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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

22-44-cv

[Filed October 19, 2022]

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of October, two thousand twenty-two.

Present:

JON O. NEWMAN,
JOHN M. WALKER, JR.,

EUNICE C. LEE,
Circuit Judges.

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, ROBERT A. BREHM, CO-EXECUTIVE DIRECTOR OF THE NEW YORK STATE BOARD OF ELECTIONS, *Defendants-Appellees*.	)

For Plaintiffs-Appellants:	JAMES OSTROWSKI (Michael Kuzma, *on the brief*), Buffalo, New York.
For Defendants-Appellees:	ELLIOT HALLAK (Daniel R. LeCours, Thomas J. Garry, Kyle D. Gooch, *on the brief*), Harris Beach PLLC, Albany, New York.

Appeal from a judgment of the United States District Court for the Southern District of New York (Koeltl, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiffs Libertarian Party of New York, Anthony D'Orazio, Larry Sharpe, Green Party of New York, and Peter LaVenia appeal from the district court's grant of summary judgment in favor of defendants, 576 F.Supp.3d 151 (S.D.N.Y. 2021). We assume the parties' familiarity with the facts and procedural history of the case, and the arguments on appeal.

Having reviewed the district court's grant of summary judgment *de novo*, *Delaney v. Bank of Am. Corp.*, 766 F.3d 163, 167 (2d Cir. 2014), and considered the parties' arguments on appeal, we affirm substantially for the reasons stated by the district court in its Opinion and Order dated December 22, 2021.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court
/s/ Catherine O'Hagan Wolfe

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Filed December 22, 2021]

20-cv-323 (JGK)

SAM PARTY OF NEW YORK, ET AL.,
Plaintiffs,

- against -

KOSINSKI, ET AL.,
Defendants.

20-cv-4148 (JGK)

HURLEY, ET AL.,
Plaintiffs,

- against -

KOSINSKI, ET AL.,
Defendants.

20-cv-5820 (JGK)

LIBERTARIAN PARTY OF
NEW YORK, ET AL.,
Plaintiffs,

- against -

NEW YORK BOARD OF ELECTIONS, ET AL.,
Defendants.

OPINION AND ORDER

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]

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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 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 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

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[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).

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 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).

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

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

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[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, 14-24(3)." SAM Party II, 987 F.3d at 271–72.

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

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[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).

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 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 "letting 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 their 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 embers, 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 ases, 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

[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.

F.3d at 275 (quoting Timmons, 520 U.S. at 360, and Williams v. Rhodes, 393 U.S. 23, 25 (1968)).

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

[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.

condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office." Munro, 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,

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[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.

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 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

[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.

(indicating that New York's amended petition thresholds are permissible); Prestia, 178 F.3d 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 signature requirement." SAM Party II, 987 F.3d at 276 (quoting Libertarian Party of Conn., 977 F.3d at 179).

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

Accordingly, the "combined effect of New York's ballot-access restriction" 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 "[h]ard work and sacrifice by dedicated volunteers are the lifeblood of any political organization." Id. at 786–87.

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[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.

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 message and competing in a Presidential election inimical to its values and

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[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.

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

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[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.

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 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

[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.").

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 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,

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[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 27–8 ("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.").

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 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

[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.

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

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[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.

/s/ John G. Koeltl
John G. Koeltl
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Filed December 22, 2021]

20 CIVIL 323 (JGK)

SAM PARTY OF NEW YORK, ET AL.,
Plaintiffs,

-against-

KOSINSKI, ET AL.,
Defendants.

20 CIVIL 4148 (JGK)

HURLEY, ET AL.,
Plaintiffs,

-against-

KOSINSKI, ET AL.,
Defendants.

20 CIVIL 5820 (JGK)

SAM PARTY OF NEW YORK, ET AL.,
Plaintiffs,

-against-)
)
NEW YORK BOARD OF)
ELECTIONS, ET AL.,)
Defendants.)
_____)

JUDGMENT

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: /s/
Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket No: 22-44

[Filed December 12, 2022]

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of December, two thousand twenty-two.

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, Robert A. Brehm, Co-Executive Director of the	)

New York State Board of Elections,)
Defendants - Appellees.)
_____)

ORDER

Appellants, Libertarian Party of New York, Anthony D'Orazio, Larry Sharpe, Green Party of New York, Gloria Mattera and Peter LaVenia, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
/s/ Catherine O'Hagan Wolfe

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-cv-5820 (JGK)

[Filed May 13, 2021]

LIBERTARIAN PARTY OF NEW YORK, ET AL., Plaintiffs,

- against -

NEW YORK BOARD OF ELECTIONS, ET AL., Defendants.

OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The Libertarian Party of New York (the "Libertarian Party") and the Green Party of New York (the "Green Party"), together with individual members, have sued the New York Board of Elections (the "NYBOE"), and its chairs, commissioners, and executive directors (together, the "NYBOE Defendants"), alleging that the amendments to the New York Election Law found in Sections 9 and 10 of Part ZZZ of the 2020-2021 Fiscal Year New York State Budget Bill ("Part ZZZ"), violate the plaintiffs' First and Fourteenth Amendment rights. Section 10 of Part ZZZ amended the overall number of votes required

for a political organization to qualify as a "party" and the frequency with which parties must requalify ("Party Qualification Requirement"). Section 9 of Part ZZZ increased the number of signatures required for a candidate to gain access to the ballot by an independent nominating petition ("Petition Requirement").

As amended, the New York Election Law now requires that a political organization's chosen candidate must receive the greater of 130,000 votes or 2 percent of votes cast in the previous presidential or gubernatorial election, whichever is more recent, to qualify as a recognized party. Because the respective presidential candidates of the Libertarian Party and the Green Party both failed to achieve the required vote threshold in the 2020 presidential election, both have been decertified as recognized political parties by the NYBOE. Thus, to gain access to the ballot in 2022, candidates from the Libertarian Party and the Green Party must file independent nominating petitions. For gubernatorial candidates, such nominating petitions must be submitted with signatures from 1 percent of the number of votes cast in the last gubernatorial election (up to 45,000), and at least 1 percent of such enrolled voters (up to 500) must reside in each of one-half of New York's 27 congressional districts.

The plaintiffs have moved for a preliminary injunction to require the NYBOE to reinstate the Libertarian Party and the Green Party as recognized parties for the 2022 gubernatorial election, and to enjoin the NYBOE Defendants from continuing to implement Sections 9 and 10 of Part ZZZ. Because the

plaintiffs have failed to demonstrate that the challenged amendments violate their Constitutional rights, otherwise cause irreparable harm to the plaintiffs absent relief at this time, or be against the public interest, their motions are **denied.**

I.

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

A.

Under the New York Election Law, a political organization that supports candidates for public office can be designated either as a "party" or an "independent body." N.Y. Elec. Law §§ 1-104(3), (12). Following the challenged amendments contained within Section 10 of Part ZZZ, that took effect on April 3, 2020, a political organization's candidate for governor or president must have received the greater of 130,000 votes, or 2 percent of the total votes cast, in the most recent presidential or gubernatorial election for that organization to qualify as a recognized "party." N.Y. Elec. Law § 1-104(3). A political organization that fails to satisfy such requirements is an "independent body." N.Y. Elec. Law § 1-104(12).

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

Recognized parties enjoy certain practical benefits that independent bodies do not, such as the authority to maintain a segregated financial account, to which ordinary contributions limits do not apply, for certain expenditures. N.Y. Elec. Law § 14-124(3). Registered parties also appear on voter-registration forms so that voters can register as party members, N.Y. Elec. Law §§ 5-210(5)(k)(x), 5-300, enabling parties greater ease in connecting with potential supporters. Compl. ¶ 25. And, as particularly relevant for this case, each recognized party receives a "berthing" for the winner of the party's nomination process on general election ballots for certain state-wide elections. Brehm Decl. ¶ 5; N.Y. Elec. Law §§ 6-102, 6-104, 6-106, 6-114.[2]

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

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

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

For 85 years, New York conferred recognized "party" status on any political organization whose candidate in the prior gubernatorial election received at least 50,000 votes. Declaration of Elliot A. Hallak, ECF No. 52 ("Hallak Decl."), Ex. D ¶ 12. Similarly, the number of signatures required for independent nominating petitions was set in 1911 at 6,000, which was then raised in 1922 at 15,000, and then raised again in 1971 to 20,000, before being lowered, in 1992, to 15,000. Declaration of Robert A. Brehm, ECF No. 51 ("Brehm Decl.") ¶¶ 66.[3] The 6-week or 42-day collection period for signatures was adopted in 1946. 1946 N.Y. Sess. Laws, Ch. 17, § 137(4).

The amended Party Qualification Requirement and Petition Requirement that the plaintiffs challenge

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

developed from the recommendations of a special commission, established to design a public campaign finance system for New York State and recommend electoral reforms. Part XXX of the 2020 Fiscal Year Enacted Budget created the New York State Campaign Finance Review Commission (the "Commission") as a "public campaign financing and election commission to examine, evaluate and make recommendations for new laws." 2019 N.Y. Sess. Laws, Ch. 59, Part XXX, § 1(a). Part XXX instructed the Commission to make its recommendations "in furtherance of the goals of incentivizing candidates to solicit small contributions, reducing the pressure on candidates to spend inordinate amounts of time raising large contributions for their campaigns, and encouraging qualified candidates to run for office." Id.

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

The Commission's Report to the Governor and the Legislature (hereafter, the "Report") included a series of recommendations to, among other things, establish a voluntary public campaign finance system with matching of small-dollar donations up to certain caps for candidates for state office in primary and general elections. Declaration of Michael Kuzma, ECF No. 46-5 ("Kuzma Decl.") Ex. D.

At issue here, the Commission also recommended changing the Party Qualification Requirement's vote threshold to 2 percent of the total votes cast for a party's candidate in the previous gubernatorial or presidential race, or 130,000 votes, whichever is greater. The Commission explained that it made this recommendation because, among other reasons, the "ability of a party to demonstrate bona fide interest from the electorate is paramount in ensuring the success of a public campaign finance system," and that "setting a rational threshold for party ballot access, based on a demonstration of credible levels of support from voters in this state, helps to ensure that the political parties whose candidates will draw down on public funds under the public matching program reflect the novel and distinct ideological identities of the electorate of New Yorkers who ultimately fund this public campaign finance program." Kuzma Decl. Ex. D, at 28; Compl. ¶ 106. The Commission noted its belief that raising the Party Qualification Requirement's threshold to a level that "retained a measure of proportionality" would "actually increase voter participation and voter choice, since voters will now be less confused by complicated ballots with multiple lines for parties that may not have any unique ideological

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

The Commission detailed in its Report that in seeking to arrive at a "rational" threshold, it considered New York's historical experience, as well as the party qualification criteria and nominating petition thresholds from other states. Report at 41-47. The Commission considered the frequency with which other states required parties to requalify, the number of votes required to requalify, whether qualification thresholds were made in reference to presidential and/or gubernatorial elections, whether states had public campaign finance systems, and whether states permitted fusion voting. Id. Minutes from the Commissions' meetings and statements from the individual Commissioners, included as part of the Report, reveal that a proposal of a 3 percent vote threshold for the Party Qualification Requirement was considered and rejected, that the appropriate threshold was actively debated, and that the 2 percent vote threshold was a compromise based upon the information considered and competing policy views. See, e.g., Report at 48 (Statement of Commissioner Kimberly A. Galvin), 52 (Statement of Commissioner Denora Getachew), 62-64 (Statement of Commissioner

Jay Jacobs), 67 (Statement of Commissioner John M. Nonna), 81 (Statement of Commissioner David C. Previte), and 133 (Minutes from November 25 Meeting at Westchester Community College).

As a "corollary" to the recommended changes to the Party Qualification Requirement, the Committee also recommended increasing the number of signatures required for independent nominating petitions, used by a candidate supported by independent bodies or otherwise unaffiliated with a party to access the general election ballot. Report, at 15. From 1922 to November 2020, New York experienced over a four-fold increase in the number of enrolled voters. Brehm Decl. ¶ 67. The Commission's recommendation of 45,000 signatures amounts to 0.74 percent of the voters who voted in the 2018 New York gubernatorial election and only 0.33 percent of New York's 13.55 million registered voters. Brehm Decl. Exs. A, B.

The Commission issued its Report on December 1, 2019. Because the New York State Legislature did not pass any statutes modifying or abrogating the Commission's recommendations, the recommendations putatively acquired the "full effect of law" by December 22, 2019, and the relevant amendments to the party qualification requirements took effect on January 1, 2020. In an unrelated proceeding, a group of plaintiffs challenged the Commission and its Report in New York state court. On March 12, 2020, the New York State Supreme Court ruled that the New York State Legislature improperly delegated legislative authority to the Commission, and as a result the

Commission's recommendations did not have the force of law. Compl. ¶ 48.

In response, Part ZZZ was added to the 2020-2021 Fiscal Year New York State Budget Bill, which the New York State Legislature passed, and Governor Cuomo signed into law on April 3, 2020. Compl. ¶ 72. Part ZZZ amended the New York Election Law to enact the recommendations of the Commission, including an amendment to Section 1-104(3) to modify the definition of "party" to include the new Party Qualification Requirement and an amendments to Section 6-142(1) to include the amended Petition Requirement. 2020 N.Y. Sess. Laws Ch. 58, Part ZZZ.

B.

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

The Green Party of New York was formed in 1992, and is affiliated with the Green Party of the United States, which the plaintiffs assert is the fourth-largest political party in the country. Id. ¶ 11. The Green Party

first became a recognized party in New York in 1998, but lost the status as a result of its gubernatorial candidate's performance in the 2002 election. Id. However, the Green Party regained party status in 2010 and requalified under the previous party qualification requirements in 2014 and 2018. Id. Gloria Mattera and Peter LaVenia are the co-chairs of the New York State Green Party. Id. ¶¶ 12-13.

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

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

Howie Hawkins, the Green Party's candidate in the 2020 November presidential elections has represented that the Green Party also has relied on paid petition

canvassers and that "[p]rofessional petition firms have tended to charge roughly $3 per signature," although this amount has increased recently because of COVID-19. Declaration of Howie Hawkins, ECF No. 46-3 ("Hawkins Decl.") ¶¶ 6-7. Hawkins explained that the Green Party has thought it necessary to collect as many as twice the required number of signatures for petitions, because signatures can be rejected for several reasons including the failure of the petitioner to fill out witness statements correctly, or to include certain details (such as, the signatory's congressional district). Id. ¶¶ 4, 14. Hawkins estimates that it would cost the Green Party $270,000 to gather 90,000 signature–the level that Hawkins believes to be necessary to provide an appropriate safety margin for rejected signatures. Id. ¶ 9. Hawkins acknowledged that "the best petitioners have been able to achieve an average of 10-20 signatures per hour." Id. ¶ 12. Gloria Mattera, current Co-Chair of the Green Party has stated that it is her opinion that it would be "nearly impossible for the Green Party to qualify candidates for statewide and federal office" with the new petitioning requirements. Declaration of Gloria Mattera, ECF No. 46-4 ¶ 12.

C.

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

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

II.

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

"To obtain a preliminary injunction against governmental action taken pursuant to a statute, the movant has to demonstrate (1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, and (3) public interest weighing in favor of granting the injunction," and (4) "that the balance of

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

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

A.

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

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

ballots to reduce election-and campaign-related disorder." Timmons v. Twin Cities Area New Party, 520 U.S. 351, 357-58 (1997). Because every election law "inevitably affects" individual voters' rights to vote and to associate with others for political ends, Burdick, 504 U.S. at 433, courts do not subject every election law or regulation to "strict scrutiny," nor "require that [each] regulation be narrowly tailored to advance a compelling state interest." Id.

Instead, courts evaluate challenges to state action restricting ballot access under the Anderson-Burdick framework, and vary the level of scrutiny applied depending on the burden that the state law imposes on First and Fourteenth Amendment rights. Libertarian Party of Conn., 977 F.3d at 177. See Burdick, 504 U.S. 428, 434 (1992) (quoting Anderson v. Celebrezze, 460 U.S. 780, 788 (1983)). When a challenged state election regulation imposes "severe restrictions on First and Fourteenth Amendment rights," it "must be narrowly drawn to advance a state interest of compelling importance." Burdick, 504 U.S. at 434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). However, "when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." Id. In such cases, a court "must weigh the State's justification against the burden imposed," but such review is "quite deferential" and does not require "elaborate empirical verification of the weightiness of the State's asserted justifications." Libertarian Party of Conn., 977 F.3d at 177; see also Timmons, 520 U.S. at 364.

While restrictions placed on a political party implicate the First Amendment rights of its supporters, Anderson, 460 U.S. at 786, political parties themselves "have no constitutional right to appear on a ballot." Person v. New York State Bd. of Elections, 467 F.3d 141, 144 (2d Cir. 2006) (citing Prestia v. O'Connor, 178 F.3d 86, 88-89 (2d Cir. 1999)). "Ballots serve primarily to elect candidates, not as forums for political expression," and thus parties and their supporters do not have a specific "right to use the ballot itself to send a particularized message." Timmons, 520 U.S. at 363. Accordingly, "States may condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office." Munro v. Social Workers Party, 479 U.S. 189, 193 (1986); see also Prestia, 178 F.3d at 88.

The plaintiffs have argued that, as amended, the New York Election Law's Party Qualification Requirement and Petition Requirement are unconstitutional, both facially and as applied to them. The plaintiffs argue that both the Party Qualification Requirement and the Petition Requirement impose a "severe burden" upon the rights of the Libertarian Party, the Green Party, and their supporters, and that such provisions are not sufficiently related to legitimate state interests to justify the restrictions under any level of scrutiny.

However, the burdens placed on the rights of the Libertarian Party, the Green Party, and their supporters by the Party Qualification Requirement and the Petition Requirement are not severe. Further, the

New York State Legislature enacted Sections 9 and 10 of Part ZZZ, consistent with the recommendations of the Commission, to advance valid, important regulatory interests, and such interests are of sufficient weight to warrant the limitations placed upon the plaintiffs. The Party Qualification Requirement and Petition Requirement are reasonable, nondiscriminatory policy choices to advance valid State regulatory interests, within the boundaries that the First and Fourteenth Amendments prescribe. Accordingly, the plaintiffs have failed to demonstrate that they are likely to succeed on the merits of their claims.

1.

To determine whether a challenged provision places a "severe burden" on a plaintiff's First and Fourteenth Amendment rights, courts in this Circuit are instructed to "consider the alleged burden imposed by the challenged provision in light of the state's overall election scheme." Schulz v. Williams, 44 F.3d 48, 56 (2d Cir. 1994). As the Second Circuit Court of Appeals has recently instructed, "the hallmark of a severe burden is exclusion or virtual exclusion from the ballot." Libertarian Party of Conn., 977 F.3d at 177 (quoting Libertarian Party of Kentucky v. Grimes, 835 F.3d 570, 574 (6th Cir. 2016)). Moreover, "[w]hat is ultimately important is not the absolute or relative number of signatures required but whether a reasonably diligent candidate could be expected to be able to meet the requirements and gain a place on the ballot." Id. at 177-78. The concern is to ensure that such reasonably diligent candidates retain means for seizing upon the

"availability of political opportunity." Munro, 479 U.S. at 199.

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

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

Law requires.[5] Further, the plaintiffs have not identified any authority to support the proposition that shifting the qualifications from quadrennial to biennial is itself a severe burden.

The plaintiffs attempt to distinguish the decisions by this Court and the Court of Appeals in SAM Party by arguing that as "non-fusion parties" (parties that will not cross-nominate candidates from other parties), both plaintiffs face uniquely severe burdens, that the plaintiffs in SAM Party and WFP did not. The plaintiffs point to data suggesting that such "non-fusion" parties have typically garnered fewer votes than "fusion" party candidates in New York state-wide elections, and, at oral argument, the plaintiffs suggested that "fusion" parties are "not germane" to

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[5] Unlike the SAM Party plaintiffs, the Libertarian Party and the Green Party have not seriously argued that the use of votes collected in presidential elections as a reference is a severe burden–possibly because both parties have historically run candidates in presidential elections. Nevertheless, as the Court of Appeals found in SAM Party, and all Circuit Courts of Appeal that have addressed the issue on the merits have found, the decision to consider the number of votes a political organization's candidate receives in the presidential election does not alter the constitutional analysis or impose a "severe burden." See SAM Party, 987 F.3d at 275-76; Libertarian Party of Ky. v. Grimes, 835 F.3d 570, 575 (6th Cir. 2016); Green Party of Ark. v. Martin 649 F.3d 675, 683-84 (8th Cir. 2011); Aruntunoff v. Okla. State Election Bd., 687 F.2d 1375, 1379 (10th Cir. 1982). Further, the Green Party's challenge to the Party Qualification Requirement's quantum of required votes is especially unpersuasive because the Green Party's presidential candidate received only 32,753 votes (0.38 percent) in the November 2020 election, which means that the Green Party would have failed to requalify even under the previous 50,000 vote threshold. Brehm Decl. ¶ 21.

the analysis of the burden the amended Party Qualification Requirement places on minor parties. Tr. at 17. That argument is unpersuasive.

As a preliminary note, this distinction is mistaken, because the SAM Party did nominate its own candidates, including its own gubernatorial ticket of Stephanie Miner and Michael Volpe, in the gubernatorial 2018 election. SAM Party, 987 F.3d at 272.[6] Further, the New York Election Law does not draw a distinction between "fusion" or "non-fusion" parties, nor require a party that has previously chosen to cross-nominate candidates to continue to do so. Historical data suggest that on several occasions "non-fusion" parties have received 2 percent of the total votes, including the Independence Party that received votes exceeding the current threshold in back-to-back races in 1996 and 1998. Brehm Decl. Ex. A. Such historical evidence belies the plaintiffs' suggestion that the Party Qualification Requirement would result in "virtual exclusion" from the ballot for non-fusion parties.

Moreover, the independent nominating petition is a viable means for candidates to obtain ballot access and the recently-enacted Petition Requirement has not foreclosed that avenue of ballot access. It is uncontested that other courts have upheld required levels of demonstrated support in other cases well above the number of signatures required by the

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

Petition Requirement–1 percent of the number of votes cast in the last gubernatorial election (up to 45,000 votes).

In Jenness v. Fortson, the Supreme Court upheld a Georgia election law that required a political organization's candidate to receive 20 percent or more of the votes in the most recent gubernatorial or presidential election to be a recognized "political party," and required all other political organizations to secure the signatures of 5 percent of the voters in the state to place their candidates on the ballot. 403 U.S. 431, 434, 439-440 (1971). In Prestia v. O'Connor, the Second Circuit Court of Appeals interpreted Jenness and its progeny to establish that "a requirement that ballot access petitions be signed by at least 5 [percent] of the relevant voter pool is generally valid, despite any burden on voter choice that results when such a petition is unable to meet the requirement." 178 F.3d at 88. See also Rainbow Coal. of Okla. v. Okla. State Election Bd., 844 F.2d 740, 743 (10th Cir. 1988) (relying on Jenness and stating that a requirement for minor parties to obtain a number of voter signatures equal to 5 percent of the votes cast in the last presidential or gubernatorial election is "undeniably constitutional").

Moreover, the Court of Appeals in SAM Party already considered the "combined effect of New York's ballot-access restrictions," including the potential for smaller political organizations in New York to "compete as an independent body," and found that independent nominating petitions remain an available, "alternative means for political organizations to complete in

elections." 987 F.3d at 275-76. The Court of Appeals concluded that, because "[t]he signature requirements set by the State of New York are significantly lower than [those at issue in Jenness], and a reasonably diligent organization could be expected to satisfy New York's signature requirement," the Petition Requirement does not impose a "severe burden." Id.; see also LaRouche v. Kezer, 990 F.2d 36, 40 (2d Cir. 1993) (concluding that facially a primary ballot petition requirement of "signatures from only one percent of the party's registered voters . . . is not a severe burden and has even been characterized as lenient in similar contexts").[7] Indeed, it appears undisputed that various other states have both higher overall required number of signatures per petition and number of signatures required as a percentage of the eligible signatories. Hallak Decl. Exs. B, C.

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

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

The plaintiffs have failed to sustain their burden of demonstrating a likelihood of success on the merits. The plaintiffs' argument that the Supreme Court in Jenness, the Court of Appeals in Prestia, and other courts have failed to consider the timing within which signatures must be gathered is unpersuasive. Litigants have previously raised the argument that a "signature-per-day" requirement is too onerous without success. For example, in American Party of Texas v. White, 415 U.S. 767 (1974), the plaintiffs sought to challenge a Texas law requiring nominating petitions to contain signatures obtained over a 55-day period from 1 percent of the voters in the last gubernatorial election. Rejecting the challenge, the Supreme Court noted that the threshold could be met with 100 canvassers collecting an average of 4 signatures a day and that it was "unimpressed" with the plaintiffs' argument because "[h]ard work and sacrifice by dedicated volunteers are the lifeblood of any political organization." Id. at 787.[8] Similarly, in Storer v. Brown, 415 U.S. 724, 740 (1974), the Supreme Court considered the constitutionality of a California requirement that candidates for President and Vice President "gather[] 325,000 signatures in 24 days," equivalent to 5 percent of the votes cast the prior general election. The election law also required that signatures must come from voters who had not previously voted in a primary–thus further shrinking

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

the pool of available voters. Although the Court remanded the case for a determination of whether the law posed a "severe burden" as applied, the Court rejected the facial challenge noting "[s]tanding alone, gathering 325,000 signatures in 24 days would not appear to be an impossible burden." Id. The Storer court noted that although the law required gathering signatures at a rate of 13,542 per day, such a threshold could be accomplished "with 1,000 canvassers" gathering 14 signatures per day which "would not appear to require an impractical undertaking for one who desires to be a candidate for President." Id.[9]

The plaintiffs have failed to establish that the level at which the New York State Legislature has set the petition requirement is beyond the capabilities of a "reasonably diligent candidate" or party. Gathering 45,000 signatures (a level set at 0.33 percent of the total registered voters in the state) in 42 days would require a candidate to gather 1,071 signatures per day, a figure representing approximately 0.008 percent of the state's population of registered voters. If, as the

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

Supreme Court assumed in Storer, a reasonably diligent candidate could rely on canvassers gathering signatures at a rate of 14 per day, over 42 days, this could be accomplished with 77 canvassers. Or, put differently, 1,000 canvassers, gathering 14 signatures a day (as in Storer) could gather the requisite number of signatures in 4 days. See LaRouche, 990 F.2d at 40-41 (Connecticut party primary ballot petitioning requirement that a candidate must obtain 1 percent of the party's registered voters in a 14 day period is constitutional).

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

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

sacrifice "are the lifeblood of any political organization." White, 415 U.S. at 787. Such potential need for more volunteers or incurred costs–particularly at the levels that the plaintiffs estimate–"do not constitute exclusion or virtual exclusion from the ballot." Grimes, 835 F.3d at 575.[10]

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

Finally, New York's historic experience of having comparatively many smaller parties and candidates nominated by independent bodies on the ballot stands in contrast to the experience of Michigan, and thus the plaintiffs' reliance on Graveline v. Benson, 992 F.3d 524, 539 (6th Cir. 2021) is misplaced. In Graveline, the Sixth Circuit Court of Appeals noted that after the relevant Michigan law's "implementation in 1988, no independent candidate for statewide office has managed to complete a qualifying petition," despite the fact that "since 1997, at least thirty candidates have formed the required committees to begin collecting signatures to qualify for the ballot as an independent candidate for statewide office." Id. at 539. In this case, New York does not have an election system that has proven to be so starkly inhospitable to independent and minor party candidates

Thus, considering the Party Qualification Requirement and the Petition Requirement together–as this Court and the Court of Appeals did in SAM Party, the plaintiffs have failed to demonstrate that either – standing alone or taken together – amounts to a "severe burden" requiring the application of strict scrutiny.[11]

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over a similar period. See Brehm Decl. ¶ 69. And under the current Party Qualification Requirement, the WFP and the Conservative Party continue to qualify as parties. Further, if the current Party Qualification Requirement threshold had applied to prior elections, several minor candidates historically would have achieved the required number of votes to have their parties recertified, such as the Ralph Nader for the Green Party in the 2000 presidential election, Howie Hawkins for the Green Party in the 2014 gubernatorial election, or the Independence Party's candidates for President and Governor in 1996 and 1998. Brehm Decl. Ex. A.

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

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Because neither the Party Qualification Requirement nor the Petition Requirement places "severe" burdens on the First and Fourteenth Amendment rights of the plaintiffs, New York's asserted regulatory interests "need only be sufficiently weighty to justify the limitation imposed on the [plaintiffs'] rights." Timmons, 520 U.S. at 364; see also Burdick, 504 U.S. at 434. New York has offered several important, non-discriminatory regulatory interests to justify both the Party Qualification Requirement and the Petition Requirement.

First, the amended Party Qualification Requirement helps to ensure that candidates appearing on the ballots enjoy a "modicum" of support, thereby assisting in maintaining an organized, uncluttered ballot; preventing voter confusion and frustration; avoiding fraudulent and frivolous candidacies; and assisting the maintenance of an efficient public finance system. See Brehm Decl. ¶¶ 38-50 (discussing ballot

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appeared to concede that they are only challenging the provision "as an as-applied in combination challenge" and that the case "is certainly not . . . pled" to demonstrate that section 6-140(1)(b) is independently unconstitutional. Tr. at 15-16.

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

complexity and voter confusion), ¶¶ 51-54 (discussing how the amended party qualifications help to ensure public campaign funding does not support frivolous intra-party primary campaigns); ¶¶ 55-58 (discussing administrative costs associated with regulating parties and administering party primaries); Hallak Decl. Ex. D ¶¶ 33-39 (discussing ballot overcrowding and risk of voter confusion); see also Munro, 479 U.S. at 193-94 (affirming the validity of states' interest in avoiding frivolous candidates and ensuring candidates on ballots enjoy a "modicum" of support); Storer, 415 U.S. at 732 (affirming the validity of states' interest in preventing overcrowded ballots and voter confusion); Green Party of Conn. v. Garfield, 616 F.3d 213, 232 (2d Cir. 2010) (affirming the validity of a state's interest in not funding "hopeless" candidates through a public campaign funding system). The Commission believed "setting a rational threshold for party ballot access, based on a demonstration of credible levels of support from voters in this state, helps to ensure that the political parties whose candidates will draw down on public funds under the public matching program reflect the novel and distinct ideological identities of the electorate of New Yorkers who ultimately fund this public campaign finance system." Report, at 14-15. Similarly, in furtherance of those objectives, the Commission found the Petition Requirement to be an important "corollary" to the amended Party Qualification Requirement. Id. The Commission's Report makes clear that its recommendations, which the New York State Legislature enacted, were in furtherance of these valid interests, and that the Commission sought to tailor its recommendations in reasonable, nondiscriminatory furtherance of those

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

As this Court and the Court of Appeals concluded in SAM Party, the Party Qualification Requirement is well within the election law requirements upheld in other cases and furthers the reasonable goals of avoiding overcrowded ballots and voter confusion and ensuring that candidates who appear on the ballot enjoy a "modicum of support." SAM Party, 987 F.3d at 277; SAM Party, 483 F. Supp. 3d at 249; see also Jenness, 403 U.S. at 440-41 (upholding a Georgia statute that required organizations have candidates receive 20 percent of the votes in a specified election to qualify for party access, and 5 percent for ballot access); Green Party of Ark. v. Martin, 649 F.3d 675, 683 (8th Cir. 2011) (upholding a requirement for a political party to obtain 3 percent of the vote in the next general election); McGlaughlin v. N.C. Bd. Of Elections, 65 F.3d 1215, 1222 (4th Cir. 1995) (upholding North Carolina election laws requiring a petition containing signatures of 2 percent of votes cast in the past gubernatorial election for a party to gain access to ballot and requiring party's candidate for president or governor to receive 10 percent of votes in the general election for the party to remain on the ballot); Rainbow Coalition, 844 F.2d at 744 (upholding

a requirement of 5 percent of the votes cast in the last general election to become a party and concluding that "the five percent requirement itself is undeniably constitutional"); Aruntunoff v. Okla. State Election Board, 687 F.2d 1375, 1378-80 (10th Cir. 1982) (upholding an Oklahoma law requiring that a party receive 10 percent of the vote in the last gubernatorial or presidential election to maintain its party status).

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

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

Second, with respect to the Petition Requirement, the same valid interests–ensuring a sufficient modicum of public support, reducing voter confusion and ballot overcrowding, and protecting against the public financing of frivolous candidates–support the policy decisions made by the New York State Legislature. New York has demonstrated that the comparatively low signature requirement has resulted, since 1994, in no fewer than 5 and up to 10 candidates for governor in each gubernatorial election, many from quixotic, one-time nominating bodies without lasting support. Report, at 64-65.[13] For example, between 1998 and 2020, 15 independent bodies obtained a berthing for their gubernatorial candidates through nominating petitions, including the "Rent Is Too Damn High Party" and the "Stop Common Core Party." Brehm Decl. ¶ 69. Therefore, the Commission recommended the increased Petition Requirement as a "corollary" to the increased

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It was reasonable for the New York State Legislature and the Commission to have been concerned that a public campaign finance system may modify behavior, making running for office more attractive, at some expense to the public campaign finance system. Munro, 479 U.S. at 195-96 ("Legislatures . . . should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights"); see also SAM Party, 987 F.3d at 277 (noting that "even if the State has installed other measures aimed at preventing nonviable candidacies from receiving public funds, it may pursue multiple avenues towards that goal").

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

Party Qualification Requirement. Report, at 15. As with the Party Qualification Requirement, the increase in the level of required, demonstrated support was, in part, to account for a significant increase in the number of eligible voters. Brehm Decl. ¶¶ 66-67. The plaintiffs have failed to demonstrate that New York's decision to raise the number of required signatures was discriminatory, or failed to further a sufficiently weighty legitimate interest. As with the Party Qualification Requirement, the New York Legislature was permitted to act preemptively and was not required to "prove actual voter confusion, ballot overcrowding, or the presence of frivolous candidates as a predicate to the imposition of reasonable ballot access restrictions" or "sustain some level of damage before the legislature [can] take corrective action." Munro, 479 U.S. at 195. Under the less searching scrutiny that non-severe ballot-access restrictions receive, New York's chosen Petition Requirement need not be the best way to avoid ballot overcrowding--it need only be a reasonable way to avoid ballot overcrowding. See De La Fuente v. State, 278 F. Supp. 3d 1146, 1156 (C.D. Cal. 2017), aff'd sub nom. De La Fuente v. Padilla, 930 F.3d 1101 (9th Cir. 2019). Raising the number of signatures required is a reasonable, direct, and narrowly-tailored method for assuring that a candidate enjoys sufficient public support before allowing such candidate to appear on the ballot.

The plaintiffs have failed to cite any persuasive legal authority to demonstrate that it is impermissible for New York to set the necessary "modicum" of demonstrated support at 0.33 percent of the State's registered voters.

Although political parties must be given the opportunity to develop channels for seizing political opportunity, "[b]allots serve primarily to elect candidates, not as forums for political expression." Timmons, 520 U.S. at 363. The fact that the Libertarian Party and the Green Party may need to increase the number of volunteers they have previously used or hire additional paid canvassers does not establish that the burdens are outweighed by New York's regulatory interests. Cf. Munro, 479 U.S. at 198 ("States are not burdened with a constitutional imperative to reduce voter apathy or to handicap an unpopular candidate to increase the likelihood that the candidate will gain access to the general election ballot."). Both the Party Qualification Requirement and Petition Requirement ultimately enacted are not so burdensome that they outweigh New York's valid regulatory interests.

To the extent the plaintiffs seek to argue the Petition Requirement has become more burdensome or severe as result of COVID-19, that proposition is too speculative to provide the basis for a preliminary injunction. For the 2020 election, pursuant to Executive Order 202.46, the signature requirements for independent nominations were reduced for all offices. Brehm Decl. ¶ 72. The petition collection period for the 2022 election would begin in May of 2022, and the plaintiffs' concerns about COVID-19's potential implications for the 2022 signature collection process are too conjectural or hypothetical to provide the basis for relief.

Because the plaintiffs have failed to demonstrate the likelihood of success on the merits of their claims that the New York Election Law provisions at issue are unconstitutional as applied to them, the plaintiffs have failed to make the much higher showing required to demonstrate a likelihood of success on the merits of their facial challenge. Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449 (2008) (upholding an election law restriction and noting "a plaintiff can only succeed in a facial challenge by "establishing that no set of circumstances exists under which the Act would be valid, i.e., that the law is unconstitutional in all of its applications").

B.

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

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

C.

When considering whether the preliminary injunction is warranted, federal courts must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief, as well as the public consequences in employing the extraordinary remedy of injunction." Yang v. Kosinski, 960 F.3d 119, 135-36 (2d Cir. 2020) (quoting Winter, 555 U.S. at 24). While the challenged provisions may result in practical difficulties for both sets of plaintiffs, and "while some voters would surely like to see the [the Libertarian Party and Green Party] automatically included on their ballot in the next cycle, the interest of those voters does not outweigh the broader public interest in administrable elections, ensuring that parties enjoy a modicum of electoral support, and the conservation of taxpayer dollars." SAM Party, 987 F.3d at 278. Further, the plaintiffs have failed to explain why the Libertarian Party and the Green Party deserve to be treated differently from the SAM Party and Independence Party–both formerly recognized parties that failed to satisfy the Party Qualification Requirement, and thus were decertified. Based on these considerations, the balance of equities and the public interest do not favor a preliminary injunction.

CONCLUSION

The Court has considered all of the arguments raised by the parties. To the extent not specifically addressed, the arguments are either moot or without merit. The plaintiffs' motion for preliminary injunction

is **denied.** The Clerk is directed to close docket numbers 46, 50, and 62.

SO ORDERED.

Dated: New York, New York
May 13, 2021

/s/ John G. Koeltl
John G. Koeltl
United States District Judge

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2020
(Argued: December 15, 2020
Decided: February 10, 2021)

Docket No. 20-3047-cv

[Filed February 10, 2021]

SAM PARTY OF NEW YORK, MICHAEL J. VOLPE,
Plaintiffs-Appellants,

v.

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

ANDREW CUOMO, as the Governor of the State of New York, ANDREA STEWART-COUSINS, as

the Temporary President and Majority Leader of the New York State Senate, JOHN J. FLANAGAN, as the Minority Leader of the New York State Senate, CARL E. HEASTIE, as the Speaker of the New York State Assembly, BRIAN M. KOLB, as the Minority Leader of the New York State Assembly, *Defendants*.	)

Before:

SACK, PARK, and MENASHI, *Circuit Judges*.

The State of New York enacted new party-qualification requirements in the spring of 2020. Political organizations must now earn the greater of 130,000 votes or 2% of the vote in elections for President and for Governor to achieve party status and the automatic place on the ballot it confers. Appellants SAM Party of New York and its chairman Michael J. Volpe appeal an order of the United States District Court for the Southern District of New York (Koeltl, *J.*) denying their motion for a preliminary injunction against the party-qualification requirements. We hold that Appellants are not likely to succeed on the merits of their First Amendment claim because the burden imposed by the presidential-election requirement is (1) not severe and (2) justified by the State's interest in uncluttered ballots, effective electoral competition, and the preservation of resources dedicated to public financing of elections. **AFFIRMED**.

ERIC A. STONE (Kannon K. Shanmugam, Robert A. Atkins, Brette

Tannenbaum, *on the brief*), Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York *for Plaintiffs-Appellants*.

ELLIOT A. HALLAK (Daniel R. LeCours, Thomas J. Garry, Kyle D. Gooch, *on the brief*), Harris Beach PLLC, Albany, New York *for Defendants-Appellees*.

PARK, *Circuit Judge*:

New York recently amended its election laws to condition status as a "political party" on an organization's performance in presidential elections. The SAM Party of New York ("SAM Party") is a political organization that, for a mix of ideological and practical reasons, chose not to participate in the 2020 presidential election. It argues that the new presidential-election requirement violates its members' First and Fourteenth Amendment rights. But unless the burden on such rights is severe or unjustified, "States may condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office." *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986). New York law provides reasonable avenues for ballot access to organizations that do not participate in the presidential election. The presidential-election requirement can also be justified by the State's interest in decluttering its ballots, preventing voter confusion, and preserving the public fisc. The district court appropriately denied the SAM Party's motion for a preliminary injunction, and we affirm.

I. BACKGROUND

A. April 2020 Electoral Reforms

New York law distinguishes between political parties and independent bodies. *Compare* N.Y. Elec. Law § 1-104(3), *with id.* § 1-104(12). Parties, which have more popular support, enjoy certain privileges but are subject to structural and filing requirements. One of the principal privileges of party status is a designated ballot line or "berth." *Id.* § 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).

For 85 years, New York conferred party status on a political organization if it won at least 50,000 votes in the quadrennial gubernatorial election. As the number of voters in New York increased, this threshold became relatively low, as did the number of signatures required on an independent body's nominating petition. Apparently as a result, the State has seen its share of colorful-if-quixotic runs for office. *See, e.g.*, William F. Buckley, Jr., *The Unmaking of a Mayor* (1966); Rent is Too Damn High Party, http://www.rentistoodamn high.org (last visited Feb. 8, 2021). Eight organizations

met the party-status threshold in the 2018 gubernatorial election.

The State amended its party-qualification requirements in April 2020. It raised the threshold from 50,000 votes to the greater of 130,000 votes or 2% of the total vote. *See* N.Y. Elec. Law § 1-104(3). And instead of requalifying every four years, political organizations must now requalify by meeting the higher threshold in the gubernatorial *and* presidential elections, one of which occurs every two years. *Id.* The New York State Campaign Finance Review Commission proposed these changes as part of a larger package of reforms that includes public financing for qualifying candidates in state races. The New York State Legislature passed and Governor Andrew Cuomo signed the package into law as part of the budget for fiscal year 2021. *See* 2020 N.Y. Laws Ch. 58 (S. 7508-B). Public financing is scheduled to begin after the 2022 general election. *Id.* pt. ZZZ, § 12.

B. The SAM Party's Challenge

The SAM Party describes itself as a "new kind of candidate-focused, process-driven political party, rather than one predicated on shared substantive policy positions or ideologies." App'x at 457 (Decl. of Michael J. Volpe in Supp. of Pls.' Mot. for Prelim. Inj. (May 18, 2020), ¶ 2). SAM stands for Serve America Movement, and the SAM Party subjects candidates for village, town, county, regional, and statewide office to a scorecard based on the four "pillars" of "transparency, accountability, electoral reform, and problem solving." *Id.* at 459 (¶ 8). Although the SAM Party has nominated several of its own candidates for office, most

of its candidates are shared with another political party. New York has a "fusion voting" system, by which 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. *See* N.Y. Elec. Law § 7-104.

SAM became a political party in 2018 when it ran a gubernatorial ticket of Stephanie Miner, the former mayor of Syracuse, a Democrat, and Michael J. Volpe, the former mayor of Pelham, a Republican. Because it was then just an independent body, to get Miner and Volpe on the ballot, the SAM Party was required to obtain signatures from 15,000 New York voters, including at least 100 from each of one-half of the State's congressional districts. *See id.* § 6-142 (2018). The Miner-Volpe ticket earned 55,441 votes, just exceeding the party-status qualification threshold then in place. In the three years since becoming a political party, the SAM Party has nominated dozens of successful candidates. In the most recent election cycle, the SAM Party endorsed nineteen successful candidates—from village trustee to the House of Representatives—all of whom appeared on its ballot line and were also nominated by either the Republican or Democratic Party.[1]

The new requirements jeopardize the SAM Party's status as a political party. It wishes to "avoid getting

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[1] *See* Press Release, *SAM Party of New York Gives Voters a Choice in 2020 Elections*, SAM Party of NY (Dec. 11, 2020), http://joinsamny.org/uncategorized/sam-party-of-new-york-gives-voters-a-choice-in-2020-elections.

prematurely embroiled in, or associated with, one side or the other of the ideological divide," fearing that taking positions on substantive issues or entering high-profile contests would detract from its process-driven mission and message. App'x at 461 (Volpe Decl. ¶ 13). The SAM Party is thus "very careful" about the races it chooses to enter. App'x at 556 (Decl. of Scott W. Muller in Supp. of Pls.' Mot. for Prelim. Inj. (May 18, 2020), ¶ 15).

When New York adopted the presidential-election requirement in the spring of 2020, the SAM Party chose not to contest the race for President and filed this lawsuit instead. The SAM Party decided not to cross-nominate Donald Trump or Joseph Biden because doing so would be "brand suicide," tagging itself "forever" with a set of positions on hot-button issues it has to this point eschewed. Appellants' Br. at 24. It also determined that running its own candidate for President would be futile because the SAM Party is organized as an official party only in New York. Indeed, the only two minor parties to retain party status after the November 2020 presidential election are the Conservative Party and the Working Families Party, each of which cross-nominated one of the two major candidates.[2]

The SAM Party challenges New York's new presidential-election party-qualification requirement, alleging that it unconstitutionally burdens the

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[2] *See* N.Y. Bd. of Elections, Certified Results for the 11/3/2020 General Election (Dec. 3, 2020), http://www.elections.ny.gov/2020ElectionResults.html.

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.

The SAM Party moved for a preliminary injunction to enjoin the State from stripping it of party status in the wake of the 2020 presidential election. The United States District Court for the Southern District of New York (Koeltl, *J.*) entered an opinion and order denying the motion. The district court concluded that the SAM Party had "failed to demonstrate that allowing the amended party qualification requirements to take effect would violate their Constitutional rights, otherwise cause irreparable harm to the plaintiffs, or be against the public interest." *SAM Party v. Kosinski*, --- F. Supp. 3d ---, No. 20-cv-323, 2020 WL 5359640, at *2 (S.D.N.Y. Sept. 1, 2020). The SAM Party and Volpe now appeal from that order. *See* 28 U.S.C. §§ 1292(a)(1), 1331, 1343.

II. DISCUSSION

To obtain a preliminary injunction against government enforcement of a statute, the SAM Party must establish (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm if the injunction is not granted, (3) that the balance of the equities tips in its favor, and (4) that the injunction serves the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "We review a district court's decision to deny a preliminary injunction for abuse of discretion." *Libertarian Party of Conn. v. Lamont*, 977 F.3d 173, 176 (2d Cir. 2020). "A district court abuses its discretion when it rests its

decision on a clearly erroneous finding of fact or makes an error of law." *Id.* (quoting *Almontaser v. N.Y.C. Dep't of Educ.*, 519 F.3d 505, 508 (2d Cir. 2008)).

A. Likelihood of Success on the Merits

The U.S. Constitution grants States "broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives,' Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (quoting *Clingman v. Beaver*, 544 U.S. 581, 586 (2005)). "The First Amendment protects the right of citizens to associate and to form political parties for the advancement of common political goals and ideas." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357 (1997). Courts have recognized that the exercise of this right to associate and to form political parties depends on an effective—and effectively democratic—electoral process. "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Id.* at 358; *accord Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Courts have thus eschewed strict scrutiny in challenges to party-qualification requirements. "[T]o 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. Accordingly, the mere fact that a State's system creates barriers tending to limit the field of candidates from which voters might choose does not of

itself compel close scrutiny." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (cleaned up).

Instead of strict scrutiny, courts apply what has come to be known as the *Anderson–Burdick* framework. "Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Id.* at 434. First, if the restrictions on those rights are "severe," then strict scrutiny applies. *Id.* "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." *Id.* (quoting *Anderson*, 460 U.S. at 788).

This latter, lesser scrutiny is not "pure rational basis review." *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 108 (2d Cir. 2008). 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.'" *Id.* at 108–09 (quoting *Burdick*, 504 U.S. at 434). Review under this balancing test is "quite deferential," and no "elaborate, empirical verification" is required. *Id.* at 109 (quoting *Timmons*, 520 U.S. at 364).

1. *Severity of the Burden*

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. *See, e.g.*, *Cal. Democratic Party v. Jones*, 530 U.S. 567, 581–82, 586 (2000); *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 229–31 (1989); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 215–16 (1986). Second are regulations restricting the "core associational activities" of the party or its members. *Timmons*, 520 U.S. at 360. *See, e.g.*, *Eu*, 489 U.S. at 223.[3] Third are regulations that "make it virtually impossible" for minor parties to qualify for the ballot. *Williams v. Rhodes*, 393 U.S. 23, 25 (1968). *See, e.g.*, *Norman v. Reed*, 502 U.S. 279, 289 (1992); *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185–86 (1979); *Green Party of N.Y. State v. N.Y. State Bd. of Elections*, 389 F.3d 411, 420 (2d Cir. 2004). The SAM Party likens the presidential-election requirement's burden to these latter two types.

We disagree. First, the presidential-election requirement does not severely burden the SAM Party's core associational activities. The SAM Party argues that the presidential-election requirement compels it to speak on the hot-button issues at stake in a presidential election. But we are not persuaded. 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

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[3] Direct regulation of "core political speech" arguably falls into this category. *Lerman v. Bd. of Elections*, 232 F.3d 135, 146 (2d Cir. 2000). Such restrictions are *per se* severe, so courts effectively bypass the *Anderson–Burdick* framework. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 344–45 (1995); *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 207–08 (1999) (Thomas, *J.*, concurring in the judgment).

particular way." *Person v. N.Y. State Bd. of Elections*, 467 F.3d 141, 144 (2d Cir. 2006) (upholding the challenge of a candidate for Attorney General to the gubernatorial-election requirement). That is because parties remain "free to choose not to seek official status." *Id.* An independent body may still operate in the political arena and run candidates. Indeed, this is how the SAM Party made its way onto the ballot three years ago. We thus reject the claim that the presidential-election requirement compels speech.

The SAM Party's second theory—that the presidential-election requirement is a "severe" impediment to the development of minor parties like itself—also fails. As we have recently explained, "the hallmark of a severe burden is exclusion or virtual exclusion from the ballot." *Libertarian Party of Conn.*, 977 F.3d at 177 (quoting *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016) (alterations omitted)). To gauge whether minor parties have been so burdened, we look at the "combined effect of [New York's] ballot-access restrictions." *Libertarian Party of Ky.*, 835 F.3d at 575 (internal quotation marks omitted).

As an initial matter, the presidential-election requirement does not "virtually exclude" minor parties from the ballot. New York's 2% threshold is in the middle of the pack among the three-dozen states that require parties to obtain a certain level of support in a statewide race. Several federal courts of appeals have approved of thresholds as high and higher. *See, e.g.*, *id.* (upholding 2% presidential-election requirement); *Green Party of Ark. v. Martin*, 649 F.3d 675, 682–83

(8th Cir. 2011) (upholding 3% presidential-election requirement); *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1222–23 (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 Cir. 1982) (same). In fact, two minor parties—the Conservative Party and the Working Families Party—easily cleared the presidential threshold during the most recent cycle.

There is also no "severe burden" because the SAM Party could compete as an independent body. Under the current signature thresholds (which were also amended in April 2020), an independent body can place a candidate on the ballot for a statewide race by collecting 45,000 signatures, a number that will never exceed 1% of the off-year electorate. *See* N.Y. Elec. Law §§ 6-138, 6-142(1). And in the county and State Assembly offices in which the SAM Party has participated, the number is 1,500 signatures or 5% of the off-year electorate, whichever is less. *Id.* § 6-142(2)(a), (g). These requirements pale in comparison to the ones the Supreme Court upheld in *Jenness v. Fortson*, 403 U.S. 431 (1971). In *Jenness*, political organizations receiving less than 20% of the vote in the most recent gubernatorial or presidential election—*i.e.*, all minor parties—would need to amass signatures representing 5% of the electorate to place a candidate for statewide office on the ballot. *Id.* at 433–34. While a 15% signature requirement imposes a severe burden, *see Williams v. Rhodes*, 393 U.S. 23, 25 (1968), a requirement as high as 5% "in no way freezes the status quo" and thus does not "abridge[] the rights of free speech and association secured by the First and

Fourteenth Amendments." *Jenness*, 403 U.S. at 439–40; *see also Libertarian Party of Ill. v. Rednour*, 108 F.3d 768, 775 (7th Cir. 1997); *Rainbow Coal. of Okla. v. Okla. State Election Bd.*, 844 F.2d 740, 741–44 (10th Cir. 1988). The signature requirements set by the State of New York are significantly lower than these, and "a reasonably diligent [organization] could be expected to satisfy [New York's] signature requirement." *Libertarian Party of Conn.*, 977 F.3d at 179.[4]

In short, the presidential-election requirement does not impose a severe burden on the SAM Party. It does not compel speech, and New York law provides alternative means for political organizations to compete in elections.

2. *Weighing the State's Interests*

We agree with the district court that the SAM Party is not likely to show that the State's interests fail to justify the presidential-election requirement. The balancing test at the second stage of the *Anderson–Burdick* framework is "quite deferential." *Price*, 540 F.3d at 109. "[A] State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons*,

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[4] The SAM Party also argues that having to compete as an independent body imposes a burden that is particularly significant for its chosen strategy of lending an "imprimatur" to candidates nominated by other parties. But the Constitution does not require any state to "compromise the policy choices embodied in its ballot-access requirements to accommodate [a political organization's] strategy." *Timmons*, 520 U.S. at 365.

520 U.S. at 358 (cleaned up). Otherwise, we would "hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes." *Clingman*, 544 U.S. at 593.

The State contends that the presidential-election requirement is a justifiable means of gauging whether a party continues to enjoy a sufficient "modicum" of support deserving automatic ballot access. "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." *Jenness*, 403 U.S. at 442. And this interest is more than a matter of uncluttered ballot layout or simplified election administration. In enacting regulations that limit the number of candidates on the ballot, "the State understandably and properly seeks to . . . assure that the winner is the choice of a majority, or at least a strong plurality, of those voting." *Bullock v. Carter*, 405 U.S. 134, 145 (1972).

The State has a second reason for its new party-status threshold: its interest in conserving limited resources devoted to public financing of state elections. Following the 2022 general election, New York will match funds raised by candidates. According to the State, more minor political parties will mean more public dollars spent on unpopular candidacies. That is in part because matching funds are used in primary elections and only political parties have primary

elections, and it is in part because only those candidates appearing on the ballot will be eligible. *See* N.Y. Elec. Law § 14-203 (effective Nov. 9, 2022). 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." *Buckley v. Valeo*, 424 U.S. 1, 96 (1976) (citation omitted).

The SAM Party does not dispute the legitimacy of these interests. It argues instead that the presidential-election threshold will not meaningfully further those interests. According to the SAM Party, "[t]he presidential-election requirement is too blunt an instrument to gauge whether an organization has that bare modicum of support among the New York electorate." Appellants' Br. at 34. But "popular vote totals in the last election are a proper measure of public support." *Green Party of Conn. v. Garfield*, 616 F.3d 213, 231 (2d Cir. 2010) (quoting *Buckley*, 424 U.S. at 99–100). Parties run individual candidates and not lists as in some countries, so it is reasonable to gauge a party's support by its candidate's performance in the top-of-the-ticket race. The SAM Party also contends that the increased qualification thresholds for gubernatorial elections suffice to vindicate the State's interest in ensuring that official parties enjoy adequate popular support, making the presidential-election requirement unnecessary. But the State may seek to measure popular support in a more timely fashion, and the presidential election is the only statewide race that always occurs off-cycle from the State's gubernatorial election.

The SAM Party also relies on reports from the Brennan Center for Justice and the Campaign Finance Institute to argue that the spending caps and other eligibility requirements built into the fund-matching formulas will cause public spending on minor parties to be insubstantial. But we do not require "elaborate, empirical verification" of the State's justifications. *Timmons*, 520 U.S. at 364. Moreover, even if the State has installed other measures aimed at preventing nonviable candidacies from receiving public funds, it may pursue multiple avenues towards that goal.

The State has set forth a coherent account of why the presidential-election requirement will help to guard against disorder and waste. Under the "quite deferential" review at this step, *Price*, 540 F.3d at 109, that is enough to justify the burden the requirement imposes on the SAM Party's members. We thus conclude that the SAM Party is not likely to succeed on the merits of its claim.

B. Irreparable Harm

Without an injunction, the SAM Party will lose its status as a political party after failing to meet the vote threshold in the 2020 presidential election. The SAM Party argues that this will harm its members' First Amendment associational and speech rights. The presence of irreparable injury to First Amendment rights, however, "turns on whether the plaintiff has shown a clear likelihood of success on the merits," which SAM has failed to do. *Beal v. Stern*, 184 F.3d 117, 123–24 (2d Cir. 1999); *see also Bronx Household of Faith v. Bd. of Educ.*, 331 F.3d 342, 349–50 (2d Cir. 2003) (holding that the presumption of irreparable

harm applies only when the challenged law "directly limits speech" and not, as here, where the law "may only potentially affect speech"). Thus, the SAM Party has not met its burden of demonstrating that it will be irreparably harmed without an injunction.

C. Public Interest

In a suit against the government, balancing of the equities merges into our consideration of the public interest. *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58–59 (2d Cir. 2020). As explained above, the presidential-election requirement serves important regulatory interests. Certainly, "securing First Amendment rights is in the public interest," *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013), but that is of no help to a plaintiff like the SAM Party that is not likely to succeed on its First Amendment claim. Moreover, while some voters would surely like to see the SAM Party automatically included on their ballot in the next cycle, the interest of those voters does not outweigh the broader public interest in administrable elections, ensuring that parties enjoy a modicum of electoral support, and the conservation of taxpayer dollars.

III. CONCLUSION

For the reasons set forth above, the district court's judgment is affirmed.

APPENDIX G

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

and

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

See Fold-Out Exhibit

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 *Graveline*)
4	**Oklahoma**	Party petition with 3% of gubernatorial or presidential vote (46,821 for 2020)		Okla. Stat. Ann. tit. 26, §§ 1-108, 1-109	1 year	128.3
5	**Kansas**	Party petition with 2% of gubernatorial vote (21,112 from 2018)		Kan. Stat. Ann. §§ 25-302a, 25-3602	180 days	117.3
6	**Arkansas**	Party petition with 3% of gubernatorial vote (26,746 from 2018) (statute) or 10,000 voters (8th Cir.)		Ark. Code Ann. § 7-7-205; *Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390, 405 (8th Cir. 2020)	90 days	297.2 (statute) / 111.1 (8th Cir.)
7	**Virginia**	Candidate petition with 10,000 voters		Va. Code Ann. §§ 24.2-506, 24.2-507	January 1 to second Tuesday in June. (158 days for 2021.)	63.3
8	**Louisiana**	Candidate petition with 5,000 voters	Party status can be through enrollment of at least 1,000 voters and registration fee. Candidate to	La. Stat. Ann. §§ 18:441, 18:465, 18:1254	90 days	55.6

			qualify can pay a fee.			
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		Ohio Rev. Code Ann. §§ 3517.01, 3513.257	No start date.	~0

		for 2020) / candidate petition with 5,000 votes				
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[1]

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[2]	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%

[1] Plaintiffs-Appellants have updated their list from the Preliminary Injunction to be complete back to 1920, using public data compiled by Wikipedia found at https://en.wikipedia.org/wiki/United_States_presidential_elections_in_New_York and https://en.wikipedia.org/wiki/New_York_gubernatorial_elections.

[2] Until after 1938, gubernatorial elections occurred every two years.

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%
1946	G	*No non-major party candidate*		
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%
1956	P	*No non-major party candidate*		
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%
2022	G	*No non-major party candidate*		