (8,659 from 2018)		Neb. Rev. Stat. Ann. § 32-716	No start date.	~0
42	Nevada	Party petition with 1% of U.S. representatives vote (13,557 from 2018)		Nev. Rev. Stat. Ann. § 293.1715	No start date.	~0

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

Exhibit B – Historical Performance of Unique Candidates in Presidential ("P") and Gubernatorial ("G") Elections in New York State Other Than the Two Major Candidates, 1920–2020

Year	G/P	Party	Votes	Percentage
1920	P	Socialist	203,201	7.01%
1920	P	Farmer-Labor	19,653	0.68%
1920	P	Prohibition	18,413	0.64%
1920	P	Socialist Labor	4,841	0.17%
1920	G	Socialist	159,804	5.57%
1920	G	Farmer-Labor	69,908	2.44%
1920	G	Prohibition	35,509	1.24%
1920	G	Socialist Labor	5,015	0.17%
1922	G	Socialist	99,944	3.95%
1922	G	Prohibition	9,561	0.38%
1922	G	Farmer-Labor	6,887	0.27%
1922	G	Socialist Labor	3,799	0.15%
1924	P	Socialist	268,510	8.23%
1924	P	Progressive	206,395	6.32%
1924	P	Socialist Labor	9,928	0.30%
1924	P	Communist	8,244	0.25%
1924	G	Socialist	99,854	3.07%
1924	G	Workers	6,395	0.20%
1924	G	Socialist Labor	4,931	0.15%
1926	G	Socialist	83,481	2.87%
1926	G	Prohibition	21,285	0.73%
1926	G	Workers	5,507	0.19%
1926	G	Socialist Labor	3,553	0.12%
1928	P	Socialist	107,332	2.44%
1928	P	Communist	10,876	0.25%
1928	P	Socialist Labor	4,211	0.10%
1928	G	Socialist	101,859	2.34%

1928	G	Workers	10,741	0.25%
1928	G	Socialist Labor	4,213	0.10%
1930	G	Law Preservation	190,666	6.08%
1930	G	Socialist	100,444	3.21%
1930	G	Communist	18,034	0.58%
1930	G	Socialist Labor	9,096	0.29%
1932	P	Socialist	177,397	3.78%
1932	P	Communist	27,956	0.60%
1932	P	Socialist Labor	10,339	0.22%
1932	G	Socialist	102,959	2.19%
1932	G	Law Preservation	83,452	1.78%
1932	G	Communist	26,407	0.56%
1932	G	Socialist Labor	7,233	0.15%
1934	G	Socialist	126,580	3.34%
1934	G	Communist	45,878	1.21%
1934	G	Law Preservation	20,449	0.54%
1934	G	Socialist Labor	7,225	0.19%
1936	P	Socialist	86,897	1.55%
1936	P	Communist	35,609	0.64%
1936	G	Socialist	96,233	1.73%
1936	G	Communist	40,406	0.73%
1938	G	Socialist	24,980	0.53%
1938	G	Industrial Gov’t	3,516	0.07%
1940	P	Socialist	18,950	0.30%
1940	P	Communist	11,289	0.18%
1940	P	Prohibition	3,250	0.05%
1942	G	American Labor	403,626	9.79%
1942	G	Communist	45,220	1.10%
1942	G	Socialist	21,911	0.53%
1942	G	Industrial Gov’t	3,496	0.08%
1944	P	Socialist Labor	14,352	0.23%
1944	P	Socialist	10,553	0.17%

1948	P	American Labor	509,559	8.25%
1948	P	Socialist	40,879	0.66%
1948	P	Socialist Labor	2,729	0.04%
1948	P	Socialist Workers	2,675	0.04%
1950	G	American Labor	221,966	4.18%
1950	G	Socialist Workers	13,274	0.25%
1950	G	Industrial Gov't	7,254	0.14%
1952	P	American Labor	64,211	0.90%
1952	P	Socialist	2,664	0.04%
1952	P	Socialist Labor	2,212	0.03%
1952	P	Socialist Workers	1,560	0.02%
1954	G	American Labor	46,886	0.91%
1954	G	Socialist Workers	2,617	0.05%
1954	G	Industrial Gov't	1,720	0.03%
1958	G	Independent-Socialist	31,658	0.55%
1960	P	Socialist Workers	14,319	0.20%
1962	G	Conservative	141,877	2.44%
1962	G	Socialist Workers	19,698	0.34%
1962	G	Socialist Labor	9,762	0.17%
1964	P	Socialist Labor	6,085	0.08%
1964	P	Socialist Workers	3,215	0.04%
1966	G	Conservative	510,023	8.46%
1966	G	Liberal	507,234	8.41%
1966	G	Socialist Workers	12,730	0.21%
1966	G	Socialist Labor	12,506	0.21%
1968	P	Courage	358,864	5.29%
1968	P	Freedom & Peace	24,517	0.36%
1968	P	Socialist Workers	11,851	0.17%
1968	P	Socialist Labor	8,432	0.12%
1970	G	Conservative	421,529	7.07%
1970	G	Communist	7,760	0.13%
1970	G	Socialist Labor	5,766	0.10%

1970	G	Labor	3,963	0.07%
1972	P	Socialist Workers	7,797	0.11%
1972	P	Communist	5,641	0.08%
1972	P	Socialist Labor	4,530	0.06%
1974	G	Courage	12,459	0.24%
1974	G	Libertarian	10,503	0.20%
1974	G	Socialist Workers	8,857	0.17%
1974	G	Communist	5,232	0.10%
1974	G	Socialist Labor	4,574	0.09%
1974	G	Labor	3,151	0.06%
1976	P	Libertarian	12,197	0.19%
1976	P	Communist	10,270	0.16%
1976	P	Socialist Workers	6,996	0.11%
1976	P	U.S. Labor	5,413	0.08%
1978	G	Right to Life	130,193	2.73%
1978	G	Libertarian	18,990	0.40%
1978	G	Socialist Workers	12,987	0.27%
1978	G	Communist	11,400	0.24%
1978	G	Labor	9,073	0.19%
1980	P	Liberal	467,801	7.54%
1980	P	Libertarian	52,648	0.85%
1980	P	Right to Life	24,159	0.39%
1980	P	Citizens	23,186	0.37%
1980	P	Communist	7,414	0.12%
1980	P	Socialist Workers	2,068	0.03%
1980	P	Workers' World	1,416	0.02%
1982	G	Right to Life	52,356	1.00%
1982	G	Libertarian	16,913	0.32%
1982	G	Unity	6,353	0.12%
1982	G	New Alliance	5,277	0.10%
1982	G	Socialist Workers	3,766	0.07%
1984	P	Libertarian	11,949	0.18%

1984	P	Communist	4,226	0.06%
1984	P	New Alliance	3,200	0.05%
1984	P	Workers' World	2,226	0.03%
1986	G	Right to Life	130,827	3.05%
1986	G	New Alliance	24,135	0.56%
1988	P	Right to Life	20,497	0.32%
1988	P	New Alliance	15,845	0.24%
1988	P	Libertarian	12,109	0.19%
1988	P	Workers' World	4,179	0.06%
1988	P	Socialist Workers	3,287	0.05%
1990	G	Conservative	827,614	20.40%
1990	G	Right to Life	137,804	3.40%
1990	G	New Alliance	31,089	0.77%
1990	G	Libertarian	24,611	0.61%
1990	G	Socialist Workers	12,743	0.31%
1992	P	Independence	1,090,721	15.75%
1992	P	Socialist Workers	15,924	0.23%
1992	P	Libertarian	13,451	0.19%
1992	P	New Alliance	11,269	0.16%
1992	P	Natural Law	4,017	0.06%
1994	G	Independence Fusion	217,490	4.18%
1994	G	Right to Life	67,750	1.30%
1994	G	Libertarian	9,506	0.20%
1994	G	Socialist Workers	5,410	0.10%
1996	P	Independence	503,458	7.97%
1996	P	Green	75,956	1.20%
1996	P	Right to Life	23,580	0.37%
1996	P	Libertarian	12,220	0.19%
1996	P	Natural Law	5,011	0.08%
1996	P	Workers' World	3,473	0.05%
1996	P	Socialist Workers	2,762	0.04%
1998	G	Independence	364,056	7.69%

1998	G	Liberal	77,915	1.65%
1998	G	Right-to-Life	56,683	1.20%
1998	G	Green	52,533	1.11%
1998	G	Marijuana Ref.	24,788	0.52%
1998	G	Unity Party	9,692	0.20%
1998	G	Libertarian	4,722	0.10%
1998	G	Socialist Workers	2,539	0.05%
2000	P	Green	244,398	3.58%
2000	P	Right to Life	25,175	0.37%
2000	P	Independence	24,369	0.36%
2000	P	Libertarian	7,718	0.11%
2000	P	Reform	6,424	0.09%
2000	P	Constitution	1,503	0.02%
2000	P	Socialist Workers	1,450	0.02%
2002	G	Independence	654,016	14.28%
2002	G	Right to Life	44,195	0.97%
2002	G	Green	41,797	0.91%
2002	G	Marijuana Reform	21,977	0.48%
2002	G	Liberal	15,761	0.34%
2002	G	Libertarian	5,013	0.11%
2004	P	Independence	84,247	1.14%
2004	P	Peace and Justice	15,626	0.21%
2004	P	Libertarian	11,607	0.16%
2004	P	Socialist Workers	2,405	0.03%
2006	G	Green	42,166	0.95%
2006	G	Libertarian	14,736	0.33%
2006	G	RTH	13,355	0.30%
2006	G	Socialist Workers	5,919	0.13%
2008	P	Populist	41,249	0.54%
2008	P	Libertarian	19,596	0.26%
2008	P	Green	12,801	0.17%
2008	P	Socialist Workers	3,615	0.05%

2010	G	Green	59,906	1.29%
2010	G	Libertarian	48,359	1.04%
2010	G	Rent Too High	41,129	0.88%
2010	G	Freedom	24,571	0.53%
2010	G	Anti-Prohibition	20,421	0.44%
2012	P	Libertarian	47,256	0.67%
2012	P	Green	39,984	0.56%
2014	G	Green	184,419	4.83%
2014	G	Libertarian	16,967	0.44%
2014	G	Sapient	4,963	0.10%
2016	P	Independence	119,160	1.55%
2016	P	Green	107,937	1.40%
2016	P	Libertarian	57,438	0.74%
2018	G	Green	103,946	1.70%
2018	G	Libertarian	95,033	1.56%
2018	G	SAM	55,441	0.91%
2020	P	Libertarian	60,369	0.70%
2020	P	Green	32,822	0.38%
2020	P	Independence	22,650	0.26%

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 13,922 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: Buffalo, New York
March 21, 2022

/s/ James Ostrowski
JAMES OSTROWSKI
Attorney for Appellants

SPECIAL APPENDIX

SPECIAL APPENDIX

TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

SAM PARTY OF NEW YORK, ET AL.,

Plaintiffs,

20 **CIVIL** 323 (JGK)

-against-

JUDGMENT

KOSINSKI, ET AL.,

Defendants.

----------X

HURLEY, ET AL.,

Plaintiffs,

20 **CIVIL** 4148 (JGK)

-against-

KOSINSKI, ET AL.,

Defendants.

----------X

SAM PARTY OF NEW YORK, ET AL.,

Plaintiffs,

20 **CIVIL** 5820 (JGK)

-against-

NEW YORK BOARD OF ELECTIONS, ET AL.,

Defendants.

----------X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated December 22, 2021, The Court has considered all of the arguments raised by the parties. To the extent not specifically addressed above, the arguments are either moot or without merit. For the reasons explained above, the defendants' motion for summary judgment is granted. These cases are dismissed; accordingly, these cases are closed.

Dated: New York, New York
December 22, 2021

RUBY J. KRAJICK

Clerk of Court

BY: _____

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAM PARTY OF NEW YORK, ET AL., Plaintiffs, - against - KOSINSKI, ET AL., Defendants.	OPINION AND ORDER 20-cv-323 (JGK)
HURLEY, ET AL., Plaintiffs, - against - KOSINSKI, ET AL., Defendants.	20-cv-4148 (JGK)
LIBERTARIAN PARTY OF NEW YORK, ET AL., Plaintiffs, - against - NEW YORK BOARD OF ELECTIONS, ET AL., Defendants.	20-cv-5820 (JGK)

JOHN G. KOELTL, District Judge:

The plaintiffs, New York State political organizations and their supporters, brought these actions to challenge recent amendments to the New York Election Law. The challenged amendments heightened the requirements that a political organization must meet in order to be recognized as a "party" under the Election Law. Specifically, the amendments at issue:

increased the overall number of votes required for a political organization to qualify as a party (the "Party Qualification Threshold"), increased the frequency with which parties must requalify to retain their party status (the "Party Qualification Method"), and increased the number of signatures required for a non-party candidate to gain access to the ballot via an independent nominating petition (the "Petition Requirement").

The plaintiffs in the SAM Party action are the SAM (Serve America Movement) Party of New York and Michael J. Volpe, the Chairman of the SAM Party of New York (together, the "SAM Party" or "SAM Party plaintiffs"). The SAM Party plaintiffs specifically challenge the amended Party Qualification Method's reliance on presidential-election returns (as opposed to only gubernatorial-election returns). The SAM Party plaintiffs argue that the amended Party Qualification Method, as applied to them, violates their First Amendment rights to freedom of speech and association, as well as the Fourteenth Amendment equal protection and due process rights of the SAM Party and its supporters.

The plaintiffs in the Hurley action are Linda Hurley, Rev. Rex Stewart, Robert Jackson, Richard N. Gottfried, Ryuh-Line Niou, Anita Thayer, Jonathan Westin, the New York State Committee of the Working Families Party, the Executive Board of the New York State Committee of the Working Families Party, and

the Working Families Party of New York State (together, the "WFP" or "WFP plaintiffs"). The WFP plaintiffs bring freedom of association, equal protection, and due process challenges to the Party Qualification Method and the Party Qualification Threshold, facially and as applied to WFP. The WFP plaintiffs further allege that the amendments to the Election Law violate the New York State Constitution because they interfere with the right to "fusion voting."[1]

The plaintiffs in the Libertarian Party action are the Libertarian Party of New York ("LPNY"), the Green Party of New York ("GPNY"), and individual members of both parties (together, the "LPNY plaintiffs"). The LPNY plaintiffs bring First and Fourteenth Amendment challenges to the Party Qualification Method, the Party Qualification Threshold, and the Petition Requirement. The LPNY plaintiffs allege that the amendments are unconstitutional on their face and as applied to the LPNY plaintiffs. The LPNY plaintiffs also allege that the amendments to the New York Election Law violate Article VII, Section 6 of

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[1] Under a fusion voting system, "the same candidate for office can be listed on each of several parties' designated ballot lines and earns the total votes cast on all his or her ballot lines." SAM Party of N.Y. v. Kosinski, 987 F.3d 267, 272 (2d Cir. 2021) (citing N.Y. Elec. Law § 7-104). The WFP plaintiffs argue that the "Constitution and laws of [New York] State guarantee the right of fusion voting." WFP Compl. ¶ 68.

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

the New York State Constitution because the amendments became law as provisions of a budget bill.

All the plaintiffs brought suit pursuant to 42 U.S.C. § 1983 against the New York State Board of Elections (the "Board"), as well as the Board's chairs, commissioners, and executive directors in their official capacities.

The defendants now move for summary judgment in each of the three referenced actions. For the reasons explained below, the defendants' motion is **granted**.

I.

Although the cases are now in a different procedural posture, the questions at issue in this motion are similar to those that were posed by the plaintiffs' previous preliminary injunction motions. In those motions, the plaintiffs sought to enjoin the application of the same amendments to the New York Election Law that are at issue here. In addition, the LPNY plaintiffs sought an injunction requiring the Board to reinstate the Libertarian and Green Parties as recognized parties for the 2022 gubernatorial election. The Court denied the preliminary injunction motions by the SAM Party plaintiffs and the WFP plaintiffs in an Opinion and Order dated September 1, 2020. See SAM Party v. Kosinski, 483 F. Supp. 3d 245 (S.D.N.Y. 2020) ("SAM Party I"). The Second Circuit Court of Appeals affirmed that judgment on February 10, 2021, concluding that the SAM Party

plaintiffs had not shown a likelihood of success on the merits of their claims. See SAM Party of N.Y. v. Kosinski, 987 F.3d 267 (2d Cir. 2021) ("SAM Party II"). This Court denied the LPNY plaintiffs' preliminary injunction motion in an Opinion and Order dated May 13, 2021. See Libertarian Party of N.Y. v. N.Y. Bd. of Elections, No. 20-cv-5820, 2021 WL 1931058 (S.D.N.Y. May 13, 2021). An appeal of that decision is pending. See LPNY Docket No. 81.

In SAM Party I, the Court concluded that the SAM and WFP plaintiffs had not shown a likelihood of success on the merits of their First and Fourteenth Amendment claims under the two-step Anderson-Burdick framework.[2] At the first step, the plaintiffs failed to demonstrate that the amendments to the Election Law caused them severe burdens. See SAM Party I, 483 F. Supp. 3d at 261. At the second step, the Court found that the interests offered by New York in support of the amendments were valid and sufficiently important to justify any burdens that the amendments imposed on the plaintiffs. See id. In SAM Party II, the Second Circuit Court of Appeals reached the same conclusions

[2] See Anderson v. Celebrezze, 460 U.S. 780 (1983); Burdick v. Takushi, 504 U.S. 428 (1992). "'Under this standard, the rigorousness of [the] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.' First, if the restrictions on those rights are 'severe,' then strict scrutiny applies. 'But 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.'" SAM Party II, 987 F.3d at 274 (quoting Burdick, 504 U.S. at 434).

with respect to the SAM Party plaintiffs' claims. See 987 F.3d at 276, 278.[3] In Libertarian Party of N.Y., this Court reached the same conclusions with respect to the LPNY plaintiffs' claims, exploring in more detail the plaintiffs' challenge to the Petition Requirement. See 2021 WL 1931058, at *8-11, *13.

II.

The factual background to these cases remains substantially unchanged from the background at the preliminary injunction stage. While the pertinent facts are set out again here, a more comprehensive discussion of the parties' backgrounds and the history of the New York Election Law can be found in this Court's preliminary injunction opinions. See id. at *1-5; SAM Party I, 483 F. Supp. 3d at 250-54.

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). Because party status carries important privileges,[4] a political organization that supports candidates

[3] The WFP plaintiffs did not appeal from the denial of their motion for a preliminary injunction.

[4] "One of the principal privileges of party status is a designated ballot line or 'berth.' [N.Y. Elec. Law] § 7-104(4). For several major offices, the winner of a party's nomination process is automatically included on the ballot. But independent bodies seeking to place candidates on the ballot must gather the requisite number of signatures for each candidate. Id. §§ 6-102, 6-104, 6-106, 6-114, 6-142. 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. Id. §§ 5-300, 14-124(3)." SAM Party II, 987 F.3d at 271-72.

for public office would generally prefer to be a party rather than an independent body. The amendments to the Election Law at issue, which were enacted in Sections 9 and 10 of Part ZZZ of the 2020-2021 Fiscal Year New York State Budget Bill, make it more difficult for political organizations to obtain and retain party status.

For 85 years, New York conferred party status on any political organization whose candidate in the prior gubernatorial election received at least 50,000 votes. Mulroy Decl., SAM Party Docket No. 84, Ex. 24 ¶ 12. This meant that political organizations had to qualify or requalify as parties every four years. The challenged amendments to the Election Law changed the frequency of party qualification and the number of votes needed to qualify. In order for a political organization to gain or retain party status under the amended law, its chosen candidate must receive the greater of 130,000 votes or 2% of votes cast in the previous presidential or gubernatorial election, whichever is more recent. N.Y. Elec. Law § 1-104(3). Thus, political organizations must now quality or requalify as parties every two years, and they need more votes to do so.

Independent bodies (political organizations that are not parties) are not provided with a guaranteed ballot berth. Rather, independent bodies must nominate candidates for public office through independent nominating petitions. Independent

nominating petitions must include signatures of a specified number of registered voters, depending on the office for which the candidate is being nominated. N.Y. Elec. Law § 6-142. Before the challenged amendments, the signature requirement for an independent nominating petition for statewide office was 15,000 signatures. Brehm Decl., SAM Party Docket No. 113 ¶ 57. Under the amended law, nominating petitions for statewide office must be signed by the lesser of 45,000 registered voters or 1% of the votes cast in the last gubernatorial election. N.Y. Elec. Law § 6-142(1).[5]

The challenged amendments were based on recommendations of the New York State Campaign Finance Review Commission (the "Commission"), which was established by the New York legislature to "examine, evaluate and make recommendations for new laws with respect to how the State should implement . . . a system of voluntary public campaign financing for state legislative and statewide public offices, and what the parameters of such a program should be." 2019 N.Y. Sess. Laws, Ch. 59, Part XXX § 1(a). The legislature instructed the Commission to make its

[5] The signatures must 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, at least 500 of the signatures (or 1% of enrolled voters, whichever is less) must be from signatories residing in each of one-half of the State's 27 congressional districts. Id. § 6-142(1). Finally, the petition can only be circulated during a specific, prescribed 6-week period. Id. § 6-138(4). Nominating petitions for offices that are not statewide require fewer signatures. See id. § 6-142(2).

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, the Commission was directed to design the public campaign finance system such that it could be administered with costs under $100 million annually. Id. § 3. The Commission was directed to submit its report by December 1, 2019. Id. § 1(a).

Initially, Part XXX provided that the Commission's recommendations "shall have the full effect of law unless modified or abrogated by statute prior to December 22, 2019." Id. However, the New York State Supreme Court, Niagara County, held that this was an impermissible delegation of lawmaking authority. See Hurley v. Pub. Campaign Fin. & Election Comm'n, 129 N.Y.S.3d 243, 261 (Sup. Ct. 2020). The legislature proceeded to enact the Commission's recommendations into law in Sections 9 and 10 of Part ZZZ of the 2020-2021 Fiscal Year New York State Budget Bill.

The Commission's Report to the Governor (the "Report") recommended, among other things, the challenged amendments to the Party Qualification Threshold, Party Qualification Method, and Petition Requirement. In explaining its recommendation to increase the frequency of party certification and the number of votes required for certification, the Commission stated: 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 "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." Report, Hallak Decl., LPNY Docket No. 70, Ex. A, at 14.

The Commission believed that increasing the party ballot access threshold and the frequency of party certification would further New York's "longstanding policy" of maintaining "proportionality between the number of voters in New York State and the ability of political parties that assert a bona fide representative status for those voters." Id. The Commission concluded that these changes would "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 would enable voters to "make more resolute choices between candidates" because they could "rely upon the knowledge that [the represented] parties have sufficient popular support from the electorate of this state." Id. at 14-15. The Commission also noted that its "primary motivation for . . . addressing party ballot access [was] to craft a public campaign finance system that remains within the enabling statute's limitation of a $100 million annual cost." Id. at 14.

In selecting a "rational" vote qualification threshold, the Commission considered New York's historical experience as well as other states' party qualification criteria and nominating petition thresholds. See id. at 41-47. The Commission considered the frequency with which other states require parties to requalify, the number of votes required to requalify, whether qualification thresholds are made in reference to presidential and/or gubernatorial elections, whether states have public campaign finance systems, and whether states permit fusion voting. See id.

The Commission ultimately recommended requiring party certification every two years, and increasing the party ballot access threshold to 2% of the total votes cast for governor or president, or 130,000 votes, whichever is greater. The 2% vote

threshold was a compromise based upon the information considered and competing policy views, and the Commission initially considered, but ultimately rejected, a 3% threshold. See id. at 51 (Statement of Commissioner Kimberly A. Galvin), 67 (Statement of Commissioner John M. Nonna), 133 (Minutes from November 25 Meeting at Westchester Community College). One commissioner noted "widespread agreement" that the previous 50,000-vote threshold (which was set in 1935) was too low, and cited a statement from Dan Cantor, then-Director of the Working Families Party, that raising the threshold will "require minor parties to show substantial popular support and will reduce ballot clutter." Id. at 62 (Statement of Commissioner Jay S. Jacobs).

As a "corollary" to increasing the party ballot access threshold, the Commission also recommended increasing the number of signatures required for independent nominating petitions. Id. at 15 (Commission's findings). The Commission noted the "historical gap in updating this number," id. at 133 (Minutes from November 25 Meeting): since 1922, when the signature requirement was set at 15,000, New York's electorate has experienced nearly a four-fold increase. Brehm Decl. ¶ 58. The Commission voted 8-1 to increase the signature requirement for statewide nominating petitions to 45,000. Report at 135 (Minutes from November 25 Meeting).

III.

The minor party plaintiffs have had mixed success in attaining party status under the New York Election Law and in nominating candidates through independent nominating petitions.

The SAM Party attained party status under the Election Law in 2018, after its gubernatorial ticket received over 50,000 votes. Defendants' Statement of Material Facts ("DSMF"), SAM Party Docket No. 115-1 ¶ 34. As of November 2020, the SAM Party had 649 enrolled members, representing 0.0048% of New York's 13.56 million registered voters. Id. ¶ 35. Because the SAM Party chose not to run a candidate in the 2020 presidential election, SAM lost its party status and became an independent body following the certification of the results of that election. Id. ¶ 41. Michael J. Volpe, the Chairman of the SAM Party of New York, states that SAM focuses on local elections and seeks to "avoid getting prematurely embroiled in, or associated with, one side or the other of the ideological divide." Volpe Decl., SAM Party Docket No. 124 ¶ 10. Therefore, Volpe states that SAM will not endorse a candidate for president as a matter of principle, because doing so would be "inimical to SAM's core messaging." Id.

WFP gained party status in 1998 after qualifying in the 1998 gubernatorial election. DSMF ¶ 42. As of February 2021, WFP had 48,207 enrolled members, representing 0.36% of New York's

registered voters. Id. ¶ 44. In four of the last seven elections, WFP achieved the greater of 130,000 votes or 2% of the vote for president or governor, id. ¶ 43, meaning that WFP would have qualified as a party following those elections even under the amended Election Law. Indeed, in the 2020 presidential election, in which WFP cross-nominated the Democratic Party's nominees for president and vice president—Joseph R. Biden and Kamala D. Harris—WFP received 386,010 votes on its ballot line and retained its party status under the amended law. Id. ¶¶ 48-50.

LPNY is the New York State affiliate of the national Libertarian Party, which LPNY alleges is the third-largest political party in the United States. LPNY Compl. ¶ 7. As of November 2020, LPNY had 21,551 enrolled members, or 0.16% of New York's registered voters. DSMF ¶ 57. LPNY operated as an independent body in New York between 1974 and 2018, submitting independent nominating petitions in each presidential and gubernatorial election except the 1986 gubernatorial election. Id. ¶ 53. LPNY obtained party status in New York for the first time in 2018, when its gubernatorial ticket received 95,033 votes. Id. ¶ 55. However, LPNY failed to retain party status under the amended vote threshold following the 2020 presidential election because its presidential ticket received 60,234 votes, or 0.70% of the total votes cast. Id. ¶¶ 58-59.

GPNY is the New York State affiliate of the national Green Party. Id. ¶ 61. As of November 2020, GPNY had 28,501 enrolled members, or 0.21% of New York's registered voters. Id. ¶ 68. GPNY nominated a candidate in each presidential and gubernatorial election since 1996, except for the 2004 presidential election. Id. ¶ 62. GPNY obtained party status based on its performance in the 1998 gubernatorial election, but lost that status four years later when its 2002 gubernatorial ticket received only 41,797 votes. Id. ¶¶ 63-65. GPNY again obtained party status in 2010, but lost its party status following the 2020 presidential election when its ticket received 32,753 votes, or 0.38% of the total votes cast, failing to meet the updated voter threshold. Id. ¶¶ 67-70.

IV.

The defendants have moved for summary judgment. The standard for granting summary judgment is well established. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). "[T]he trial court's task at the summary judgment motion stage of the litigation is carefully limited to discerning whether there are any genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is

confined at this point to issue-finding; it does not extend to issue-resolution." Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994). The moving party bears the initial burden of "informing the district court of the basis for its motion" and identifying the matter that "it believes demonstrate[s] the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In determining whether summary judgment is appropriate, a court must resolve all ambiguities and draw all reasonable inferences against the moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Gallo, 22 F.3d at 1223. "If, as to the issue on which summary judgment is sought, there is any evidence in the record from any source from which a reasonable inference could be drawn in favor of the nonmoving party, summary judgment is improper." Chambers v. TRM Copy Ctrs. Corp., 43 F.3d 29, 37 (2d Cir. 1994). If the moving party meets its burden under Rule 56, the nonmoving party must produce evidence in the record and "may not rely simply on conclusory statements or on contentions that the affidavits

supporting the motion are not credible." Ying Jing Gan v. City of N.Y., 996 F.2d 522, 532 (2d Cir. 1993).

V.

"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, 504 U.S. at 433 (quoting U.S. Const. Art. I, § 4, cl. 1). "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997). Because every election law "inevitably affects" individual voters' rights to vote and to associate with others for political ends, courts do not subject every election law or regulation to "strict scrutiny" or "require that [each] regulation be narrowly tailored to advance a compelling state interest." Burdick, 504 U.S. at 433.

Instead, courts evaluate challenges to state action restricting ballot access under the Anderson-Burdick framework, and vary the level of scrutiny to be applied depending on the burden that the state law imposes on First and Fourteenth Amendment rights. SAM Party II, 987 F.3d at 274; Libertarian Party of Conn. v. Lamont, 977 F.3d 173, 177 (2d Cir. 2020); see supra n.2. When a challenged state election regulation imposes

"severe restrictions" on First or 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 this latter category of 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.

The Court has previously concluded that the challenged amendments to the New York Election Law do not impose severe burdens on the plaintiffs, and that the State's proffered interests are sufficient to justify the amendments. The Second Circuit Court of Appeals agreed with those conclusions with respect to the SAM Party plaintiffs' challenges. See SAM Party II, 987 F.3d at 276, 278. The factual record remains substantially unchanged from the time of the Court's preliminary injunction decisions. Accordingly, for the reasons explained

below, the Court reaches the same conclusions under the Anderson-Burdick framework.[6]

A.

To determine whether a challenged provision places a "severe burden" on a plaintiff's First or Fourteenth Amendment rights, courts "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). "Courts have identified three types of severe burdens on the right of individuals to associate as a political party. First are regulations meddling in a political party's internal affairs. Second are regulations restricting the 'core associational activities' of the party or its members. Third are regulations that 'make it virtually impossible' for minor parties to qualify for the ballot." SAM Party II, 987 F.3d at 275 (quoting Timmons, 520 U.S. at 360, and Williams v. Rhodes, 393 U.S. 23, 25 (1968)).

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[6] The defendants argue that the law-of-the-case doctrine may apply to preclude relitigation of the plaintiffs' federal constitutional challenges in light of the decision by the Second Circuit Court of Appeals in SAM Party II. However, the law-of-the-case doctrine is "discretionary and does not limit a court's power to reconsider its own decision prior to final judgment." Cangemi v. United States, 13 F.4th 115, 140 (2d Cir. 2021) (quoting Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992)). Moreover, "[a] preliminary determination of likelihood of success on the merits in a ruling on a motion for preliminary injunction is ordinarily tentative, pending a trial or motion for summary judgment." Goodheart Clothing Co., Inc. v. Laura Goodman Enters., Inc., 962 F.2d 268, 274 (2d Cir. 1992). In any event, there is no need to resort to the law-of-the-case doctrine in deciding the defendants' motion: the Court will apply the Anderson-Burdick framework—as recently applied by the court of appeals—along with the standard for summary judgment, to the current factual record.

The plaintiffs primarily argue that the challenged amendments make it virtually impossible for minor parties to qualify for the ballot. See Libertarian Party of Conn., 977 F.3d at 177 ("[T]he hallmark of a severe burden is exclusion or virtual exclusion from the ballot." (quoting Libertarian Party of Ky. v. Grimes, 835 F.3d 570, 574 (6th Cir. 2016))). In this analysis, "[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 v. Socialist Workers Party, 479 U.S. 189, 199 (1986).

New York's ballot access restrictions do not virtually exclude minor parties from the ballot. In fact, two minor parties, including WFP, retained party status under the revised law based on their performances in the 2020 presidential election.[7] Moreover, it is well established that "States may condition access to the general election ballot by a minor-party

[7] Based on the results of the 2020 presidential election, four of the seven statutory parties that ran a presidential ticket requalified as parties under the amended law for the next two-year election cycle: the Democratic Party, the Republican Party, WFP, and the Conservative Party. DSMF ¶ 73. SAM was also a statutory party prior to the 2020 presidential election, but failed to retain its party status under the amended law because it did not run a presidential ticket. Id. ¶ 75.

or independent candidate upon a showing of a modicum of support among the potential voters for the office." Munro, 479 U.S. at 193; see also SAM Party II, 987 F.3d at 277; Prestia v. O'Connor, 178 F.3d 86, 88 (2d Cir. 1999). As the Second Circuit Court of Appeals recently found, New York's amended 2% vote threshold is "middle of the pack among the three-dozen states that require parties to obtain a certain level of support in a statewide race. Several federal courts of appeals have approved of thresholds as high and higher."[8] SAM Party II, 987 F.3d at 275-76; see, e.g., Libertarian Party of Ky., 835 F.3d at 575 (upholding 2% presidential-election requirement); Green Party of Ark. v. Martin, 649 F.3d 675, 686-87 (8th Cir. 2011) (upholding 3% presidential-election requirement); McLaughlin v. N.C. Bd. of Elections, 65 F.3d 1215, 1226 (4th Cir. 1995) (upholding 10% presidential-election requirement to requalify as a party); Arutunoff v. Okla. State Election Bd., 687 F.2d 1375, 1379 (10th

[8] The three-dozen number is subject to some dispute. The defendants state that "New York is one of 21 states that require political organizations to demonstrate a minimum threshold of votes in a specific election in order to qualify for or retain party status." DSMF ¶ 106. The plaintiffs dispute the defendants' figure on the grounds that "[m]any of these [21] states afford other routes to acquire or maintain party status." SAM Party Docket No. 122 ¶ 106; see also WFP Docket No. 74 ¶ 106. Presumably the plaintiffs highlight this distinction to demonstrate that some of the states to which New York is being compared have less stringent party qualification requirements because they offer alternative avenues for party qualification. It is undisputed, however, that: (1) New York is one of many states that certify parties based only on their performances in a specific election, (2) two New York minor parties retained party status under the amended law based on their performances in the 2020 presidential election, and (3) courts have upheld vote thresholds that are equivalent to or more demanding than the one at issue here.

Cir. 1982) (same). Eighteen[9] states other than New York require parties to meet specific requirements to retain party status at least biennially, and some states require that political organizations obtain 3, 4, 5, 10, or even 20% of the vote in a specific election to qualify as parties. DSMF ¶¶ 107-08.

There is also no "severe burden" on the plaintiffs because political organizations that do not qualify as parties can place candidates on the ballot by independent nominating petitions. See SAM Party II, 987 F.3d at 276. The plaintiffs argue that the recently increased petition thresholds, like the party qualification thresholds, are so high that they are impossible for minor parties to meet. This argument fails. The Supreme Court has held that a petition threshold as high as 5% of the state electorate is permissible and does not "abridge[] the rights of free speech and association secured by the First and Fourteenth Amendments." Jenness v. Fortson, 403 U.S. 431, 440 (1971). Federal appellate courts have followed suit. See, e.g., SAM Party II, 987 F.3d at 276 (indicating that New York's amended petition thresholds are permissible); Prestia, 178 F.3d

[9] This number is also subject to some dispute. The plaintiffs assert that only seventeen other states require parties to meet specific requirements to retain party status at least biennially. SAM Party Docket No. 122 ¶ 108. This factual dispute, like many others raised by the parties, goes only to where in the middle of the pack New York's party and ballot access thresholds lie. Such disputes are not germane to the analysis of whether New York's scheme virtually excludes minor parties from the ballot such that it would present a "severe burden" under Anderson-Burdick step one.

at 88 ("[A] requirement that ballot access petitions be signed by at least 5% of the relevant voter pool is generally valid, despite any burden on voter choice that results when such a petition is unable to meet the requirement."); Libertarian Party of Ill. v. Rednour, 108 F.3d 768, 775 (7th Cir. 1997) (citing Jenness and upholding a 5% petition threshold); Rainbow Coalition of Okla. v. Okla. State Election Bd., 844 F.2d 740, 744 (10th Cir. 1988) (5% petition threshold "undeniably constitutional"). Under New York's amended petition thresholds, independent nominating petitions for statewide office must be signed by the lesser of 45,000 registered voters or 1% of the votes cast in the last gubernatorial election (nominating petitions for non-statewide office require fewer signatures). N.Y. Elec. Law § 6-142. These petition thresholds, like the amended party status threshold, are in line with other states' requirements. New York, the fourth most populous state, ranks seventh in terms of absolute number of signatures required for nominating petitions for statewide office. SAM Party Docket No. 122 ¶ 110. When compared by population of eligible signatories, there are seventeen[10] states with independent nominating petition requirements stricter than New York. DSMF ¶ 112. "[A] reasonably diligent organization could be expected to satisfy New York's

[10] The plaintiffs state that this number is sixteen. SAM Party Docket No. 122 ¶ 112. This dispute is not material.

signature requirement." SAM Party II, 987 F.3d at 276 (quoting Libertarian Party of Conn., 977 F.3d at 179). Accordingly, the "combined effect of New York's ballot-access restrictions" does not virtually exclude minor parties from the ballot. Id. at 275 (quoting Libertarian Party of Ky., 835 F.3d at 575).[11]

The LPNY plaintiffs argue that other requirements New York imposes on independent nominating petitions combine to impose a severe burden on minor parties. This argument also fails, for substantially the same reasons explained in the Court's previous opinion in Libertarian Party of N.Y., 2021 WL 1931058, at *9-10. New York imposes a 42-day collection period for signatures. N.Y. Elec. Law § 6-138(4). Gathering 45,000 signatures (or 0.33% of registered voters) in 42 days would require a candidate to gather 1,072 signatures per day. Seventy-seven canvassers could gather the required signatures at a rate of 14 signatures per day, over 42 days. In Am. Party of Tex. v. White, 415 U.S. 767 (1974), the Supreme Court rejected a challenge to a Texas law requiring nominating petitions to contain signatures from 1% of voters in the last gubernatorial election obtained over a 55-day period. The Court noted that 100 canvassers could obtain the required signatures at a rate of 4 signatures per day, and that

[11] The LPNY plaintiffs argue that the petition threshold "was not directly at issue" in SAM Party II. LPNY Docket No. 84, at 23. However, it is plain that the Second Circuit Court of Appeals considered the amended petition threshold in determining whether the "combined effect of New York's ballot-access restrictions" imposes a severe burden on minor parties. See 987 F.3d at 276.

"[h]ard work and sacrifice by dedicated volunteers are the lifeblood of any political organization." Id. at 786-87.

Similarly, in Storer v. Brown, 415 U.S. 724, 740 (1974), the Court rejected a facial challenge to a California law requiring presidential candidates to gather 325,000 signatures, or 5% of the votes cast in the prior general election, in 24 days. The law at issue also required that the signatures come from voters who had not voted in the presidential primary election, shrinking the pool of eligible signatories. 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. The Court did remand for a determination of whether this requirement posed a severe burden as applied to independent candidates, but specifically cited the additional burden imposed by the disqualification of people who voted in the primary election. See id. New York's law does not impose this requirement; it only requires that nominating petitions be signed by registered voters who have not already signed another petition for the same office. N.Y. Elec. Law § 6-138(1). Moreover, the New York law requires far fewer signatures on nominating petitions for offices representing smaller political

subdivisions within the State. See id. § 6-142(2). Accordingly, while the 42-day signature period may present a burden, especially for political organizations seeking to nominate candidates for statewide office, this requirement does not make it virtually impossible to nominate candidates by petition—either on its own or in conjunction with the rest of New York's ballot access restrictions.[12]

The SAM Party plaintiffs articulate a narrower challenge to the Party Qualification Method, specifically challenging the requirement that political organizations receive a requisite number of votes in presidential elections, as opposed to only gubernatorial elections, to qualify as parties. SAM argues that the presidential-election requirement imposes a severe burden because "SAM was forced to choose between abandoning its core

[12] The LPNY plaintiffs again take issue with the requirement that nominating petition signatures must be witnessed by a New York voter. As they did at the preliminary injunction stage, the LPNY plaintiffs only cite a vacated district court decision in support of this argument. LPNY Docket No. 84, at 10 (citing Free Libertarian Party, Inc. v. Spano, 314 F. Supp. 3d 444 (E.D.N.Y. 2018), vacated sub nom., Redpath v. Spano, No. 18-2089, 2020 WL 2747256 (2d Cir. May 7, 2020)). The witness residency requirement has been upheld in a case that remains good law. 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), aff'd on other grounds sub nom., Germalic v. N.Y. Bd. of Elections Comm'rs, 466 F. App'x 54 (2d Cir. 2012) (concluding that the witness residency requirement "is narrowly tailored to serve the state's compelling interest of protecting the integrity of the electoral process and guarding against fraud"). The LPNY plaintiffs do not explain why the witness residency requirement is unconstitutional or why it imposes a severe burden on ballot access. Accordingly, for the same reasons explained in the Court's preliminary injunction opinion, the witness residency requirement is not unconstitutional, either by itself or in conjunction with the rest of New York's ballot access restrictions. See Libertarian Party of N.Y., 2021 WL 1931058, at *11 n.11.

message and competing in a Presidential election inimical to its values and strategy, or being excluded from the ballot and stripped of 'party' status." SAM Party Docket No. 121, at 13. But the Second Circuit Court of Appeals has already rejected this argument, concluding that the presidential-election requirement does not compel political organizations to speak. See SAM Party II, 987 F.3d at 275 ("A law that ties party status to a political organization's demonstrated support in a designated race does not 'force' the organization 'to divert its resources in any particular way.'" (quoting Person v. N.Y. State Bd. of Elections, 467 F.3d 141, 144 (2d Cir. 2006))). Political organizations remain free to not seek official party status and to continue to participate in the political process by running candidates as independent bodies.[13] Political organizations do not have "a right to use the ballot itself to send a particularized message" because "[b]allots serve primarily to elect candidates, not as forums for political expression." Timmons, 520 U.S. at 363. Accordingly, the presidential-election requirement does not compel political speech, and the SAM Party plaintiffs fare no better than the other plaintiffs in arguing

[13] The presidential-election requirement does not "threaten[] SAM's ability to exist," SAM Party Docket No. 121, at 13, because "[a]n independent body may still operate in the political arena and run candidates," SAM Party II, 987 F.3d at 275. Regardless of whether SAM loses party status because of principle or because of an inability to attract sufficient support from the New York electorate, SAM can continue operating as an independent body and is not virtually excluded from the ballot.

that New York's ballot access restrictions impose a severe burden under Anderson-Burdick step one.

Viewing the alleged burdens imposed by the challenged amendments "in light of the state's overall election scheme," Schulz, 44 F.3d at 56, it is plain that the challenged amendments do not impose a "severe burden" on the plaintiffs, as that phrase has been interpreted by courts applying the Anderson-Burdick framework.

B.

Because the challenged amendments do not place severe burdens on the First or 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. "The balancing test at the second stage of the Anderson-Burdick framework is 'quite deferential.'" SAM Party II, 987 F.3d at 276 (quoting Price v. N.Y. State Bd. of Elections, 540 F.3d 101, 109 (2d Cir. 2008)). "A State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." Id. (quoting Timmons, 520 U.S. at 358).

New York has offered several important, non-discriminatory regulatory interests to justify the challenged amendments. First, the State contends that the amendments help gauge whether

a political organization enjoys a sufficient "modicum of support" such that it deserves automatic ballot access. See id. at 277. This interest was emphasized in light of New York's new public campaign finance system and the need to keep that system operating within the $100 million annual limit set by the legislature:

> [T]he ability of a party to demonstrate bona fide interest from the electorate is paramount in ensuring the success of a public campaign finance system. . . . [S]etting 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.

Report at 14.

The State's interest in requiring a modicum of support for ballot access has been endorsed by the Supreme Court and by the Second Circuit Court of Appeals. See SAM Party II, 987 F.3d at 277 ("There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." (quoting Jenness, 403 U.S. at 442)). In SAM Party II, the court of appeals also explicitly endorsed New York's interest in preserving the public fisc. See id. ("The

government's 'interest in not funding hopeless candidacies with large sums of public money necessarily justifies the withholding of public assistance from candidates without significant public support.'" (quoting Buckley v. Valeo, 424 U.S. 1, 96 (1976))). Finally, the State also made clear that the challenged amendments represent an effort to maintain organized, uncluttered ballots; prevent voter confusion; and preserve proportionality between the thresholds required for ballot access and the number of registered voters in the State. See Report at 14-15.

The plaintiffs do not question the importance of the interests proffered by the State. Rather, the plaintiffs challenge whether the proffered interests are genuine and whether there are empirically verifiable problems.[14] But where, as here, the challenged law does not impose a severe burden, the State need not offer "elaborate, empirical verification" of its justifications. SAM Party II, 987 F.3d at 277 (quoting Timmons, 520 U.S. at 364); see also Munro, 479 U.S. at 194-95 ("We have never required a State to make a particularized showing of the

[14] See, e.g., SAM Party Docket No. 121, at 15 (arguing that the defendants "have adduced no evidence that [ballot overcrowding] actually is a problem in New York"); id. at 21 ("Defendants have not adduced any evidence that the public-finance program will be any less expensive if there are fewer minor parties[.]"); WFP Docket No. 73, at 20 ("Defendants have not offered any evidence for how the Election Voting Law lessens (or removes) voter confusion."); id. ("Defendants have not cited any evidence demonstrating that ballot overcrowding is a problem.").

existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access."). The plaintiffs also argue that the challenged amendments were not the most effective or least restrictive means of pursuing the State's proffered goals.[15] But the State "may pursue multiple avenues" to achieve its stated goals, SAM Party II, 987 F.3d at 277, and the State need not pursue the least restrictive means available. "To subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest would tie the hands of States seeking to assure that elections are operated equitably and efficiently." Id. at 274 (quoting Burdick, 504 U.S. at 433).

The State has sufficiently demonstrated that its proffered interests are furthered by the challenged amendments, and that those interests require any incidental burdens on the plaintiffs. See id. Increasing the party qualification and

[15] See, e.g., SAM Party Docket No. 121, at 16 ("To the extent that Defendants imply that there would be no easier, cleaner, or less-confusing way to write the ballots . . . , that is disputed too."); id. ("The State has submitted no evidence showing that it attempted to cure its allegedly overcrowded ballots through a widely used redesign, rather than by forcing minor parties to run candidates for President."); WFP Docket No. 73, at 18 ("Nor is there any evidence the State considered any alternative options [to preserve the public campaign finance system]."); id. at 21 ("Defendants also fail to explain why voter confusion and ballot overcrowding could not be eliminated by better ballot design, which would impose no burden on the WFP or any other parties (independent or recognized)."); LPNY Docket No. 84, at 27–28 ("If Defendants or the Legislature eliminated [the requirement for a full-face paper ballot], all the confusion and overcrowding concerns that Defendants express can be solved.").

nominating petition thresholds are reasonable steps to take to prevent ballot overcrowding and assure that political organizations appearing on the ballot enjoy a sufficient modicum of support from the electorate. Moreover, increasing the ballot access requirements is a reasonable way to ensure that only candidates with a reasonable amount of support benefit from the State's public campaign finance program. The State has also adduced evidence that granting party status to political organizations that lack significant support from the electorate results in administrative burdens and waste. See Brehm Decl. ¶¶ 44-49 (describing a 2020 SAM Party primary election in a county in which there were no enrolled SAM voters). These interests outweigh any burdens imposed on the plaintiffs.

The plaintiffs cite Green Party of N.Y. State v. N.Y. State Bd. of Elections, 389 F.3d 411, 422 (2d Cir. 2004) for the proposition that "the ability to meet the requirements for placing a candidate on the statewide ballot is enough of an indication of support to overcome the state's interest in preventing voter confusion." But states are permitted to increase those requirements over time in response to large population increases. See Timmons, 520 U.S. at 358 ("States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder."). In New York, the previous party status and

nominating petition thresholds were set in 1935 and 1922, respectively; the State's population has seen nearly a four-fold increase since 1922. See Brehm Decl. ¶¶ 19, 57-58. Moreover, courts have repeatedly held that "popular vote totals in the last election are a proper measure of public support." SAM Party II, 987 F.3d at 277 (quoting Green Party of Conn. v. Garfield, 616 F.3d 213, 231 (2d Cir. 2010)). There is no authority to support the proposition that a state's ballot access requirements must remain frozen over time.

"The State has set forth a coherent account" of why the challenged amendments will "help to guard against disorder and waste." Id. at 278. Accordingly, the burdens imposed on the plaintiffs by the challenged amendments are justified under the "quite deferential" review at Anderson-Burdick step two. Id.

VI.

The SAM and WFP plaintiffs resist summary judgment by arguing that they "cannot present facts essential to justify [their] opposition." Fed. R. Civ. P. 56(d).[16] The plaintiffs correctly note that "[c]ourts in the Second Circuit routinely deny or defer motions for summary judgment when the non-movant has not had an opportunity to conduct discovery and submits an affidavit or declaration that meets the requirements set forth

[16] The LPNY plaintiffs do not raise a Rule 56(d) argument because fact discovery in that action has closed. See LPNY Docket No. 55.

in Rule 56(d)." Walden v. Sanitation Salvage Corp., Nos. 14-cv-112, 14-cv-7759, 2015 WL 1433353, at *5 (S.D.N.Y. Mar. 30, 2015). But the plaintiffs have had ample opportunity to conduct discovery in these cases.

The SAM Party plaintiffs served extensive document demands on the defendants at the preliminary injunction stage. The SAM Party plaintiffs sought, among other things, "[a]ll documents and things" relating to the challenged amendments, including "documents sufficient to show the basis for the decision to amend" the New York Election Law. SAM Party Docket No. 133, Ex. O, at 4. The defendants produced 1,334 pages of responsive documents. SAM Party Docket No. 133 ¶ 7. This discovery was contemporaneously produced to the WFP plaintiffs, who chose not to serve their own discovery demands on the defendants. Id. ¶¶ 9-10.

Parties opposing summary judgment on the grounds that additional discovery is required bear a heavy burden. See Stryker v. HSBC Sec. (USA), No. 16-cv-9424, 2020 WL 5127461, at *19 (S.D.N.Y. Aug. 31, 2020); Eastern Sav. Bank, FSB v. Rabito, No. 11-cv-2501, 2012 WL 3544755, at *6 (E.D.N.Y. Aug. 16, 2012). Moreover, "a plaintiff cannot defeat a motion for summary judgment by merely restating the conclusory allegations contained in his complaint, and amplifying them only with speculation about what discovery might uncover." Contemp.

Mission, Inc. v. U.S. Postal Serv., 648 F.2d 97, 107 (2d Cir. 1981). Parties resisting summary judgment under Rule 56(d) "must submit an affidavit showing (1) what facts are sought to resist the motion and how they are to be obtained, (2) how those facts are reasonably expected to create a genuine issue of material fact, (3) what effort [the] affiant has made to obtain them, and (4) why the affiant was unsuccessful in those efforts." Stryker, 2020 WL 5127461, at *19 (quoting Gurary v. Winehouse, 190 F.3d 37, 43 (2d Cir. 1999)); see also Ortiz v. Case, 782 F. App'x 65, 66 (2d Cir. 2019).

The plaintiffs have not met this burden. The plaintiffs fail to explain how additional discovery would create a genuine issue of material fact or why they have been unable to obtain such discovery to date. Indeed, the plaintiffs have not shown that the additional discovery they seek is even relevant to the Anderson-Burdick analysis.

Some of the plaintiffs' requests for additional discovery simply rehash their arguments that the challenged amendments pose a severe burden. See Stone Decl., SAM Party Docket No. 123 ¶ 22. Other requests seek "elaborate, empirical verification" of the State's proffered justifications, or explanations for why the State did not pursue its goals by other, assertedly less-intrusive means—neither of which the law requires. See SAM Party II, 987 F.3d at 277; Stone Decl. ¶¶ 27, 32, 37, 42, 46; Guirguis

Decl., WFP Docket No. 75 ¶¶ 34-35. Because these categories of discovery are not germane to the Anderson-Burdick analysis, the additional facts the plaintiffs seek are not "essential to justify [their] opposition," Fed. R. Civ. P. 56(d), and their argument under Rule 56(d) fails.

VII.

The WFP and LPNY plaintiffs also argue that the challenged amendments violate the New York State Constitution. However, "[t]he Eleventh Amendment [to the Federal Constitution] bars federal suits against state officials on the basis of state law." Allen v. Cuomo, 100 F.3d 253, 260 (2d Cir. 1996); see also Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 106 (1984) ("[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law."); Boyland v. Wing, 487 F. Supp. 2d 161, 182 (E.D.N.Y. 2007). This bar applies to federal suits against state governments as well as state officials. See id. at 180-82. Accordingly, the plaintiffs' claims under the New York State Constitution also fail.

CONCLUSION

The Court has considered all of the arguments raised by the parties. To the extent not specifically addressed above, the arguments are either moot or without merit.

For the reasons explained above, the defendants' motion for summary judgment is **granted.**[17] The Clerk is directed to enter judgment dismissing these cases. The Clerk is also directed to close all pending motions and to close these cases.

SO ORDERED.

Dated: **New York, New York**
December 22, 2021

John G. Koeltl
United States District Judge

[17] The LPNY plaintiffs state that the defendants failed to move for summary judgment with respect to those plaintiffs' third and fourth causes of action. LPNY Docket No. 84, at 6. That is incorrect. The LPNY plaintiffs' third and fourth causes of action both assert due process and First Amendment challenges. LPNY Compl. at 42-43. These challenges, like all the plaintiffs' federal constitutional challenges to the amended New York Election Law, are governed by the Anderson-Burdick framework. See Acevedo v. Cook Cnty. Officers Electoral Bd., 925 F.3d 944, 948 (7th Cir. 2019) ("[The Anderson-Burdick] test applies to all First and Fourteenth Amendment challenges to state election laws." (citing Burdick, 504 U.S. at 432-34)). Moreover, the defendants' motion for summary judgment specifically refers to these claims. See SAM Party Docket No. 115, at 8-10. Accordingly, summary judgment is granted with respect to all the plaintiffs' claims, including the LPNY plaintiffs' third and fourth causes of action.

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, PARTIC-IPATING 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 aggre-

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 PARTICIPAT-ING 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

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

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

§ 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

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.

(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

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

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 REPAID.
(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:

(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

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

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;

(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 AUTHORI-
TY 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

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

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

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

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.

§ 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

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-

VISION, AND AT THE DIRECTION OF THE DIRECTOR OF THE BUDGET, TRANSFER THE REQUESTED AMOUNT FROM REMAINING AVAILABLE MONIES IN THE ABANDONED PROP-
ERTY 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

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.