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CAE 22-00895

NYSCEF DOC. NO. 3

Steuben County Clerk's Index No. E2022-0116CV

RECEIVED NYSCEF: 06/15/2022

New York Supreme Court

APPELLATE DIVISION—FOURTH DEPARTMENT

TIM HARKENRIDER, GUY C. BROUGHT, LAWRENCE CANNING, PATRICIA CLARINO, GEORGE DOOHER, JR., STEVEN EVANS, LINDA FANTON, JERRY FISHMAN, JAY FRANTZ, LAWRENCE GARVEY, ALAN NEWPHEW, SUSAN ROWLEY, JOSEPHINE THOMAS, and MARIANNE VOLANTE,

DOCKET No.
CAE 22-00895

—against— *Petitioners-Respondents,*

GOVERNOR KATHY HOCHUL, LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE BRIAN A. BENJAMIN, SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE SENATE ANDREA STEWART-COUSINS, SPEAKER OF THE ASSEMBLY CARL HEASTIE, NEW YORK STATE BOARD OF ELECTIONS, and THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT,

Respondents-Respondents.

THE PARENT PARTY OF NEW YORK,

Intervenors-Appellants,

TYRRELL BEN-AVI, MARK BRAIMAN,
UPSTATE JOBS PARTY and UNITE NEW YORK,

Intervenors.

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TABLE OF CONTENTS

	PAGE
Statement Pursuant to CPLR 5531	1
Intervenor The Parent Party of New York's Notice of Appeal, dated June 6, 2022	3
Decision and Order of the Honorable Patrick F. McAllister Appealed From, dated May 31, 2022, with Notice of Entry, dated June 6, 2022	9
Intervenors The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax's [Proposed] Order to Show Cause Regarding The Parent Party Intervenors' Emergency Motion for Leave to Intervene	14
The Parent Party Intervenors' Memorandum of Law in Support of Motion to Intervene and New Cause of Action Requesting Modifications to the Independent Nominating Petition Process, dated May 16, 2022	17
Affidavit of Patrick Donohue in Support of Emergency Motion to Intervene, sworn to May 15, 2022	32
Affidavit of William Noel in Support of Emergency Motion to Intervene, sworn to May 15, 2022	39
Affidavit of Brian Robinson in Support of Emergency Motion to Intervene, sworn to May 15, 2022	42
Affidavit of Danyela Souza Egorov in Support of Emergency Motion to Intervene, sworn to May 15, 2022	44
Affidavit of Kevin Pazmino in Support of Emergency Motion to Intervene, sworn to May 15, 2022	46

	PAGE
Affidavit of Pooi Stewart in Support of Emergency Motion to Intervene, sworn to May 14, 2022	48
Affidavit of Otis D. Danne Jr. in Support of Emergency Motion to Intervene, sworn to May 15, 2022	50
Affidavit of Gavin Wax in Support of Emergency Motion to Intervene, sworn to May 15, 2022	52
[Proposed] Order Amending May 11, 2022 Ballot Access Order	54
Intervenor Mark Braiman's [Proposed] Order to Show Cause Regarding Emergency Motion for Leave to Intervene	56
Intervenor Mark Braiman's Proposed Answer to Amended Petition with Additional Cause of Action Seeking to Modify Provisions for Independent Congressional and State Senate Candidates, dated May 16, 2022.....	85
Intervenor Mark Braiman's Memorandum of Law in Support of Motion to Intervene and Modify Election Scheduling Provisions	89
Intervenors The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax's Order to Show Cause Regarding The Parent Party Intervenors' Emergency Motion for Leave to Intervene, dated May 16, 2022.....	102
Notice of Entry, dated May 17, 2022, with Intervenors The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax's Order to Show Cause Regarding The Parent Party Intervenors' Emergency Motion for Leave to Intervene, dated May 16, 2022.....	105

iii

PAGE

Exhibit A—

(i) The Parent Party Intervenors' Memorandum of Law in Support of Motion to Intervene and New Cause of Action Requesting Modifications to the Independent Nominating Petition Process, dated May 16, 2022 (Reproduced herein at pages 17 to 31)	110
(ii) Affidavit of Patrick Donohue in Support of Emergency Motion to Intervene, sworn to May 15, 2022 (Reproduced herein at pages 32 to 38)	110
(iii) Affidavit of William Noel in Support of Emergency Motion to Intervene, sworn to May 15, 2022 (Reproduced herein at pages 39 to 41)	110
(iv) Affidavit of Brian Robinson in Support of Emergency Motion to Intervene, sworn to May 15, 2022 (Reproduced herein at pages 42 to 43)	110
(v) Affidavit of Danyela Souza Egorov in Support of Emergency Motion to Intervene, sworn to May 15, 2022 (Reproduced herein at pages 44 to 45)	110
(vi) Affidavit of Kevin Pazmino in Support of Emergency Motion to Intervene, sworn to May 15, 2022 (Reproduced herein at pages 46 to 47)	110
(vii) Affidavit of Pooi Stewart in Support of Emergency Motion to Intervene, sworn to May 14, 2022 (Reproduced herein at pages 48 to 49)	110
(viii) Affidavit of Otis D. Danne Jr. in Support of Emergency Motion to Intervene, sworn to May 15, 2022 (Reproduced herein at pages 50 to 51)	110
(ix) Affidavit of Gavin Wax in Support of Emergency Motion to Intervene, sworn to May 15, 2022 (Reproduced herein at pages 52 to 53)	111
(x) [Proposed] Order Amending May 11, 2022 Ballot Access Order (Reproduced herein at pages 54 to 55)	111
(xi) Intervenors The Parent Party's Proposed Petition with Additional Cause of Action Requesting Modifications to the Independent Nominating Petition Process, dated May 16, 2022	112

iv

PAGE

(xii) Intervenor The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax's Order to Show Cause Regarding The Parent Party Intervenor's Emergency Motion for Leave to Intervene, dated May 16, 2022 (Reproduced herein at pages 102 to 104)	117
Intervenor Mark Braiman's Order to Show Cause Regarding Emergency Motion for Leave to Intervene, dated May 17, 2022	118
Upstate Jobs Party and Unite New York's Motion for Leave to File Brief as Amicus Curiae, dated May 18, 2022	121
Brief of the Upstate Jobs Party and Unite New York as Amicus Curiae, dated May 18, 2022	124
Notice of Entry of Order to Show Cause Regarding Mark Braiman's Emergency Motion for Leave to Intervene, dated May 18, 2022	133
Affidavit of Mark Braiman in Support of Emergency Motion for Leave to Intervene, sworn to May 15, 2022	137
Intervenor Mark Braiman's Proposed Answer to Amended Petition with Additional Cause of Action Seeking to Modify Provisions for Independent Congressional and State Senate Candidates, dated May 16, 2022	163
Intervenor Mark Braiman's Memorandum of Law in Support of Motion to Intervene and to Modify Election Scheduling Provisions, filed May 18, 2022	167
Order to Show Cause Regarding Tyrrell Ben-Avi's Emergency Motion for Leave to Intervene, dated May 13, 2022	180
Affidavit of Tyrrell Ben-Avi in Support of Request for Leave to Intervene, dated May 5, 2022	183

v

	PAGE
Intervenor Tyrrell Ben-Avi's Notice of Motion for Permission to Intervene, dated May 5, 2022.....	185
Letter from Brian L. Quail to the Honorable Patrick F. McAllister, dated May 24, 2022.....	187
Respondent New York State Board of Elections Memorandum of Law in Opposition to Motions to Intervene, filed May 24, 2022	188
Petitioners' Response Memorandum of Law in Opposition to Tyrrell L.S. Ben-Avi's Motion to Intervene, dated May 24, 2022	201
Letter from Craig R. Bucki to the Honorable Patrick F. McAllister, dated May 24, 2022 (Motion Seq. 015).....	207
Letter from Craig R. Bucki to the Honorable Patrick F. McAllister, dated May 24, 2022 (Motion Seq. 016).....	208
Letter from Craig R. Bucki to the Honorable Patrick F. McAllister in Opposition to Tyrrell Ben-Avi's Motion to Intervene, dated May 24, 2022.....	209
Executive Respondents' Memorandum of Law in Opposition to Motion to Intervene by The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax, dated May 24, 2022.....	211
Executive Respondents' Memorandum of Law in Opposition to Motion to Intervene by Mark Braiman, dated May 24, 2022	225
Executive Respondents' Memorandum of Law in Opposition to Motion to Intervene by Tyrrell Ben-Avi, dated May 24, 2022	241
Certification Pursuant to CPLR § 2105	251

1

Statement Pursuant to CPLR 5531

[pp. 1 - 2]

STATEMENT PURSUANT TO CPLR 5531

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION FOURTH DEPARTMENT

TIM HARKENRIDER, GUY C. BROOKHUIS, LAWRENCE
CANNING, PATRICIA CLARINO, GEORGE DOOHER, JR.,
STEVEN EVANS, LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVY, ALAN NEWTHUW, SUSAN
ROWLEY, JOSEPHINE THOMAS, AND MARIANNE VOLANTE,

Petitioners-Respondents,

against

Docket No.
CAE 22 00895

GOVERNOR KATHY HOCHUL, LIEUTENANT GOVERNOR AND
PRESIDENT OF THE SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER and PRESIDENT PRO TEMPORE OF THE
SENATE ANDREA STEWART-COONS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, AND THE NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH and
REAPPORTIONMENT,

Respondents-Respondents

THE PARIENT PARTY OF NEW YORK,

Intervenor-Appellant,

TYRQUEL BEN AVI, MARK BRAIMAN, UPSTATE JOBS
PARTY AND UNITED NEW YORK,

Intervenor Respondents.

1. The index number of the case is E2022-0116CV.
2. The full names of the original parties are as set forth above. There has been no change in the parties.
3. The action was commenced in Supreme Court, Steuben County.
4. The action was commenced on February 3, 2022 by filing of petition; the answer of Respondents Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Coons was filed on February 24, 2022. The answer of Respondents Governor of New York State Kathy Hochul and Lieutenant Governor and President of the Senate of New York State Brian A. Benjamin was filed on February 24, 2022. The answer of Respondents

Speaker of the Assembly Carl Heastie. The amended petition was served on February 8, 2022. The answer to the amended petition of Respondents New York State Kathy Hochul and Lieutenant Governor and President of the Senate of New York State Brian A. Benjamin was filed on March 10, 2022. The answer to amended petition of Respondent Speaker of the Assembly Carl Heastie was filed on March 10, 2022. The answer to amended petition of Respondents Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins was filed on March 10, 2022. The proposed answer to the amended petition of Intervenor Gavin Wax was filed on May 1, 2022. The proposed answer to amended petition of Intervenors Larry Sharpe, Diane Sara and William Cody Anderson, as Chair and de facto President of the Libertarian Party of New York filed on May 11, 2022. The proposed answer to amended petition of Intervenor Mark Braiman was filed on May 16, 2022.

5. The nature and object of the action is requesting modifications to the independent nominating petition process.
6. This appeal is from a decision and order of the Honorable Patrick F. McAllister, entered on June 1, 2022, which denied Intervenors The Parent Party, Tyrrell Ben-Avi, Mark Braiman, Upstate Jobs and Unite New York's respective motions to intervene; denied Intervenors motion to create a primary for the U.S. Senate for August 23, 2022; and denied as untimely the amicus curiae submission in support of the Upstate Jobs Party and Unite New York.
7. The appeal is on a full reproduced record.

3

Intervenor The Parent Party of New York's Notice of Appeal, dated

June 6, 2022

[pp. 3 - 8]

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INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 698

RECEIVED NYSCEF: 06/06/2022

STATE OF NEW YORK
SUPREME COURT: STEUBEN COUNTY

-----X

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEWPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

NOTICE OF APPEAL

Index No.:
E2022-0116CV

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE;
BRAIN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE;
ANDREW STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK BOARD OF
ELECTIONS, AND THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

-----X

PLEASE TAKE NOTICE that the PARENT PARTY Intervenor hereby appeal to the Appellate Division, Fourth Department of the Supreme Court of the State of New York, from the Decision and Order of the Honorable Patrick F. McAllister, A.J.S.C. annexed hereto and entered in the Steuben County Clerk's Office on June 1, 2022 [NYSCEF Doc. No. 692]. This appeal is taken from each and every part of the Order, as well as from the whole thereof.

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INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 698

RECEIVED NYSCEF: 06/06/2022

Dated: New York, New York
June 6, 2022

Brain Injury Rights Group, Ltd.

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To: All Counsel (via NYSCEF)

5

FILED: STEUBEN COUNTY CLERK 06/06/2022 08:40 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 692

RECEIVED NYSCEF: 06/06/2022

At a Regular Motion Term of the Supreme
Court held in and for the County of Steuben
in the Village of Bath, New York on the 26th
day of May 2022

STATE OF NEW YORK
SUPREME COURT : STEUBEN COUNTY

Index No. E2022-0116CV

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

Petitioners,

-against-

DECISION and ORDER

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

PRESENT: Hon. Patrick F. McAllister
Acting Supreme Court Justice

These potential intervenors, the Parent Party, Tyrell Ben-Avi, Mark Braiman, Upstate Jobs Party and Unite New York are generally seeking to extend the time period for gathering signatures and decreasing the signature requirements for the upcoming election. The court heard oral argument on May 26, 2022 and reserved decision. Aaron Foldenauer, Esq. argued on behalf of the candidate intervenors of the Parent Party; no one appeared on behalf of potential intervenors Upstate Jobs Party and Unite New York; Tyrell Ben-Avi appeared *pro se*; Gary Donoyan, Esq. appeared for Mark Brainman; George Winner, Esq. argued on behalf of the Petitioners; Alice Reiter, Esq. argued on behalf of Senate Majority Leader Andrea Stewart-

FILED: STEUBEN COUNTY CLERK 06/05/2022 08:40 AM

NYSCEF DOC. NO. 692

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 06/05/2022

Cousins; Craig Bucki, Esq. argued on behalf Speaker of the Assembly of Carl Heastie, Assistant Attorney General, Michelle Crain argued on behalf of Governor Houcul; and Brian Quail, Esq. argued on behalf of the New York State Board of Elections.

Discussion:

These potential intervenors are potential candidates or political parties attempting to assist candidates to be on the ballot. The intervenors are generally seeking to extend the time period for gathering signatures and for the court to decrease the signature requirements. Thus they meet the standing requirement. Further, unlike some of the prior potential intervenors these intervenors are not seeking to add a new action to this case or to delay the upcoming primaries. What they seek is for the court to extend the time for the gathering of signatures for Independent nominating petitions from the May 31, 2022 deadline.

Tyrrel Ben-Avi presents a novel issue. Tyrel Ben-Avi sought to be a Republican candidate for the U. S. Senate. He was gathering signatures to be on the June primary ballot but has been informed by the Board of Elections that the Democrats and the Republicans each just selected a candidate to run for the position of U.S. Senate, thus foreclosing him from being a primary candidate. Further he alleges that he was misled in his efforts to gather signatures by the Board of Election notice that congressional elections were on hold pending the completion of the redistricting maps. Tyrrel Ben-Avi argues that "congressional" would include both the Senate and House of Representative elections.

Attorney Foldenauer argues that there will be no delay, no timeliness issue and no harm as a result of extending the time for candidates to gather signatures. Further he drew the court's attention to Justice Trautman's recent dissenting opinion that candidates that were not of the two major political parties would be most disadvantaged by changing the primary dates and signature gathering periods. He stated that Mr. Knowle went to the Board of Elections on May 3rd and was told he would have to wait for the court's decision. Attorney Foldenauer also pointed out that under the old system the petitioning process was different for candidates running for state offices verses federal offices.

Candidate Brainard seeks to change the filing dates, reduce the number of signatures and that the court and the Board of Elections should honor all signatures gathered during the April - May signing period as well as the later signing period.

The long publicized deadline for gathering signatures to run for governor and other statewide elections on an Independent nominating petition has been May 31, 2022. However, as a result of the Petitioners' action in this matter the court threw out the Congressional and State Senate maps. Thus by Order of this court a new primary date was established for the Congressional and State Senate primaries and a new time frame was established for the collection of signatures. For Congressional and State Senate candidates the signing period now runs from May 21, 2022 through July 5, 2022. This leaves only a few days of overlap between

7

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INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 698

RECEIVED NYSCEF: 06/04/2022

the signature gathering period for other statewide offices and the Congressional and State Senate Candidates. Many potential candidates for statewide office rely on local candidates, Congressional candidates, and State Senate candidates to simultaneously circulate petitions for each other. With differing time frames now the potential intervenors contend that it will be much more difficult, if not impossible, for them to obtain the necessary signatures.

The candidates via Independent nominating petition have further been compromised by not knowing the various boundaries of the 26 congressional districts. Until the new congressional maps are finalized as a result of this case no one knows the congressional boundaries. However, as a candidate for a statewide office the potential candidates are required to gather at least 500 signatures from at least 13 different congressional districts. This counts toward their overall total of at least 45,000 signatures that are required. Since the candidates will not learn the boundary locations until just days before the May 31, 2022 deadline they are asking for some kind of relief. They would like either an extension of the signing period; and/or a waiver of the 500 signatures per district requirement; and/or a decrease in the total number of signatures. Former Governor Cuomo lowered the signature requirement in 2020 because of the COVID pandemic. Since there has been a recent uptick in COVID cases statewide the potential intervenors would like the court to similarly lower the total number of signatures required this year.

Election Law §6-138(4) prescribes a six week petitioning period for Independent nominations. To add to that time frame would contravene that law. The candidates for statewide office will have had their full six week time frame to gather signatures.

A reduction in the Independent nominating signature requirement would be in contravention of Election Law §6-142(1). A similar reduction in signatures was requested in a case last year, Libertarian Party of N.Y. v. New York Bd. of Education; 539 F.Supp 3rd 310 (So. Dist. of New York 2021). That court denied a similar motion to reduce the signature requirements. "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 the New York's 13.55 million registered voters." Libertarian Party of N.Y. v. New York Bd. of Education; (supra. at 317).

The entire purpose of requiring a number of signatures is to show that a candidate has widespread support. Similarly, the requirement that a candidate be able to garner at least 500 signatures from at least 1/2 of the congressional districts is an indication of widespread support. The court is not inclined to decrease the signature requirement or to waive the 500 signatures per district requirement.

This court issued an advisory opinion on May 5, 2022 to warn potential candidates that were seeking to get on the November ballot via an Independent nominating petition that she/he should continue collecting signatures as the court was not inclined to change the signature period for those persons. Six weeks is six weeks.

FILED: STEUBEN COUNTY CLERK 06/04/2022 08:30 AM

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 06/04/2022

NYSCEF DOC. NO. 692

Respondents further object to the Intervenor's motion as being untimely since this action has been pending since early February and they waited until now to bring the motion.

The court would note that in its Decision and Order dated March 31, 2022 it repeatedly used the term "congressional" when referring to the elections for the 26 congressional districts for the House of Representatives. A reading of that order would have been clear the Decision and Order was not affecting the U.S. Senate race.

NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is

ORDERED, ADJUDGED, and DECREED that the Intervenor's motion to be permitted to intervene in this action and to have the signature requirements for the filing of Independent nominating petitions be extended and/or that the number of signatures be reduced, and/or that the court waive the 500 signatures per district requirement be, and hereby is, denied.; and it is further

ORDERED, ADJUDGED, and DECREED that the Intervenor's motion to create a primary for the U.S. Senate for August 23, 2022 be, and hereby is denied; and it is further

ORDERED, ADJUDGED, and DECREED that the *amicus curiae* submission in support of the Upstate Jobs Party and Unite New York who in turn is in support of the Libertarian Party, whose motion to intervene was denied last week is untimely and is therefore denied as untimely.

Dated: May 31, 2022


Hon. Patrick F. McAllister
Acting Supreme Court Justice

ENTER

9

**Decision and Order of the Honorable Patrick F. McAllister Appealed
From, dated May 31, 2022, with Notice of Entry, dated June 6, 2022**

[pp. 9 - 13]

FILED: STEUBEN COUNTY CLERK 06/01/2022 08:30 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 692

RECEIVED NYSCEF: 05/31/2022

At a Regular Motion Term of the Supreme Court held in and for the County of Steuben in the Village of Bath, New York on the 26th day of May 2022.

STATE OF NEW YORK
SUPREME COURT : STEUBEN COUNTY

Index No. E2022-0116CV

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

Petitioners,

-against-

DECISION and ORDER

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

PRESENT: Hon. Patrick F. McAllister
Acting Supreme Court Justice

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Page 1 of 4

Cousins; Craig Bucki, Esq. argued on behalf Speaker of the Assembly of Carl Heastie, Assistant Attorney General, Michelle Crain argued on behalf of Governor Houcul; and Brian Quail, Esq. argued on behalf of the New York State Board of Elections.

Discussion:

These potential intervenors are potential candidates or political parties attempting to assist candidates to be on the ballot. The intervenors are generally seeking to extend the time period for gathering signatures and for the court to decrease the signature requirements. Thus they meet the standing requirement. Further, unlike some of the prior potential intervenors these intervenors are not seeking to add a new action to this case or to delay the upcoming primaries. What they seek is for the court to extend the time for the gathering of signatures for Independent nominating petitions from the May 31, 2022 deadline.

Tyrrel Ben-Avi presents a novel issue. Tyreel Ben-Avi sought to be a Republican candidate for the U. S. Senate. He was gathering signatures to be on the June primary ballot but has been informed by the Board of Elections that the Democrats and the Republicans each just selected a candidate to run for the position of U.S. Senate, thus foreclosing him from being a primary candidate. Further he alleges that he was misled in his efforts to gather signatures by the Board of Election notice that congressional elections were on hold pending the completion of the redistricting maps. Tyrrel Ben-Avi argues that "congressional" would include both the Senate and House of Representative elections.

Attorney Foldenauer argues that there will be no delay, no timeliness issue and no harm as a result of extending the time for candidates to gather signatures. Further he drew the court's attention to Justice Trautman's recent dissenting opinion that candidates that were not of the two major political parties would be most disadvantaged by changing the primary dates and signature gathering periods. He stated that Mr. Knowle went to the Board of Elections on May 3rd and was told he would have to wait for the court's decision. Attorney Foldenauer also pointed out that under the old system the petitioning process was different for candidates running for state offices verses federal offices.

Candidate Brainard seeks to change the filing dates, reduce the number of signatures and that the court and the Board of Elections should honor all signatures gathered during the April - May signing period as well as the later signing period.

The long publicized deadline for gathering signatures to run for governor and other statewide elections on an Independent nominating petition has been May 31, 2022. However, as a result of the Petitioners' action in this matter the court threw out the Congressional and State Senate maps. Thus by Order of this court a new primary date was established for the Congressional and State Senate primaries and a new time frame was established for the collection of signatures. For Congressional and State Senate candidates the signing period now runs from May 21, 2022 through July 5, 2022. This leaves only a few days of overlap between

11

FILED: STEUBEN COUNTY CLERK 06/01/2022 08:30 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 692

RECEIVED NYSCEF: 05/31/2022

the signature gathering period for other statewide offices and the Congressional and State Senate Candidates. Many potential candidates for statewide office rely on local candidates, Congressional candidates, and State Senate candidates to simultaneously circulate petitions for each other. With differing time frames now the potential intervenors contend that it will be much more difficult, if not impossible, for them to obtain the necessary signatures.

The candidates via Independent nominating petition have further been compromised by not knowing the various boundaries of the 26 congressional districts. Until the new congressional maps are finalized as a result of this case no one knows the congressional boundaries. However, as a candidate for a statewide office the potential candidates are required to gather at least 500 signatures from at least 13 different congressional districts. This counts toward their overall total of at least 45,000 signatures that are required. Since the candidates will not learn the boundary locations until just days before the May 31, 2022 deadline they are asking for some kind of relief. They would like either an extension of the signing period; and/or a waiver of the 500 signatures per district requirement; and/or a decrease in the total number of signatures. Former Governor Cuomo lowered the signature requirement in 2020 because of the COVID pandemic. Since there has been a recent uptick in COVID cases statewide the potential intervenors would like the court to similarly lower the total number of signatures required this year.

Election Law §6-138(4) prescribes a six week petitioning period for Independent nominations. To add to that time frame would contravene that law. The candidates for statewide office will have had their full six week time frame to gather signatures.

A reduction in the Independent nominating signature requirement would be in contravention of Election Law §6-142(1). A similar reduction in signatures was requested in a case last year, Libertarian Party of N.Y. v. New York Bd. of Education; 539 F.Supp 3rd 310 (So. Dist. of New York 2021). That court denied a similar motion to reduce the signature requirements. "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 the New York's 13.55 million registered voters." Libertarian Party of N.Y. v. New York Bd. of Education; (supra. at 317).

The entire purpose of requiring a number of signatures is to show that a candidate has widespread support. Similarly, the requirement that a candidate be able to garner at least 500 signatures from at least 1/4 of the congressional districts is an indication of widespread support. The court is not inclined to decrease the signature requirement or to waive the 500 signatures per district requirement.

This court issued an advisory opinion on May 5, 2022 to warn potential candidates that were seeking to get on the November ballot via an Independent nominating petition that she/he should continue collecting signatures as the court was not inclined to change the signature period for those persons. Six weeks is six weeks.

FILED: STEUBEN COUNTY CLERK 06/01/2022 08:30 AM

NYSCEF DOC. NO. 692

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/31/2022

Respondents further object to the Intervenor's motion as being untimely since this action has been pending since early February and they waited until now to bring the motion.

The court would note that in its Decision and Order dated March 31, 2022 it repeatedly used the term "congressional" when referring to the elections for the 26 congressional districts for the House of Representatives. A reading of that order would have been clear the Decision and Order was not affecting the U.S. Senate race.

NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is

ORDERED, ADJUDGED, and DECREED that the Intervenor's motion to be permitted to intervene in this action and to have the signature requirements for the filing of Independent nominating petitions be extended and/or that the number of signatures be reduced, and/or that the court waive the 500 signatures per district requirement be, and hereby is, denied; and it is further

ORDERED, ADJUDGED, and DECREED that the Intervenor's motion to create a primary for the U.S. Senate for August 23, 2022 be, and hereby is denied; and it is further

ORDERED, ADJUDGED, and DECREED that the *amicus curiae* submission in support of the Upstate Jobs Party and Unite New York who in turn is in support of the Libertarian Party, whose motion to intervene was denied last week is untimely and is therefore denied as untimely.

Dated: May 31, 2022

ENTER


Hon. Patrick F. McAllister
Acting Supreme Court justice

13

FILED: STEUBEN COUNTY CLERK 06/06/2022 10:42 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 697

RECEIVED NYSCEF: 06/06/2022

STATE OF NEW YORK
SUPREME COURT: STEUBEN COUNTY

-----X

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEWPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

**NOTICE OF ENTRY
OF ORDER**

Index No.:
E2022-0116CV

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE;
BRAIN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE;
ANDREW STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK BOARD OF
ELECTIONS, AND THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

-----X

PLEASE TAKE NOTICE that the annexed Decision and Order of the Honorable Patrick
F. McAllister, A.J.S.C. was entered in the Steuben County Clerk's Office on June 1, 2022
[NYSCEF Doc. No. 692].

Dated: New York, New York
June 6, 2022

Brain Injury Rights Group, Ltd.

/s/ Rory J. Bellantoni

Rory J. Bellantoni, Esq.

Attorneys for Parent Party of New York, Intervenor
300 E. 95th Street, Suite 130
New York, New York 10128
(646) 530-5035

To: All Counsel (via NYSEF)

14

**Intervenors The Parent Party of New York, Patrick Donohue, William
Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi
Stewart, Otis D. Danne Jr., and Gavin Wax's [Proposed] Order
to Show Cause Regarding The Parent Party Intervenors' Emergency
Motion for Leave to Intervene
[pp. 14 - 16]**

At a _____ of the Supreme Court of the
State of New York, held in and for the County
of Steuben at 3 East Pulteney Square, Bath,
NY 14810, on the ____ day of May 2022.

PRESENT: HON. PATRICK F. MCALLISTER, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.
-----X

Index No.: E2022-0116CV

**ORDER TO SHOW CAUSE
REGARDING THE PARENT
PARTY INTERVENORS'
EMERGENCY MOTION FOR
LEAVE TO INTERVENE**

Upon the emergency motion of The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax to intervene in this action on the ground that their interests are or may be inadequately represented and they may be bound by the judgment entered herein and on the ground that their intervention will not unduly delay the determination of the action or prejudice the substantial rights of any party; the Affidavits of Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax; the Proposed Petition with Additional Cause of Action

15

Requesting Modifications to the Independent Nominating Petition Process; the Proposed Order, and the Memorandum of Law, Petitioners and Respondents are hereby

ORDERED TO SHOW CAUSE, on the _____ day of May 2022 at _____, or as soon thereafter as counsel can be heard, at Room __3__ at the Courthouse located at 3 East Pulteney Square, Bath NY 14810 [Virtual Appearance Permitted], why, under CPLR § 1012 and/or CPLR § 1013, The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax should not be allowed to intervene as Petitioners; and

WHY THIS COURT should not amend its May 11, 2022 Order concerning ballot access (NYSCEF Doc. No. 524) (the "Ballot Access Order") as follows:

1. The political calendar dates for independent nominating petitions listed on page 4 of the Ballot Access Order shall apply to the independent nominating process for the following offices: (a) All Statewide offices; (b) Representative in Congress; (c) New York State Senate; (d) New York State Assembly; and (e) all local public offices for the November 8, 2022 General Election;
2. With respect to the political calendar dates for the independent nominating process listed on page 4 of the Ballot Access Order, the "First day to sign" is hereby modified to read "4/19/22"; and
3. The signature requirements set forth in New York Election Law § 6-142 for independent nominating petitions are hereby reduced by 50%, given the uncertainties caused by this action and related redistricting litigation, and the ongoing COVID-19 pandemic; and

WHY THIS COURT should not grant any such other and further relief as is just and equitable; and it is further

ORDERED that of a copy of this Order and related documents be served on counsel to all parties via NYSCEF, on or before the _____ day of May, 2022, and that such service be deemed sufficient, and it is further;

16

ORDERED that Petitioners and Respondents, including the NEW YORK STATE BOARD OF ELECTIONS, shall file a copy with this Court of their reply/opposition papers, if any, in connection with the above motion to intervene and/or any of the accompanying requests for relief, via NYSCEF, by

_____ at _____.

DATED: Bath, New York

May ____, 2022

ENTER:

HON. PATRICK F. MCALLISTER, J.S.C.

17

**The Parent Party Intervenors' Memorandum of Law in Support of
Motion to Intervene and New Cause of Action Requesting Modifications
to the Independent Nominating Petition Process, dated May 16, 2022
[pp. 17 - 31]**

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 545

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Petitioners,

v.

Index No.: E2022-0116CV

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.
-----X

**THE PARENT PARTY INTERVENORS' MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION TO INTERVENE AND NEW CAUSE OF ACTION REQUESTING
MODIFICATIONS TO THE INDEPENDENT NOMINATING PETITION PROCESS**

Aaron S. Foldenauer, Esq.
LAW OFFICE OF AARON S. FOLDENAUER
30 Wall Street, 8th Floor
New York, NY 10005
Telephone: (212) 961-6505
Email: aaron@nyelectionlaw.com

Date: May 16, 2022

Counsel for the Parent Party Intervenors

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
ARGUMENT	2
I. THE PARENT PARTY INTERVENORS WILL BE HARMED IF THE COURT DOES NOT MODIFY ITS MAY 11 BALLOT ACCESS ORDER	2
A. The Parent Party Intervenor are Candidates and Organizers who are Seeking To Build a Political Party	2
B. The Parent Party's Efforts to Build a Political Party and Promote Candidates During the 2022 Election Cycle	4
C. The Redistricting Litigation and the Court's May 11 Ballot Access Order Are Interfering with the Parent Party's Petitioning Efforts	5
II. THERE ARE NO TIMING ISSUES WITH RESPECT TO THE RELIEF REQUESTED.	9
III. THE COURT SHOULD ALLOW SIGNATURES OBTAINED ON APRIL 19, 2022 OR THEREAFTER TO BE COUNTED.	11
IV. A REDUCTION IN THE OVERALL SIGNATURE REQUIREMENTS FOR INDEPENDENT NOMINATING PETITIONS IS ALSO APPROPRIATE	12
CONCLUSION	13

The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax (collectively, the "Parent Party Intervenors") respectfully submit this Memorandum in support of their request to intervene and in support of their additional cause of action requesting modifications to the independent nominating petition process that was set forth in the Court's May 11 Order (NYSCEF No. 524) (the "Ballot Access Order").

PRELIMINARY STATEMENT

In this Motion to Intervene, the Parent Party Intervenors seek several modifications to the Court's May 11 Ballot Access Order, including but not limited to (a) applying the Court's new calendar for the independent nominating process to all public offices; (b) allowing signatures gathered on or after April 19 to be counted as valid (if otherwise valid); and (c) reducing the signature requirements for independent nominating petitions by 50%.

These modifications would vindicate the Parent Party Intervenors' right to associate with the political party of one's choice pursuant to the United States Constitution. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986) (internal quotation omitted) (concluding that "[t]he right to associate with the political party of one's choice is an integral part of this basic constitutional freedom [of association]"). The proposed modifications would allow the Parent Party's endorsed candidates a fair opportunity to circulate independent nominating petitions to get on the ballot, in what has been an election cycle filled with uncertainty given the ongoing redistricting developments and the now-resurging COVID-19 pandemic.

There are no timeliness concerns with respect to this motion to intervene. The Parent Party Intervenors appear now, just days after the Court entered the Ballot Access Order, an order which the court issued less than several hours after counsel to Respondent New York State Board of Elections proposed it, without explanation or any prior briefing. Compare NYSCEF No. 523 with

NYSCEF No. 524. Furthermore, no one will be harmed by the relief the Parent Party Intervenor seeks, given that relief requested impacts only the independent nominating petition process and the November 8, 2022 General Election.

The intervenors are the Parent Party of New York, affiliated individuals, and candidates endorsed by the Parent Party. The Parent Party is a new political party which is seeking to get candidates on the ballot by virtue of slate petitioning—a practice commonly used whereby candidates team up to gather petitions together. The Ballot Access Order has made it virtually impossible for the Parent Party of New York, and its candidates, to put together slates of candidates so as to get them on the ballot and effectively organize this election cycle.

ARGUMENT

I. THE PARENT PARTY INTERVENORS WILL BE HARMED IF THE COURT DOES NOT MODIFY ITS MAY 11 BALLOT ACCESS ORDER.

The Constitutional rights of the Parent Party Intervenor, who are attempting to organize a new political party and select and elect candidates to office, would be violated under the current independent nominating petition rules that have been set forth by the Court. *Price v. New York State Bd. of Elections*, 540 F.3d 101, 107-08 (2d Cir. 2008) (noting that where a challenged regulation “governs the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, [it] inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.”) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (internal quotation marks omitted)).

A. The Parent Party Intervenor are Candidates and Organizers who are Seeking To Build a Political Party

The Parent Party of New York is a new political party in New York State. Affidavit of Patrick Donohue (“Donohue Aff.”) ¶ 3. The Parent Party’s mission is to empower parents to take back control of their child’s education, empower citizens to take back control of our democracy,

and support local law enforcement to take back control of our streets. Donohue Aff. ¶ 4. Intervenor Patrick Donohue is the Founder and Chairman of the Parent Party of New York (the "Parent Party"), and Intervenor William Noel is the Chief of Staff of the Parent Party. Donohue Aff. ¶ 3; Noel Aff. ¶ 2.

Five of the petitioners in connection with this Motion to Intervene are candidates for office who intend to secure the Parent Party third-party ballot line in the November 8, 2022 General Election. All five of these candidates have been endorsed by the Parent Party and intend to circulate independent nominating petitions, but the redistricting process and the ongoing litigation has interfered with their ability to do so. Brian Robinson and Danyela Souza Egorov are candidates for Congress and State Senate, respectively, and have already qualified to appear on the ballot in the upcoming Democratic primary scheduled for August 23, 2022. Affidavit of Brian Robinson ¶ 3; Affidavit of Danyela Souza Egorov ¶ 2. Kevin Pazmino and Pooi Stewart are both candidates for State Assembly; Pooi Stewart has qualified to appear on the ballot in the upcoming Democratic primary scheduled for June 28, 2022, and Kevin Pazmino has qualified to be the Conservative Party nominee in the November 8, 2022 General Election. Affidavit of Pooi Stewart ¶ 2; Affidavit of Kevin Pazmino ¶ 2.

Intervenor Otis Danne is a candidate for State Assembly and is uniquely situated given that he attempted to qualify as a candidate in the Democratic primary but was removed from the ballot by the New York City Board of Elections. Affidavit of Otis Danne ¶ 6. Accordingly, if he does not successfully secure the Parent Party line or any other third-party line, he will not make the ballot at all, which would mean that none of his supporters in his Assembly District would be able to vote for him at all this election cycle. *Id.* ¶ 7. In addition to the Parent Party's current candidates, other potential candidates may decide to run on the Parent Party line once districts are finalized (a

determination they could have not made previously, given the ongoing uncertainty concerning the district maps).

Intervenor Gavin Wax is a registered voter who supports the ability of third parties to organize in the State of New York, given that he believes our “polarized, tribal political culture is broken.” Affidavit of Gavin Wax (“Wax Aff.”) ¶ 2. Mr. Wax supports the Parent Party and agrees with several key issues advanced by the Parent Party, including school choice and standing in opposition to “Defund the Police” efforts. *Id.* ¶ 3. Mr. Wax seeks to intervene as a voter and supporter of the Parent Party so that his rights will be protected.

B. The Parent Party’s Efforts to Build a Political Party and Promote Candidates During the 2022 Election Cycle

The Parent Party has been focused on the 2022 election cycle in which various elections are scheduled to be held. Those elections include Statewide offices, such as Governor, Lieutenant Governor, Attorney General and Comptroller. In addition, elections for U.S. Senate, Congress, State Senate, State Assembly, and local offices are scheduled to be held in New York this year. Donohue Aff. ¶ 5. For the 2022 election cycle in New York, one aim of the Parent Party is to recruit suitable candidates, get them on the ballot, and work with their campaigns with the goal of electing as many Parent Party candidates into office as possible. *Id.* ¶ 6.

The Parent Party has endorsed a wide array of candidates running for Statewide offices, State Senate, State Assembly, and Congress. *Id.* ¶ 7; *see also* Media Advisories available at <https://www.parentparty.org/media/> (last visited May 15, 2022).

One of the goals of the Parent Party is to become an official ballot access party in New York State, which would enable it to be deemed a “party” under the New York State Election Law. *Id.* ¶ 8. Currently, there are four ballot access parties in New York State: (1) the Democratic party; (2) the Republican party; (3) the Conservative party; and (4) the Working Families party. If the

23

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 545

RECEIVED NYSCEF: 05/16/2022

Parent Party were to become a ballot access party, it would secure a number of benefits, including:

- (a) being able to form an official party apparatus and further build its fundraising operation;
- (b) allowing individuals, when they register to vote, to officially enroll in the Parent Party; and
- (c) allowing individuals to run as a Parent Party candidate as part of the designating petition process. In other words, becoming a ballot access party will increase the standing of the Parent Party and enhance its ability to elect qualified candidates into office. *Id.* ¶ 9.

In order to become a ballot access party in the State of New York, the Parent Party needs to obtain “excluding blank and void ballots . . . at least two percent of the total votes cast for its candidate for governor, or one hundred thirty thousand votes, whichever is greater, in the year in which a governor is elected . . .” N.Y. Elec. Law § 1-104(3). As was recently reported by the *New York Post*, the Parent Party of New York has endorsed Lee Zeldin for Governor. See *New York Post*, Parent Party Endorses Lee Zeldin, GOP Candidates for Top Statewide Offices, May 14, 2022, available at <https://nypost.com/2022/05/14/parent-party-endorses-lee-zeldin-gop-candidates-for-top-statewide-offices/>.¹ Given that Lee Zeldin will be the Parent Party candidate for governor, the Parent Party and its supporters will circulate independent nominating petitions that will nominate him to be on the ballot on the Parent Party line in the November 8, 2022 General Election. Donohue Aff. ¶ 12.

C. The Redistricting Litigation and the Court’s May 11 Ballot Access Order Are Interfering with the Parent Party’s Petitioning Efforts

The Parent Party has always intended to use “slate petitions” to get its candidates on the ballot. When slate petitions are used, not only would Lee Zeldin’s name typically appear on a

¹ Lee Zeldin is also (a) a candidate for governor in the Republican Primary Election currently scheduled to be held on June 28, 2022; and (b) the Conservative Party’s candidate for governor in the General Election scheduled on November 8, 2022. Donohue Aff. ¶ 11.

petition, but also, the names of the other statewide candidates would appear along with, when applicable, selected Parent Party candidates running for (a) Representative in Congress; (b) State Senate; (c) State Assembly; and (d) candidates running for local office. By utilizing this slate petitioning strategy—which is also used by both major political parties—the signatures gathered count for all of the candidates on each petition sheet, thus allowing the candidates to work with each other and make the process of gathering signatures a synergistic one. *Id.* ¶ 13.

The entire redistricting process and the ongoing litigation has interfered with the Parent Party's ability to form petition slates and gather signatures on slate petitions, which contravenes their constitutional right of association. As the Second Circuit has recognized, circulating petitions "clearly constitute[s] core political speech," because it "of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change." *Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 146 (2d Cir. 2000).

The redistricting process and several provisions in the Ballot Access Order are interfering with the Parent Party's attempt to (a) get Parent Party candidates to get on the ballot and (b) qualify the Parent Party as a ballot access party in the State of New York. Significant uncertainty has existed in connection with the petitioning process since this action was initiated on February 3, 2022, and particularly after this Court's March 31, 2022 Decision and Order striking down the Congressional map, State Senate map, and State Assembly map, and the subsequent appeals and motion practice that followed. *Donohue Aff.* ¶ 14.

According to the New York State Board of Elections Political Calendar, the independent nominating petition process was originally due to start on April 19, 2022. *See* <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf/> (last visited May 15, 2022). However, as of April 19, the Congressional map, State Senate map, and State Assembly

map were all in question, thus leaving few, if any, of the Parent Party candidates with clear guidance as to whether to begin petitioning then. Statewide candidates, such as Mr. Zeldin, need to obtain signatures by Congressional district (in addition to gathering a certain total number of signatures). Thus, it did not make sense for statewide candidates to start then, particularly when many of their “boots on the ground” to gather signatures—e.g., candidates for Congress, State Senate, State Assembly—could not feasibly start slate petitioning at that time (given that their district lines were unknown) and since it was not clear if any signatures gathered by anyone, including a Statewide candidate, would count at all. Donohue Aff. ¶ 16.

Additional uncertainty followed the Appellate Division’s decision on April 21, 2022 and the Court of Appeals’ decision on April 27, 2022. The eyes of the political world then focused on both this Court and the Board of Elections for guidance as to the future of all petitioning, including independent nominating petitions—even while motions to intervene were pending before this Court concerning the constitutionality of the State Assembly map. *Id.* ¶ 17.

While the various appeals and other motions to intervene were pending in late-April and during the first two weeks of May, the Board of Elections provided no official guidance as to what candidates should do, including with respect to those candidates and political parties, such as the Parent Party Intervenor, who were contemplating circulating independent nominating petitions. As the Chief of Staff of the Parent Party, William Noel, states in his affidavit, he sought guidance at the New York State Board of Elections’ office in Albany on May 3, 2022 concerning the independent nominating petition process. Noel Aff. ¶ 5. After asking three different individuals for guidance, they informed him that they did not know what the process would be for independent nominating petitions and stated that it is up to the courts. They further informed him that they were waiting for the courts to create a political calendar for the independent nominating petition

process. *Id.* Based on the lack of guidance provided by the State Board of Elections, along with the continuing uncertainties relating to the redistricting litigation, the Chief of Staff did not know if the Parent Party should start the independent nominating petition process and if it did, whether those signatures would ultimately be considered valid. *Id.* ¶ 6.

The first potential guidance received by interested parties was from this Court in its May 5, 2022 Advisory Opinion (NYSCEF Doc. No. 409), and that Advisory Opinion commented on only the independent nominating petition process for statewide candidates. Donohue Aff. ¶ 18. It was only when the Court issued its ballot access order on May 11, 2022 (NYSCEF Doc. No. 524) (the “Ballot Access Order”) that candidates for office and political advocates (including members and candidates affiliated with the Parent Party) began to have some guidance as to the future of the independent nominating petitioning process. This, again, is crucial to the Parent Party, because the independent nominating petition process is precisely how Parent Party candidates will get on the ballot, and the path through which the Parent Party can become a ballot access party in the State of New York. *Id.* ¶ 19.

At this juncture, the independent nominating petition schedule is bifurcated, whereby Statewide and State Assembly candidates must (apparently) circulate independent nominating petitions pursuant to the Board of Elections’ Political Calendar, but yet, Congressional and State Senate candidates are not required—or even allowed—to start circulating such petitions until May 21. Among other issues, given these bifurcated petitioning schedules, as the Ballot Access Order is now written, it is nearly impossible for Lee Zeldin and the other Statewide candidates to effectively slate petition with other candidates. In addition, State Senate and Congressional candidates are similarly unable to form independent nominating petition slates with any Statewide or State Assembly candidates because of the differing petition schedules (and vice-versa). Indeed,

27

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 545

RECEIVED NYSCEF: 05/16/2022

it is highly unusual that Congressional and State Senate candidates are given more time than other candidates to circulate independent nominating petitions when the relevant General Election date is the same for all candidates: November 8, 2022.

In addition, it is inequitable, and unnecessary, to require Statewide, State Assembly, and local candidates to file their independent nominating petitions by May 31 pursuant to the political calendar, when there was—and, indeed, still is—so much uncertainty concerning the petitioning and redistricting processes. In addition, only now is there some reasonable certainty concerning the parameters of the Assembly Map, given that this Court ruled on an unrelated Motion to Intervene on this question on May 11, 2022. *See, e.g.*, Decision and Order, NYSCEF No. 520.

Statewide candidates such as Lee Zeldin are also further harmed because in addition to garnering a certain number of total signatures, they also must gather signatures by Congressional District. N.Y. Election Law § 6-142. Those Congressional Districts, of course, do not yet exist, and will not exist until those districts are finalized by this Court on May 20—and even then, the district lines will be subject to an appeal or further challenges. Accordingly, even in the best-case scenario, statewide candidates will have only eleven days from when the congressional lines are supposed to be issued to ensure that they have met the Election Law's requirement of gathering signatures by Congressional District. Critically, it is unlikely that Respondent Board of Elections will have updated voter rolls by the May 31 deadline, thus rendering it highly difficult for campaigns to cross-reference the many thousands of signatures gathered to ensure compliance with the congressional-district requirement.

II. THERE ARE NO TIMING ISSUES WITH RESPECT TO THE RELIEF REQUESTED.

The Parent Party Intervenors brought their Motion to Intervene just days after the Court issued the Ballot Access Order. They could not have proceeded sooner, since the Ballot Access

Order was issued without any prior briefing or warning, and only hours after the New York State Board of Elections posted it to the docket, without explanation. *Compare* NYSCEF No. 523 with NYSCEF No. 524.

Furthermore, there are no timing issues with respect to the relief requested, and no one will be harmed. The only changes that the Parent Party Intervenors request pertain to the November 8, 2022 General Election. In other words, the Parent Party Intervenors are *not* asking the Court to change anything concerning the scheduled June 28 and August 23 primaries. Accordingly, this motion to intervene does not seek to change anything concerning the designating petition process and or any of the district lines.

The relief requested, which would allow all candidates to circulate independent nominating petitions pursuant to the Court's schedule set forth in the May 11 Ballot Access Order, would simply give candidates more time to circulate petitions without resulting in harm or injury to anyone.² The New York State Board of Elections, and local boards of elections, will have plenty of time to finalize the ballot for the November 8, 2022 General Election. In fact, the independent nominating petition process has historically taken place much later in the year. For example, in 2017—when, incidentally, Aaron Foldenauer, counsel to the Parent Party Intervenors, ran for New York City Council and sought and obtained a third-party line—the process for gathering signatures for independent nominating petitions did not even *begin* until July 11. *See* New York State Board

² In addition to vindicating the Parent Party Intervenors' Right of Association, it would also benefit other individuals and smaller political parties, such as the Libertarian Party Intervenors, who have long sought fair access to the ballot. *See, e.g.,* Press Release, *Unite NY Calls for Changes to Ballot Access Requirements to Give Voters A Greater Voice* (Apr. 28, 2022), available at <https://uniteny.org/unite-ny-calls-for-changes-to-ballot-access-requirements-to-give-voters-a-greater-voice/>; Press Release, Green Party, *Suppressing Ballot Access is a Violation of Voting Rights* (May 12, 2022), available at https://www.gp.org/suppressing_ballot_access_is_a_violation_of_voting_rights.

of Elections 2017 Political Calendar, *available at* <https://www.elections.ny.gov/NYSBOE/law/2017PoliticalCalendar.pdf> (last visited May 16, 2022). The last day to gather signatures for independent nominating petitions in 2017 was August 22. *Id.* At that time, there was no suggestion that August 22 as the final signature-gathering date for independent nominating petitions was in any way “too late” to finalize the ballot for the November General Election. Here, the Court has scheduled petitioning for independent nominations to conclude well before then—July 5—which allows for approximately six weeks of additional lead time compared to the timing for the very same independent nominating petitioning process used in 2017.

III. THE COURT SHOULD ALLOW SIGNATURES OBTAINED ON APRIL 19, 2022 OR THEREAFTER TO BE COUNTED.

Independent nominating petitioning was originally scheduled to commence on April 19, 2022. New York State Board of Elections 2022 Political Calendar, *available at* <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf> (last visited May 16, 2022). As described above, the Parent Party Intervenors have not been able to start petitioning until recently, given the various uncertainties posed by the redistricting process and the ongoing litigation. However, so that no candidate who started on April 19 will be prejudiced, the Court should modify the Ballot Access Order to indicate that any independent nominating petitions gathered starting on April 19 should be considered valid (if the signatures are otherwise valid). This would constitute only a minor modification to the Court’s Ballot Access Order, which currently would invalidate any signatures gathered before May 21, 2022 for the independent nominating petitions that are subject to the Court’s schedule. *See* Ballot Access Order at 4.

IV. A REDUCTION IN THE OVERALL SIGNATURE REQUIREMENTS FOR INDEPENDENT NOMINATING PETITIONS IS ALSO APPROPRIATE.

The Parent Party Intervenors agree with the Libertarian Party Intervenors (*see* Motion No. 14) that the signature requirements set forth in the Election Law should be reduced, given the ongoing chaos caused by the redistricting process and the resurging COVID-19 pandemic. Signature requirements for independent nominating petitioning have been substantially reduced over the course of the past two years, and there was no reported harm to the political process. Compare N.Y. Elec. Law § 6-142 (provisions effective until Dec. 31, 2021) with N.Y. Elec. Law § 6-142 (provisions currently in effect). Furthermore, and unfortunately, the COVID-19 pandemic is not over and is now resurging. Just today, the New York City Health Department issued a strong recommendation to wear high-quality masks in public, indoor settings, given that case numbers are rising.³

Other indicia of the continuing ramifications of the COVID-19 pandemic are evident in this very court: Rules governing the Courtroom in Steuben County Supreme Court require all individuals to wear a mask, even while they are speaking.

The Parent Party Intervenors request that the number of signatures required for independent nominating petitions for each public office, as set forth in New York Election Law Section 6-142, be reduced by 50%. These lowered requirements would make the petitioning process safer and reduce the amount of paperwork that needs to be processed by the New York State Board of Elections and local boards of elections.

³*See*

https://twitter.com/nycHealthy/status/1526219171549401088?s=20&t=QoGIZxkIvLbmEMes_98_9A (last visited May 16, 2022).

31

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 545

RECEIVED NYSCEF: 05/16/2022

CONCLUSION

For the foregoing reasons, the Parent Party Intervenors request that the Court make the following modifications to its Ballot Access Order to vindicate the Parent Party Intervenors' Constitutional freedom of association:

- a) apply the Court's schedule for Independent Nominating Petitions listed on page 4 of the Ballot Access Order to all candidates for public office, namely: Statewide, Congressional, State Senate, State Assembly, and local offices for the November 8, 2022 General Election;
- b) allow signatures gathered on independent nominating petitions as early as April 19, 2022 to be counted as valid (if otherwise valid); and
- c) reduce the signature requirements set forth in New York Election Law § 6-142 for independent nominating petitions by 50%, consistent with NYS Legislature's modifications due to COVID-19 and its variants.

Dated: May 16, 2022
New York, NY

Respectfully submitted,

/s/ Aaron Foldenauer

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Counsel for the Parent Party Intervenors

32

**Affidavit of Patrick Donohue in Support of Emergency Motion to
Intervene, sworn to May 15, 2022
[pp. 32 - 38]**

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 546

RECEIVED NYSCEF: 05/16/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

**AFFIDAVIT OF
PATRICK DONOHUE**

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Patrick Donohue, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 795 Columbus Avenue in New York County. I am registered to vote in the State of New York.

2. I have been involved in politics and other causes for decades. For example, I served as the Finance Director for the Former Governor of the State of New York, George Pataki, for twelve years. I am also an international civil rights lawyer and advocate for the millions of families

33

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 546

RECEIVED NYSCEF: 05/16/2022

who must cope with the leading cause of death and disability for American youth, namely brain injury and brain-based disorders.

3. I am the Founder and Chairman of the Parent Party of New York (the "Parent Party"). The Parent Party is a new political party in New York State.

4. The Parent Party's mission is to empower parents to take back control of their child's education, empower citizens to take back control of our democracy, and support local law enforcement to take back control of our streets. The Parent Party is open to Republican candidates, Democratic candidates, and independents who make the following Parent Party Pledge:

Pledge #1: Educational Freedom and Independence

- I support educational freedom and independence for parents by having their education funds follow the students based on their parents' choice of schooling.
- I support a full audit (academic, financial, and personnel) of the education system and schools to provide parents and the public with full transparency.

Pledge #2: Universal Term Limits

- I support universal term limits for elected offices.

Pledge #3: Safe streets and schools

- I support our local law enforcement, I oppose any efforts to defund police and public safety, knowing safe streets and safe schools are paramount to quality education.

5. In the State of New York, the Parent Party has been focused on the 2022 election cycle in which various elections are scheduled to be held. Those elections include Statewide offices, such as Governor, Lieutenant Governor, Attorney General and Comptroller. In addition, elections for U.S. Senate, Congress, State Senate, State Assembly, and local offices are scheduled to be held in New York this year.

6. For the 2022 election cycle in New York, one aim of the Parent Party is to recruit suitable candidates, get them on the ballot, and work with their campaigns with the goal of electing as many Parent Party candidates into office as possible.

7. As the Parent Party recently announced, it has endorsed a wide array of candidates running for Statewide offices, State Senate, State Assembly, and Congress. *See Media Advisories* available at <https://www.parentparty.org/media/> (last visited May 15, 2022). Some of the Parent Party candidates are Petitioners in connection with the related Motion to Intervene.

8. Another goal of the Parent Party is to become an official ballot access party in New York State, which would enable it to be deemed a "party" under the New York State Election Law. Currently, there are four ballot access parties in New York State: (1) the Democratic party; (2) the Republican party; (3) the Conservative party; and (4) the Working Families party.

9. If the Parent Party were to become a ballot access party, it would secure a number of benefits, including: (a) being able to form an official party apparatus and further build its fundraising operation; (b) allowing individuals, when they register to vote, to officially enroll in the Parent Party; and (c) allowing individuals to run as a Parent Party candidate as part of the designating petition process. In other words, becoming a ballot access party will increase the standing of the Parent Party and enhance its ability to elect qualified candidates into office.

10. In order to become a ballot access party in the State of New York, the Parent Party needs to obtain "excluding blank and void ballots . . . at least two percent of the total votes cast for its candidate for governor, or one hundred thirty thousand votes, whichever is greater, in the year in which a governor is elected . . ." N.Y. Elec. Law § 1-104(3).

11. As was recently reported by the New York Post, the Parent Party of New York has endorsed Lee Zeldin for Governor. *See NY Post, Parent Party Endorses Lee Zeldin, GOP*

35

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 546

RECEIVED NYSCEF: 05/16/2022

Candidates for Top Statewide Offices, May 14, 2022, available at <https://nypost.com/2022/05/14/parent-party-endorses-lee-zeldin-gop-candidates-for-top-statewide-offices/>. Lee Zeldin is also (a) a candidate for governor in the Republican Primary Election currently scheduled to be held on June 28, 2022; and (b) the Conservative Party's candidate for governor in the General Election scheduled on November 8, 2022.

12. Given that Lee Zeldin will be the Parent Party candidate for governor, the Parent Party and its supporters will circulate independent nominating petitions that will nominate him to be on the ballot on the Parent Party line in the November 8, 2022 General Election.

13. The Parent Party has always intended to circulate these petitions as "slate petitions" on which not only Lee Zeldin's name would appear, but also, the names of the other statewide candidates would appear along with, when applicable, selected Parent Party candidates running for (a) Representative in Congress; (b) State Senate; (c) State Assembly; and (d) candidates running for local office. By utilizing this slate petitioning strategy—which is also used by both major political parties—the signatures gathered count for all of the candidates on each petition sheet, thus allowing the candidates to work with each other and make the process of gathering signatures a synergistic one.

14. The entire redistricting process and the ongoing litigation has interfered with the Parent Party's ability to form petition slates and gather signatures on slate petitions. This interferes with the Parent Party's attempt to (a) get Parent Party candidates to get on the ballot and (b) qualify the Parent Party as a ballot access party in the State of New York. Significant uncertainty has existed in connection with the petitioning process since this action was initiated on February 3, 2022, and particularly after this Court's March 31, 2022 Decision and Order striking down the Congressional map, State Senate ap, and State Assembly map, and the subsequent appeals and

motion practice that followed.

15. According to the New York State Board of Elections Political Calendar, the independent nominating petition process was originally due to start on April 19, 2022. *See* <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf/> (last visited May 15, 2022).

16. However, as of April 19, the Congressional map, State Senate map, and State Assembly map were all in question, thus leaving few, if any, of the Parent Party candidates with clear guidance as to whether to begin petitioning then. Statewide candidates, such as Mr. Zeldin, need to obtain signatures by Congressional district (in addition to gathering a certain total number of signatures). Thus, it did not make sense for statewide candidates to start then, particularly when many of their “boots on the ground” to gather signatures—e.g., candidates for Congress, State Senate, State Assembly—could not feasibly start slate petitioning at that time (given that their district lines were unknown) and since it was not clear if any signatures gathered by anyone, including a Statewide candidate, would count at all.

17. Additional uncertainty followed the Appellate Division’s decision on April 21, 2022 and the Court of Appeals’ decision on April 27, 2022. The eyes of the political world then focused on both this Court and the Board of Elections for guidance as to the future of all petitioning, including independent nominating petitions—even while motions to intervene were pending before this Court concerning the constitutionality of the State Assembly map.

18. While the various appeals and other motions to intervene were pending in late-April and during the first two weeks of May, the Board of Elections provided no official guidance as to what candidates should do, including with respect to those candidates and political parties, such as the Parent Party Intervenors, who were contemplating circulating independent nominating

37**FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 546

RECEIVED NYSCEF: 05/16/2022

petitions. The first potential guidance received was from this Court in its May 5, 2022 Advisory Opinion (NYSCEF Doc. No. 409), and that Advisory Opinion commented on only the independent nominating petition process for statewide candidates.

19. It was only when the Court issued its ballot access order on May 11, 2022 (NYSCEF Doc. No. 524) (the "Ballot Access Order") that candidates for office and political advocates (including advocates such as myself, as the Founder and Chairman of the Parent Party) began to have some guidance as to the future of the independent nominating petitioning process. This, again, is crucial to the Parent Party, because the independent nominating petition process is precisely how Parent Party candidates will get on the ballot, and the path through which the Parent Party can become a ballot access party in the State of New York.

20. In this Motion to Intervene, the Parent Party of New York is asking for several modifications to the Ballot Access Order (as described in more detail in other papers filed with the Court) to vindicate the Parent Party's (and their candidates') right to associate with the political party of one's choice pursuant to the United States Constitution.

21. Among other issues, as the Ballot Access Order is now written, it is impossible for Lee Zeldin and the other Statewide candidates to slate petition with other candidates, and it is impossible for State Assembly candidates to slate petition with other candidates. In addition, the Parent Party contends that it is inequitable, and unnecessary, to require Statewide, State Assembly, and local candidates to file their independent nominating petitions by May 31 pursuant to the political calendar, when there was so much uncertainty concerning the process, and while, at the same time, Congressional and State Senate candidates are given more time to circulate independent nominating petitions.

22. In addition, only now is there some reasonable certainty concerning the parameters

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

NYSCEF DOC. NO. 546

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/16/2022

of the Assembly Map, given that this Court ruled on an unrelated Motion to Intervene on this question on May 11, 2022.

23. No one will be prejudiced by the relief requested by the Parent Party Intervenors, given that the relief requested concerns only the identity of the candidates on the ballot in the November 8, 2022 General Election. Thus, there are no timing issues that would impact Respondent State Board of Elections, local boards of elections, or otherwise.

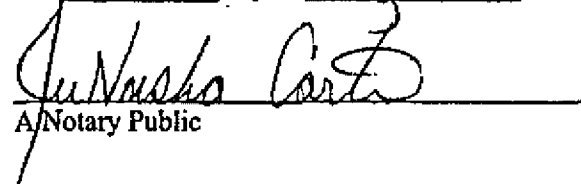
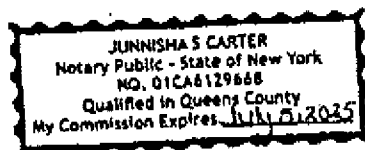
24. I have not submitted any prior application for the relief I seek.



Patrick Donohue

Sworn to and subscribed before me

this 15th day of May 2022.


A/Notary Public

39

Affidavit of William Noel in Support of Emergency Motion to Intervene, sworn
to May 15, 2022
[pp. 39 - 41]

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

NYSCEF DOC. NO. 547

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/16/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

AFFIDAVIT OF
WILLIAM NOEL

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

I, William Noel, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 66 Lacrosse Road, Carmel, NY 10512 in Putnam County. I am registered to vote in the State of New York.
2. I am the Chief of Staff of the Parent Party of New York (the "Parent Party"). One of my key responsibilities is to vet, recruit, and select candidates (a) to be endorsed by the Parent Party; and (b) to participate in the independent nominating process so as to get any endorsed

candidates on the ballot on the Parent Party line in the November 8, 2022 General Election.

3. The Parent Party has been recruiting candidates to run for various offices, including (a) Statewide offices; (b) Representative in Congress; (c) State Senate; (d) State Assembly; and (e) local offices on the county level, including County Clerk and County Legislator.

4. The entire redistricting process and the ongoing litigation has interfered with the Parent Party's ability to recruit candidates and circulate petitions. This interferes with the Parent Party's attempt to (a) get Parent Party candidates to get on the ballot and (b) for the Parent Party to qualify as a ballot access party in the State of New York.

5. On May 3, 2022, I traveled to the main office of the New York State Board of Elections (the "Board of Elections") located in Albany, New York. While I was at the office of the Board of Elections, I spoke with three individuals at the main/filing desk. Given the uncertainties surrounding the ongoing redistricting litigation, I asked these three individuals what the process would be for the independent nominating petitions, particularly since many of the districts were unknown. The three officials at the Board of Elections told me that they did not know what the process would be for independent nominating petitions and stated that it is up to the courts. They further informed me that they were waiting for the courts to create a political calendar for the independent nominating petition process.

41

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 547

RECEIVED NYSCEF: 05/16/2022

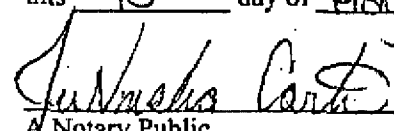
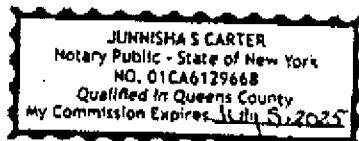
6. Given the lack of guidance provided to me by officials at the New York State Board of Elections, and the fact that many of the district maps were unknown, I left their office not knowing what actions the Parent Party should take in connection with the independent nominating petition process. In fact, it was unclear, if the Parent Party started gathering signatures for the independent nominating process, whether those signatures would even be considered to be valid.

7. I have not submitted any prior application for the relief I seek.


William Noel

Sworn to and subscribed before me

this 15th day of May 2022.


A Notary Public

42

**Affidavit of Brian Robinson in Support of Emergency Motion to
Intervene, sworn to May 15, 2022**

[pp. 42 - 43]

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 548

RECEIVED NYSCEF: 05/16/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

**AFFIDAVIT OF
BRIAN ROBINSON**

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Brian Robinson, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 121 Reade Street, Apt. 10F, New York, NY 10013 in New York County. I am registered to vote in the State of New York.
2. I am a candidate for Representative in Congress in what is currently known as the 10th Congressional District.
3. I have qualified to appear on the ballot in the upcoming Democratic Primary

43

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 548

RECEIVED NYSCEF: 05/16/2022

election, currently scheduled to be held on August 23, 2022.

4. I have been endorsed by the Parent Party of New York (the "Parent Party").
5. In partnership with the Parent Party, I intend to circulate independent nominating petitions so that I can appear on the ballot as a Parent Party candidate for Representative in Congress in the November 8, 2022 General Election.
6. The redistricting process, and the ongoing litigation related thereto, has interfered with my ability to circulate petitions to appear as a candidate on the Parent Party line in the November 8, 2022 General Election.
7. I seek to intervene in this action so that my rights as a voter and a candidate will be protected. I have not submitted any prior application for the relief I seek.

Brian Robinson

Brian Robinson

STATE OF NEVADA, COUNTY OF CLARK

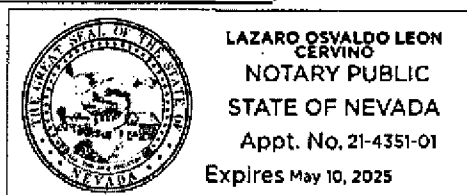
Sworn to and subscribed before me

this 15th day of May 2022 by Brian Robinson

[Signature]

A Notary Public

Notarized online using audio-video communication



44

Affidavit of Danyela Souza Egorov in Support of Emergency Motion
to Intervene, sworn to May 15, 2022

[pp. 44 - 45]

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 549

RECEIVED NYSCEF: 05/16/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
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LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

AFFIDAVIT OF
DANYELA SOUZA EGOROV

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Danyela Souza Egorov, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 88 Laight Street, Apt. 7, New York, NY 10013 in New York County. I am registered to vote in the State of New York.
2. I am a candidate for State Senator in what is currently known as the 29th Senatorial District. I have qualified to appear on the ballot in the upcoming Democratic Primary election, currently scheduled to be held on August 23, 2022.

45


FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 549

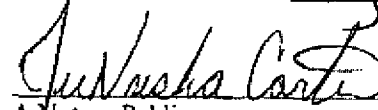
RECEIVED NYSCEF: 05/16/2022

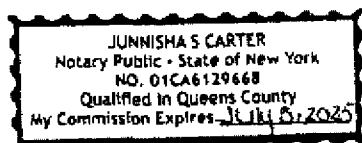
3. I have been endorsed by the Parent Party of New York (the "Parent Party").
4. In partnership with the Parent Party, I intend to circulate independent nominating petitions so that I can appear on the ballot as a Parent Party candidate for State Senator in the November 8, 2022 General Election.
5. The redistricting process, and the ongoing litigation related thereto, has interfered with my ability to circulate petitions to appear as a candidate on the Parent Party line in the November 8, 2022 General Election.
6. I seek to intervene in this action so that my rights as a voter and a candidate will be protected. I have not submitted any prior application for the relief I seek.


Danyela Souza Egorov

Sworn to and subscribed before me

this 15th day of May 2022.


A Notary Public



46

**Affidavit of Kevin Pazmino in Support of Emergency Motion to
Intervene, sworn to May 15, 2022
[pp. 46 - 47]**

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 550

RECEIVED NYSCEF: 05/16/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

**AFFIDAVIT OF
KEVIN PAZMINO**

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF THE BRONX)

I, Kevin Pazmino, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 5565 Netherland Avenue, Apt. 2F, Bronx, NY 10471 in Bronx County. I am registered to vote in the State of New York.
2. I am a candidate for Member of the Assembly in the 81st Assembly District. I have qualified to appear on the ballot on the Conservative Party line in the General Election to be held on November 8, 2022.

47

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 550


RECEIVED NYSCEF: 05/16/2022

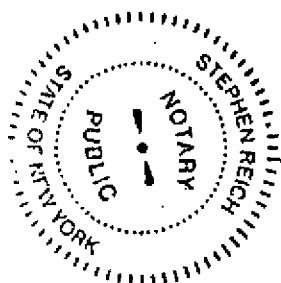
3. I have been endorsed by the Parent Party of New York (the "Parent Party").
4. In partnership with the Parent Party, I intend to circulate independent nominating petitions so that I can appear on the ballot as a Parent Party candidate for Member of the Assembly in the November 8, 2022 General Election.
5. The redistricting process, and the ongoing litigation related thereto, has interfered with my ability to circulate petitions to appear as a candidate on the Parent Party line in the November 8, 2022 General Election.
6. I seek to intervene in this action so that my rights as a voter and a candidate will be protected. I have not submitted any prior application for the relief I seek.


Kevin Pazmino

Sworn to and subscribed before me

this 15th day of MAY 2022.


A Notary Public



48

**Affidavit of Pool Stewart in Support of Emergency Motion to Intervene,
sworn to May 14, 2022
[pp. 48 - 49]**

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 551

RECEIVED NYSCEF: 05/16/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

**AFFIDAVIT OF
POOL STEWART**

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF THE BRONX)

I, Pool Stewart, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 153 Morton Place, Bronx, NY 10453 in Bronx County. I am registered to vote in the State of New York.
2. I am a candidate for Member of the Assembly from the 86th Assembly District. I have qualified to appear on the ballot in the upcoming Democratic Primary election, currently scheduled to be held on June 28, 2022.

49

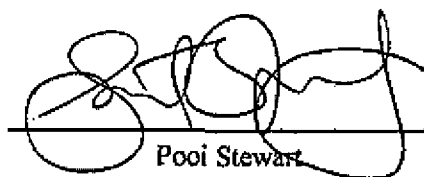
FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

NYSCEF DOC. NO. 551

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/16/2022

3. I have been endorsed by the Parent Party of New York (the "Parent Party").
4. In partnership with the Parent Party, I intend to circulate independent nominating petitions so that I can appear on the ballot as a Parent Party candidate for Member of the Assembly in the November 8, 2022 General Election.
5. The redistricting process, and the ongoing litigation related thereto, has interfered with my ability to circulate petitions to appear as a candidate on the Parent Party line in the November 8, 2022 General Election.
6. I seek to intervene in this action so that my rights as a voter and a candidate will be protected. I have not submitted any prior application for the relief I seek.


Pooli Stewart

Sworn to and subscribed before me

this 14 day of MAY 2022.
A Notary Public

50

**Affidavit of Otis D. Danne Jr. in Support of Emergency Motion
to Intervene, sworn to May 15, 2022
[pp. 50 - 51]**

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 552

RECEIVED NYSCEF: 05/16/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

**AFFIDAVIT OF
OTIS D. DANNE JR.**

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Otis D. Danne Jr., being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 5023 Avenue D, Apt. 2F, Brooklyn, NY 11203 in Kings County. I am registered to vote in the State of New York.
2. I am a candidate for Member of the Assembly from the 58th Assembly District.
3. I have been endorsed by the Parent Party of New York (the "Parent Party").
4. In partnership with the Parent Party, I intend to circulate independent nominating

51

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 552

RECEIVED NYSCEF: 05/16/2022

petitions so that I can appear on the ballot as a Parent Party candidate for Member of the Assembly in the November 8, 2022 General Election.

5. The redistricting process, and the ongoing litigation related thereto, has interfered with my ability to circulate petitions to appear as a candidate on the Parent Party line in the November 8, 2022 General Election.

6. I previously circulated and filed a Designating Petition with the New York City Board of Elections in an attempt to qualify to appear on the ballot in the upcoming Democratic Primary election, currently scheduled to be held on June 28, 2022. However, the Commissioners of the New York City Board of Elections removed me from the ballot after determining that my Designating Petition contained insufficient signatures.

7. Accordingly, if I do not secure the Parent Party line or any other third-party line, then I will not be on the ballot at all. If I do not make the ballot, registered voters within the 58th Assembly District who support me would not be able to vote for me at any time this election cycle.

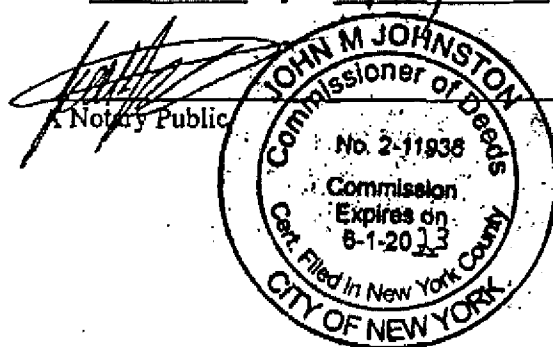
8. I seek to intervene in this action so that my rights as a voter and a candidate will be protected. I have not submitted any prior application for the relief I seek.



Otis D. Danne Jr.

Sworn to and subscribed before me

this 15 day of MA 2022.



-2-

52

Affidavit of Gavin Wax in Support of Emergency Motion to Intervene,
sworn to May 15, 2022
[pp. 52 - 53]

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 553

RECEIVED NYSCEF: 05/16/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Index No.: E2022-0116CV

**AFFIDAVIT OF
GAVIN WAX**

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Gavin Wax, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 1229 First Avenue, Apt. 11, New York, NY 10065 in New York County. I am registered to vote in the State of New York.
2. I am the President of the New York Young Republican Club. In addition to my political advocacy on behalf of Republican-related causes, I am a supporter of the ability of so-called "third parties" to organize in the State of New York and for candidates to seek third-party

53

FILED: STEUBEN COUNTY CLERK 05/16/2022 03:31 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 553

RECEIVED NYSCEF: 05/16/2022

ballot lines in general elections. Our polarized, tribal political culture is broken, and I firmly believe that more voices deserve to be heard.

3. I am a supporter of the Parent Party of New York (the "Parent Party"). I understand that two of the core issues promoted by the Parent Party of New York are school choice and supporting local law enforcement. I have always supported parents' right to choose where their children go to school. In addition, I oppose so-called "Defund the Police" efforts. Accordingly, I strongly support several of the core principles of the Parent Party.

4. The entire redistricting process and the ongoing litigation has interfered with the Parent Party's ability to circulate petitions which would (a) allow Parent Party candidates to get on the ballot and (b) enable the Parent Party to become a ballot access party in the State of New York. This dilutes the power of my vote based on my political beliefs and diminishes the effect of my political advocacy work.

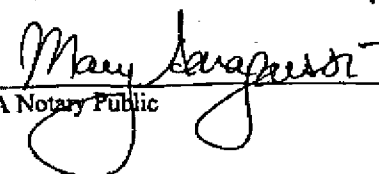
5. I seek to intervene in this action so that my rights will be protected. I previously intervened in this action seeking the State Assembly map to be invalidated, but now, my current request for relief focuses only on the independent nominating petitioning process based on the Court's May 11, 2022 Ballot Access Order.


Gavin Wax

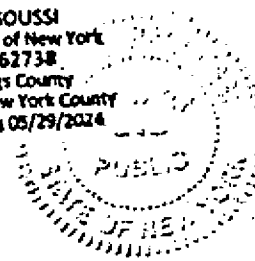
STATE OF NEW YORK
COUNTY OF NEW YORK

Sworn to and subscribed before me

this 15TH day of MAY 2022.


A Notary Public

MARY SARAGOUSSI
Notary Public, State of New York
NO. 015A6262738
Qualified in Kings County
Certificate filed in New York County
Commission Expires 05/29/2024



-2-

54

[Proposed] Order Amending May 11, 2022 Ballot Access Order
[pp. 54 - 55]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

Index No.: E2022-0116CV

**[PROPOSED] ORDER AMENDING
MAY 11, 2022 BALLOT ACCESS
ORDER**

-----X
Upon the emergency Motion to Intervene by the Parent Party of New York, Patrick Donohue,
William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr.,
and Gavin Wax, and accompanying papers;

IT IS HEREBY ORDERED that the Court's May 11, 2022 Order concerning ballot access
(NYSCEF Doc. No. 524) (the "Ballot Access Order") is hereby amended as follows:

1. The political calendar dates for independent nominating petitions listed on page 4 of the Ballot
Access Order shall apply to the independent nominating process for the following offices: (a) All
Statewide offices; (b) Representative in Congress; (c) New York State Senate; (d) New York State
Assembly; and (e) all local public offices for the November 8, 2022 General Election;

55

2. With respect to the political calendar dates for the independent nominating process listed on page 4 of the Ballot Access Order, the "First day to sign" is hereby modified to read "4/19/22"; and

3. The signature requirements set forth in New York Election Law § 6-142 for independent nominating petitions are hereby reduced by 50%, given the uncertainties caused by this action and related redistricting litigation, and the ongoing COVID-19 pandemic.

DATED: Bath, New York

May ____, 2022

ENTER:

HON. PATRICK F. MCALLISTER, J.S.C.

56

**Intervenor Mark Braiman's [Proposed] Order to Show Cause Regarding
Emergency Motion for Leave to Intervene
[pp. 56 - 84]**

At a _____ of the Supreme
Court of the State of New York,
held in and for the County of
Steuben, at Three East Pulteney
Square, Bath, New York, on the
____ day of May 2022.

PRESENT: HON. PATRICK F. MCALLISTER, J.S.C.

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHÉR, JR., STEHPAN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE,

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

-----X
UPON the emergency motion of Mark Braiman to intervene in this action on the ground that his
interests are or may be inadequately represented and that he may be bound by the judgment entered
herein; the annexed affidavits of Mark Braiman, Cody Anderson, and Jonathan Howe; the Proposed
Answer to Amended Petition with Additional Cause of Action Seeking to Modify Provisions for
Independent Congressional and State Senate Candidates; and the accompanying Memorandum of Law
of Gary L. Donoyan, Esq, Petitioners and Respondents are hereby

ORDERED TO SHOW CAUSE, on the _____ day of May 2022, at _____ or as soon

57

thereafter as counsel can be heard, at Part ____ [Room ____] at the Courthouse located at Three East Pulteney Square, Bath, New York 14810, under CPLR 1012 and 1013,

- (a) WHY PETITIONER-INTERVENOR should not be allowed to intervene to protect his rights as a voter and independent Congressional candidate, and
- (b) WHY AN ORDER should not be issued modifying this Court's May 11, 2022 Decision and Order, which set "political calendar dates" for "the independent nominating process for Member of Congress and New York State Senate, for the November 8, 2022 General Election for State Senate and Member of [United States] House of Representatives," so to set the same such dates for independent statewide and independent New York State Assembly candidates as well; and
- (c) WHY AN ORDER should not be issued modifying the May 11, 2022 Decision and Order, which ordered "the signature requirements provided for by current law to be unchanged," so to provide for a 50% reduction in signatures required for independent candidates for Congress from 3,500 to 1,750 signatures, and for independent candidates for State Senate from 3,000 to 1,500; and
- (d) WHY AN ORDER should not be issued modifying the May 11, 2022 Decision and Order, which set May 21, 2022 as "First day to sign" for independent Congressional and State Senate candidates' petitions, so to provide that valid signatures gathered on otherwise valid petitions between April 19 and April 27, by the same candidates of voters residing within the newly-created districts, as the case may be, shall also count towards the required total number of signatures; and
- (e) WHY THIS COURT should not grant such other and further relief as is just and equitable, and it is further

58

ORDERED that service of a copy of this Order and accompanying documents be made on counsel for all parties by NYSCEF, on or before the ____ day of May 2022, and that such service be deemed sufficient, and it is further

ORDERED that Petitioners and Respondents, including Respondent New York State Board of Elections, shall file with this Court, by NYSCEF, a copy of their opposition papers, if any, in connection with the above motion to intervene and/or any of the accompanying requests for relief, on or before May ____, 2022.

Dated: Bath, New York

May ____, 2022

ENTER:

Hon. Patrick F. McAllister, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPIEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE.

AFFIDAVIT IN SUPPORT

Index No. E2022-0116CV

Petitioners.

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE BRIAN BENJAMIN, SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE SENATE ANDREA STEWART-COUSINS, SPEAKER OF THE ASSEMBLY CARL HEASTIE, NEW YORK STATE BOARD OF ELECTIONS, and THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT.

Respondents.

STATE OF WASHINGTON)
) ss.:
COUNTY OF KING)

I, Mark Braiman, being duly sworn, depose and say:

1. I am a candidate for Member of the United States House of Representatives, formerly running in the 22nd District of New York, having been endorsed by the Libertarian Party of New York, an independent body.

2. I submit this affidavit in support of my emergency request to intervene in the above-captioned action. I am fully familiar with the facts and circumstances stated herein.

3. I am moving for leave to intervene by order to show cause so that my rights as a voter and candidate for a non-recognized party, known as an independent body, will be protected.

4. I seek to intervene as of right in this action, on the ground that my interests are not adequately represented by the present parties and since I may be bound by any judgment rendered herein. CPLR §1012(a)(2) ("Upon timely motion, any person shall be permitted to intervene in any action ... when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment.")

5. In the alternative, I seek to intervene by permission in this action, on the ground that my claim and the main action "have a common question of law or fact." CPLR §1013.

6. The Legislature's unconstitutional redistricting has harmed voters' and candidates' interests in fair representation. In addition, this Court's Decision and Order of May 11, 2022 also harms the interests and rights of independent Congressional and State Senate candidates. Pursuant to that order, Respondent New York State Board of Elections will now require independent Congressional and State Senate candidates to start collecting signatures no sooner than May 21, 2022, and file their petitions six weeks thereafter, by July 5, 2022. None of the signatures collected between April 19, 2022 and April 27, 2022, even if within the new districts for the same candidates, will be considered valid (though previously-collected signatures for recognized party candidates for the same offices will count to permit some of those candidates to qualify for the ballot without any further petitioning at all). The number of signatures required has not changed from the statutory requirement, which is 3,500 signatures for each independent Congressional candidate, and 3,000 signatures for each independent State Senate candidate. However, none of the independent Congressional and State Senate candidates will be able to gather signatures on joint petitions with any independent statewide candidates, because the two sets of petitions must be filed separately, which is absolutely not the statutory structure intended by the Legislature. Those independent statewide petitions must still be filed by May 31, 2022, while the independent Congressional and State Senate petitions may not be filed before June 27, 2022, eliminating the possibility of joint

filings with joint petitions.

7. The redrawing of Congressional and State Senate district lines has resulted in a likelihood that the signatures gathered by independent Congressional and State Senate candidates will not meet the statutory requirements, and sufficient signatures cannot be gathered between the new starting date for petitioning of May 21, 2022, and the deadline for filing on July 5, 2022. Between April 19, 2022, when independent Congressional and State Senate candidates began petitioning to qualify for the ballot using the old district lines, and April 27, 2022, when the Court of Appeals affirmed (against the predictions of many) this Court's March 31, 2022 voiding of those old lines, I and many other such candidates spent countless hours collecting signatures and organizing volunteers and paid petitioners, in the expectation that our completed petitions could be filed six weeks later, on May 31, 2022. In addition, I made, and other independent Congressional and State Senate candidates typically made, arrangements in our professional and personal lives to set aside those six weeks for the all-important petitioning drive, arrangements many of which could not be undone, and many of which can not be made again.

8. In addition, I will be losing a big motivational factor for collecting signatures, and organizing others to collect signatures, because I will not be able to collect also for my favorite Governor candidate, Libertarian Larry Sharpe. While I can circulate his petitions (which are combined with four other statewide Libertarian candidates, for Lieutenant Governor, Attorney General, Comptroller, and US Senator), together with my new petitions between May 21 and May 31 (the last day to file the statewide petitions), for the remaining weeks, until the last day to file the Congressional and State Senate petitions which is July 5, I will be petitioning only for myself, while my Libertarian statewide candidate friends (if they have managed to qualify for the ballot at all), in turn, will have less incentive to assist my efforts. When you add on the recent and recurring difficulties caused by constantly-evolving new strains of COVID-19 and related restrictions and

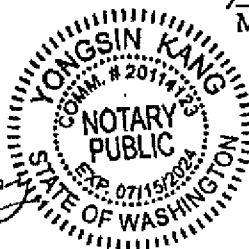
common fears, which reduce the availability of signers and efficiency of petition witnesses, this must be the most difficult year in New York history for independent candidates for office.

9. I am requesting three forms of relief in this action: (1) that the deadline for independent statewide and State Assembly candidates to file their petitions be extended from May 31, 2022 to July 5, 2022, so as to be coordinate with the new deadline set (on May 11, 2022) for independent Congressional and State Senate candidates to file their petitions, permitting the circulation of joint petitions; (2) that the signature requirements for independent Congressional and State Senate candidates be reduced from the statutory requirement of 3,500 signature and 3,000 signatures, respectively, by at least 50%, in light of the burdens caused by the previous petitioning efforts which cannot be undone and which will cause more burdens in the future, the difficulties caused by constantly-evolving new strains of COVID-19 and associated restrictions and fears, and in the event the statewide filing deadline is not extended, by the lack of assistance and coordination with statewide candidates whose names would otherwise be on the same petitions; and (3) that the signatures collected by independent Congressional and State Senate candidates between April 19 and April 27, 2022, from qualified signers residing within the new district they seek to qualify in, be included in and counted towards their total signatures collected in the new district.

10. I have not made any prior application for the relief requested herein, in this or any court.

Sworn to before me this
15 day of May 2022

Yongsin Kang
NOTARY PUBLIC



Mark S. Braiman 5/15/22
Mark Braiman

63

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
 TIM HARKENRIDER, GUY C. BROUGHT,
 LAWRENCE CANNING, PATRICIA CLARINO,
 GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
 FANTON, JERRY FISHMAN, JAY FRANTZ,
 LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
 ROWLEY, JOSEPHINE THOMAS, and MARGARET
 VOLANTE,

AFFIDAVIT IN SUPPORT

Index No. E2022-0116CV

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
 GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
 BENJAMIN, SENATE MAJORITY LEADER AND
 PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
 STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
 CARL HEASTIE, NEW YORK STATE BOARD OF
 ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
 TASK FORCE ON DEMOGRAPHIC RESEARCH AND
 REAPPORTIONMENT,

Respondents.

-----X
 STATE OF NEW YORK)
) ss.:
 COUNTY OF SCHOHARIE)

I, William Cody Anderson, being duly sworn, depose and say:

1. I am Chair and de facto President of the Libertarian Party of New York ("LPNY"), an independent body and unincorporated association.

2. I, on behalf of the LPNY, submit this affidavit in support of the motion of proposed intervenor Mark Braiman, who is the LPNY's candidate for Member of the U.S. House of Representatives ("Congress") from the (former) 22nd District of New York, to intervene in the above-captioned action. I am fully familiar with the facts and circumstances stated herein.

3. In 2018 the LPNY's Governor candidate crossed the vote threshold required for the

LPNY to obtain recognized party status, the first time in its fifty year history it had achieved such status. However, the Legislature passed a new election law in 2020, which truncated the period of the status enjoyed by all recognized parties into two years rather than four. Under the new law, in addition to the Governor candidates, the President candidates are also required to meet a certain vote threshold, and in addition, that vote threshold was set at a number more than double what it had been for decades. Sure enough, in November 2020, and also due to the limited campaigning that was a result of New York's Covid-19 travel restrictions, the LPNY's President candidate did not meet the new vote threshold, and the LPNY was reduced to independent body status again.

4. The LPNY's current Governor candidate, Larry Sharpe, now provides the only opportunity for the LPNY to regain its recognized party status, and it must gather a minimum of 45,000 valid signatures in order even to appear on the 2022 ballot.

5. In past years, in every even numbered year from the 1980s up to and including 2018, LPNY candidates for Congress and New York State Senate (as well as for New York State Assembly) were always actively recruited, particularly for those districts across New York for which their petitions would be filed with Respondent New York State Board of Elections ("NYSBOE").¹ One important value of such candidates for the LPNY, in the years in which it is an independent body, is that such petitions can be and typically are combined with that of the LPNY's statewide candidates, which have qualified for the ballot every two years since the 1980s, thus providing an assist both to our statewide candidates, and to our Congress and State Senate candidates. But even local candidates whose petitions are not combined with the statewide candidates' petition provide assistance, by commonly circulating both petitions and seeking to obtain signatures on each one. One exception to that pattern was in 2020,

¹ Candidates running in districts wholly within a county, or within New York City, will file their petitions with the board of elections for that county, or for New York City, respectively. Candidates running in districts that encompass parts of more than one county, other than those wholly within New York City, will file their petitions with Respondent NYSBOE.

65

when our President candidate qualified for the ballot by election at a national party convention, because as noted, that year the LPNY was a recognized party. The enthusiasm of those local candidates and their familiarity with their communities and local political activists always provides a substantial boost to our statewide candidates' efforts to qualify for the ballot, whether or not each Congress or State Senate candidate him or herself qualifies for the ballot, because all collected signatures will count towards the statewide total regardless.

6. In 2022, the LPNY and/or its local county affiliates endorsed four Congress candidates, two State Senate candidates, and three State Assembly candidates, as follows:

- Howard Rabin, for Member of the U.S. House of Representatives (1st District)
- Michael Rakebrandt, for Member of the U.S. House of Representatives (2nd District)
- Jonathan Howe, for Member of the U.S. House of Representatives (14th District)
- Mark Braiman, for Member of the U.S. House of Representatives (22nd District)
- James Coll, for State Senate (6th District)
- Blay Tarnoff, for State Senate (7th District)
- Joseph Maffia, for State Assembly (75th District)
- Pietro Geraci, for State Assembly (104th District)
- Matthew Schieber, for State Assembly (144th District)

A copy of each of those candidates' petition sheets is annexed hereto as Exhibit 1.

7. To my knowledge, all nine of those candidates had petitions prepared and plans made to circulate them, as of April 19, 2022, which was the start of the petitioning period for all independent candidates, according to the Election Law. Those candidates who were eligible to, combined their petitions with our statewide candidates' petition, and those who were not, obtained both petitions so as to circulate their own petitions as well as our statewide candidates' petition, a more cumbersome but still helpful process.

8. Eight days later, on April 27, 2022, the Court of Appeals handed down its decision affirming this Court's ruling, which came as a surprise to many of us. It was a happy surprise in some respects, because I and most of my colleagues in the LPNY thought it was the right decision, but it also caused immediate difficulties for all of our candidates. Our four Congressional and two State Senate

candidates now had no districts to run in, and it soon became apparent that further petitioning for their own races would likely be of no use. Our statewide candidates also no longer had any ability to keep track of which Congress districts their signatures were being collected in, which made it impossible to ensure they would meet the state law requirement that their petition include 500 signatures in each of half of the Congress districts.

9. LPNY Governor candidate Larry Sharpe and the LPNY, as well as independent US Senate candidate Diane Sare, began to explore our legal options, and retained attorney Jonathan O'Brien, Esq., to prepare papers and file an order to show cause, seeking to intervene in this action on our behalf, for relief from the extreme difficulties suffered by all statewide independent candidates caused by the elimination of Congress and State Senate district lines, as affirmed by the Court of Appeals on April 27, 2022. Our proposed order to show cause was filed on May 12, 2022, and the order was signed on May 13, 2022, setting the return date of our motion for May 19, 2022.

10. Meanwhile, on May 11, 2022, the order of this Court was issued setting out the new requirements for qualification for the ballot, for all Congress and State Senate candidates, in anticipation of the proclamation of new district lines on or before May 20, 2022. The May 11 order harms the interests and rights of independent Congress and State Senate candidates. Pursuant to that order, Respondent New York State Board of Elections will now require independent Congress and State Senate candidates to start collecting signatures no sooner than May 21, 2022, and file their petitions six weeks thereafter, by July 5, 2022. None of the signatures collected between April 19, 2022 and April 27, 2022, even if within the new districts for the same candidates, will be considered valid (though previously-collected signatures for recognized party candidates for the same offices will count to permit some of those candidates to qualify for the ballot without any further petitioning at all). The number of signatures required has not changed from the statutory requirement, which is 3,500 signatures for each independent Congress candidate, and 3,000 signatures for each independent State Senate candidate.

However, none of the independent Congress and State Senate candidates will be able to gather signatures on joint petitions with any independent statewide candidates, because the two sets of petitions must be filed separately, which is absolutely not the statutory structure intended by the Legislature. Those independent statewide (and State Assembly) petitions must still be filed by May 31, 2022, while the independent Congress and State Senate petitions may not be filed before June 27, 2022, eliminating the possibility of joint filings with joint petitions.

11. The terms of the May 11 order have resulted in a likelihood that the signatures gathered by independent Congress and State Senate candidates will not meet the statutory requirements, and sufficient signatures cannot be gathered between the new starting date for petitioning of May 21, 2022, and the deadline for filing on July 5, 2022. Between April 19, 2022, when independent Congress and State Senate candidates began petitioning to qualify for the ballot using the old district lines, and April 27, 2022, when the Court of Appeals affirmed (against the predictions of many) this Court's March 31, 2022 voiding of those old lines, movant-candidate Mark Braiman and the other five LPNY Congress and State Senate candidates spent countless hours collecting signatures and organizing volunteers and paid petitioners, in the expectation that their completed petitions could be filed six weeks later, on May 31, 2022. In addition, movant-candidate Mark Braiman and the other five LPNY Congress and State Senate candidates made arrangements in their professional and personal lives to set aside those six weeks for the all-important petitioning drive, arrangements many of which could not be undone, and many of which can not be made again.

12. In addition, during the new six-week period proclaimed in the May 11 order during which all six Congress and State Senate LPNY candidates may collect signatures, each of them will have lost a big motivational factor for collecting signatures, and organizing others to collect signatures, because they will not be able to collect also for our Governor candidate, Libertarian Larry Sharpe. While they may circulate his petitions (which are combined with four other statewide Libertarian

candidates, for Lieutenant Governor, Attorney General, Comptroller, and US Senator), together with their new petitions between May 21 and May 31 (the last day to file the statewide petitions), for the remaining weeks, until the last day to file the independent Congress and State Senate petitions which is July 5, each of those six LPNY candidates will be petitioning only for themselves, while our LPNY statewide candidates (if they have managed to qualify for the ballot at all), in turn, will have less incentive to assist the efforts of those six of our candidates. When you add on the recent and recurring difficulties caused by constantly-evolving new strains of COVID-19 and related restrictions and common fears, which reduce the availability of signers and efficiency of petition witnesses, this must be the most difficult year in New York history for independent candidates for office.

13. Furthermore, two of our State Assembly candidates (those campaigning for the 104th and 144th Districts) whose petitions must be filed with Respondent NYSBOE (and whose petitions are thus joint with our statewide candidates), and all other such independent State Assembly candidates, would be harmed and likely unable to qualify for the ballot at all, should their filing deadline not also be extended to July 5, 2022, if this Court extends the filing deadline for independent statewide candidates to July 5, as it should. That is because their petition sheets would have to be withheld from filing until after May 31, if those joint petition sheets are to be included in the whole petition to be filed on behalf of the statewide candidates, on July 5, and there would be little time after such a ruling, for such independent State Assembly candidates to create new separate petition sheets and then meet the signature requirement in the remaining time. And to be fair to those independent State Assembly candidates who do not file their petitions with Respondent NYSBOE, their deadline for filing should also be extended to July 5, 2022, in line with that of all other independent candidates, in that event.

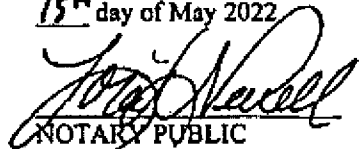
14. I urge this court to consider the harm that will likely result to every truly independent political party and candidate in New York State, as well as to every New York voter, myself included, should the relief requested by movant-candidate Mark Braiman not be granted, not just this year but for

several years into the future, as a failure to qualify a Governor candidate for the ballot prevents it not only from having an opportunity to keep or regain its recognized party status, but also eliminates all of its enrolled members from the rolls of Respondent NYSBOE, as those rolls are maintained only for "Other" independent bodies that have run a Governor (and now also, apparently, a President) candidate in the last election. There are no parties presently appearing in this action who represent or have advocated for the interests of independent bodies and candidates in this state, at all. For all those reasons and many others, I urge this Court to grant the relief sought by movant-candidate Mark Braiman, and I thank the Court for its consideration of these issues.



William Cody Anderson

Sworn to before me this
15th day of May 2022


NOTARY PUBLIC

LORA L. NEWELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01588288660
Qualified in Schoharie County
My Commission Expires October 01, 2024

70

EXHIBIT 1

71

Independent Nominating Petition

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 6th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate

Larry Sharpe
Andrew C. Hollister
Sean C. Hayes
William K. Schmidt
Thomas D. Quiter
Howard Rabin

Public Office

Governor of New York
Lieutenant Governor of New York
Attorney General of New York
Comptroller of New York
U.S. Senator from New York
U.S. Congressman, District 1

Place of Residence (also Post Office address if not identical)

23-14 24th Ave., Astoria, NY 11102
710 Jones Road, Rochester, NY 14612
200 Rector Place Apt. 191, New York, NY 10280
1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566
1789 State Highway 8, Mount Upton, NY 13809
88 Virginia Ave., Plainview, NY 11803

I do hereby appoint:

William Cody Anderson
Anthony D'Onofrio
Diane J. Whitman
Andrew M. Kolacz
Lora L. Newell

P.O. Box 910, Middleburgh, NY 12122
122 West Filbert Street, East Rochester, NY 14445
5806 East Lane, Lakeview, NY 14083
35 Fairfield Avenue, Jamestown, NY 14701
P.O. Box 321, Middleburgh, NY 12122

Robert M. Arrigo
Gabrielle S. Cordova
Piero S. Geraci
Paul M. Orsadio
Richard F. Purcell

24 Proctor Way, Saratoga Springs, NY 12866
65-60 Wetherdale Street, Apt. 4A, Rego Park, NY 11374
26 Rockwood Drive, Newburgh, NY 12550
157 Start Street, Apt. 4R, Brooklyn, NY 11237
4 Holmes Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	Date	Name of Signer (printed name may be added)	Residence	Town or City Except in NYC, County
1	/ / 2022 X	printed name:		
2	/ / 2022 X	printed name:		
3	/ / 2022 X	printed name:		
4	/ / 2022 X	printed name:		
5	/ / 2022 X	printed name:		
6	/ / 2022 X	printed name:		
7	/ / 2022 X	printed name:		
8	/ / 2022 X	printed name:		
9	/ / 2022 X	printed name:		
10	/ / 2022 X	printed name:		

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date:

Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town or City:

County:

Sheet No. _____

Independent Nominating Petition

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.



Name of Candidate

Larry Sharpe

Andrew C. Hollister

Sean C. Hayes

William K. Schmidt

Thomas D. Qulter

Mike Rakebrandt

Public Office

Governor of New York

Lieutenant Governor of New York

Attorney General of New York

Comptroller of New York

U.S. Senator from New York

U.S. Congressman, District 2

Place of Residence (also Post Office address if not identical)

23-14 24th Ave., Astoria, NY 11102

710 James Road, Rochester, NY 14612

200 Rector Place Apt. 19L, New York, NY 10280

1874 Crompond Rd., Apt. 3 B2, Peekskill, NY 10566

1789 State Highway 8, Mount Upton, NY 13809

125 Ballad Circle, Holbrook, NY 11741

I do hereby appoint:

William Cody Anderson

Anthony D. Ouzin

Dorot J. Whinnier

Andrew M. Kotlos

Lora L. Maxwell

P.O. Box 910, Middleburgh, NY 12122

122 West Fulton Street, East Rochester, NY 14445

3800 East Lane, Lakeview, NY 14685

35 Fairfield Avenue, Jamestown, NY 14701

P.O. Box 321, Middleburgh, NY 12122

Robert M. Arrigo

Gabrielle S. Cordova

Pietro S. Gencel

Paul M. Grindie

Richard F. Purcell

24 Preserve Way, Saratoga Springs, NY 12866

65 60 Westboro Street, Apt. 4A, Rego Park, NY 11374

26 Rockwood Drive, Newburgh, NY 12550

137 Main Street, Apt. 4R, Brooklyn, NY 11237

4 Holmes Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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7	/ / 2022 X	printed name:		
8	/ / 2022 X	printed name:		
9	/ / 2022 X	printed name:		
10	/ / 2022 X	printed name:		

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date

Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town or City: _____

County: _____

Sheet No. _____

73

DOC. NO. 533

Independent Nominating Petition

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/11/2022

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.



Name of Candidate	Public Office	Place of Residence (also Post Office address if not identical)
Larry Sharpe	Governor of New York	23-14 24th Ave., Astoria, NY 11102
Andrew C. Hollister	Lieutenant Governor of New York	710 James Road, Rochester, NY 14612
Sean C. Hayes	Attorney General of New York	200 Rector Place Apt. 19L, New York, NY 10280
William K. Schmidt	Comptroller of New York	1874 Crompond Rd., Apt. 1 B7, Peekskill, NY 10566
Thomas D. Quiter	U.S. Senator from New York	1789 State Highway 8, Mount Upton, NY 13809
Mark S. Brannan	Representative in Congress, 22 nd District	4775 East Lake Road, Canastota, NY 13015

I do hereby appoint:

William Cody Anderson	P.O. Box 910, Middleburgh, NY 12122	Robert M. Arrigo	24 Francine Way, Saratoga Springs, NY 12866
Anthony D'Onofrio	122 West Filbert Street, East Rochester, NY 14445	Gabrielle B. Cordova	63-46 Wyckoff Street, Apt. 4A, Rego Park, NY 11374
Dennis J. Whelan	5806 East Lane, Lakewood, NY 14085	Pietro S. Grimaldi	26 Rockwood Drive, Newburgh, NY 12550
Andrew M. Kolster	35 Fairfield Avenue, Jamestown, NY 14701	Paul M. Grimaldi	137 Star Street, Apt. 4R, Brooklyn, NY 11237
Lara L. Newell	P.O. Box 321, Middleburgh, NY 12122	Richard T. Purrell	4 Holston Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	Date	Name of Signer (printed name may be added)	Residence	Town or City Except in NYC, County
1	/ / 2022	X		
	Printed name:			
2	/ / 2022	X		
	Printed name:			
3	/ / 2022	X		
	Printed name:			
4	/ / 2022	X		
	Printed name:			
5	/ / 2022	X		
	Printed name:			
6	/ / 2022	X		
	Printed name:			
7	/ / 2022	X		
	Printed name:			
8	/ / 2022	X		
	Printed name:			

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residential address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the date above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date

Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition to be valid.

Town or City: _____

County: _____

C.D. 22

4 of 4

Sheet No. _____

Independent Nominating Petition

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate:Public Office:Place of Residence (also Post Office address if not identical)

James L. Coll

State Senate, District 6

579 Arlington Drive, Seaford, NY 11783

I do hereby appoint:

Jonathan Gansher

636 Stewart Ave., Bethpage, NY 11714

Howard Rubin

88 Virginia Ave., Plainville, NY 11803

Day Tarnoff

55 Bayview Ave., Port Washington, NY 11050

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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Date

Signature of Witness

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Sheet No. _____

75

Independent Nominating Petition

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Name of Candidate

Public Office

Place of Residence (also Post Office address if not identical)

Blay Tarnoff

State Senator, District 7

55 Bayview Ave., Port Washington, NY 11050

I do hereby appoint:

Gary Donoyan

186 Bayview Road, Manhasset, NY 11030

Randy Tarnoff

55 Bayview Ave., Port Washington, NY 11050

Cory Cohen Tarnoff

55 Bayview Ave., Port Washington, NY 11050

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at

(residence address)

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date: _____

Signature of Witness: _____

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Sheet No. _____

76

Independent Nominating Petition

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Name of CandidatePublic OfficePlace of Residence (also Post Office address if not identical)

Joseph A. Maffia

Member, New York Assembly, 75th Assembly District

100 West 57th, #14J, New York, NY 10019

I do hereby appoint:

Mary-Jean Maffia

100 West 57 Street, #14J, New York 10019

Paul Hornsloch

100 West 57 Street, #14P, New York 10019

Debra Lobbie

9 West 64th Street New York, NY 10023

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	Date	Name of Signer (printed name may be added)	Residence	Town or City Except in NYC, County
1	1/1/2022 X	printed name:		
2	1/1/2022 X	printed name:		
3	1/1/2022 X	printed name:		
4	1/1/2022 X	printed name:		
5	1/1/2022 X	printed name:		
6	1/1/2022 X	printed name:		
7	1/1/2022 X	printed name:		
8	1/1/2022 X	printed name:		
9	1/1/2022 X	printed name:		
10	1/1/2022 X	printed name:		

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date: _____

Signature of Witness _____

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town or City: _____

County: _____

Sheet No. _____

77

Independent Nominating Petition

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate	Public Office	Place of Residence (also Post Office address if not identical)
Larry Sharpe	Governor of New York	23-14 24 th Ave., Astoria, NY 11102
Andrew C. Hollister	Lieutenant Governor of New York	710 James Road, Rochester, NY 14612
Senn C. Hayes	Attorney General of New York	200 Rector Place Apt. 191, New York, NY 10280
William K. Schmidt	Comptroller of New York	1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566
Thomas D. Quilter	U.S. Senator from New York	1789 State Highway 8, Mount Upton, NY 13809
Pietro S. Geraci	New York State Assembly, District 104	26 Rockwood Drive Newburgh, NY 12550

I do hereby appoint:

William Cory Anderson	P.O. Box 910, Middleburgh, NY 12122	Robert M. Aringo	24 Preserve Way, Saratoga Springs, NY 12866
Anthony D'Orazio	122 West Filbert Street, East Rochester, NY 14445	Gabrielle S. Cordova	65-60 Wetheric Street, Apt. 4A, Rego Park, NY 11374
Duane J. Whitmer	3806 East Lane, Lakeview, NY 14685	Pietro S. Geraci	26 Rockwood Drive, Newburgh, NY 12550
Andrew M. Kolase	35 Fairfield Avenue, Jamesville, NY 14701	Paul M. Grindic	157 Starr Street, Apt. 4R, Brooklyn, NY 11237
Lee L. Newell	P.O. Box 321, Middleburgh, NY 12122	Richard F. Puntoli	4 Hoboken Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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78

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William K. Schmidt	Comptroller of New York	1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566
Thomas D. Quiter	U.S. Senator from New York	1789 State Highway 8, Mount Upton, NY 13809
Matthew M. Schieber	New York State Assembly, District 144	199 Two Rod Road, Alden, NY 14004

I do hereby appoint:

William Cody Anderson	P.O. Box 910, Middleburgh, NY 12122	Robert M. Anigo	24 Preserve Way, Saratoga Springs, NY 12866
Anthony D'Onofrio	122 West Elbert Street, East Rochester, NY 14445	Gabriel S. Condon	65-60 Waterhole Street, Apt. 4A, Rego Park, NY 11374
Deane J. Whiter	3806 Fern Lane, Lakeview, NY 14045	Piero S. Connel	26 Rockwood Drive, Newburgh, NY 12550
Andrew M. Kolster	35 Fairfield Avenue, Jamestown, NY 14701	Paul M. Ocinella	157 Star Street, Apt. 4R, Brooklyn, NY 11237
Lora L. Newell	P.O. Box 521, Middleburgh, NY 12122	Richard F. Puncil	4 Holmes Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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Signature of Witness: _____

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

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County: _____

Sheet No. _____

79

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

 TIM HARKENRIDER, GUY C. BROUGHT,
 LAWRENCE CANNING, PATRICIA CLARINO,
 GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
 FANTON, JERRY FISHMAN, JAY FRANTZ,
 LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
 ROWLEY, JOSEPHINE THOMAS, and MARGARET
 VOLANTE,

AFFIDAVIT IN SUPPORT

Index No. E2022-0116CV

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
 GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
 BENJAMIN, SENATE MAJORITY LEADER AND
 PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
 STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
 CARL HEASTIE, NEW YORK STATE BOARD OF
 ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
 TASK FORCE ON DEMOGRAPHIC RESEARCH AND
 REAPPORTIONMENT,

Respondents.

 STATE OF NEW YORK)
) ss.:
 COUNTY OF QUEENS)

I, Jonathan Howe, being duly sworn, depose and say:

1. I am a candidate for Member of the United States House of Representatives,
 formerly running in the 14th District of New York, having been endorsed by the Libertarian
 Party of New York, an independent body.

2. I submit this affidavit in support of Mark Braiman's emergency request to
 intervene in the above-captioned action. I am fully familiar with the facts and circumstances
 stated herein.

3. My candidacy has also been significantly impacted by this Court's order, dated May 11, 2022, setting a new petitioning period for independent U.S. House of Representatives and N.Y. State Senate candidates. As a candidate for the United States House of Representatives, I am required to follow the New York State 2022 Official Political Calendar posted by Respondent New York State Board of Elections on their website in order to know when to collect signatures for ballot access, as well as other important dates relevant to the election. The election calendar dated April 1, 2022 has remained on the Board's website since that date, and continues to be hosted there and presented as the current election calendar.¹ That calendar indicates that the *petitioning period for Independent Nominating Petitions was to run from April 19th to May 31st.*

4. I began collecting signatures on April 19th and continued to do so through the Court of Appeals decision which affirmed the invalidation of the newly drawn election districts on April 27th. After reading the Court of Appeals ruling, checking the NY State Board of Elections website for a new calendar, and consulting with other candidates, I was unable to find any guidance as to whether I could or should continue in the petitioning process. With no guidance and the clock ticking down, I chose to continue gathering signatures. In an effort to ensure that these signatures would be valid and from voters in my eventual district, I focused on petitioning in my immediate neighborhood, with the hope that those neighbors would be in the same new district, whenever those might be drawn. On May 11th, after reading the order from this Court which issued a new election calendar, I stopped petitioning, and asked my friends, family, and volunteers to do the same. As of the afternoon of May 11th when I received the Court's order, my campaign had collected just over 1000 signatures.

5. I have been working with my campaign team and various volunteers since September 2021 to plan for the petitioning period. We all knew that petitioning for signatures

¹ <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf>

during the Covid-19 pandemic would be a challenge. As soon as the NY State Board of Elections Political Calendar was published in early 2022 I used it to schedule four days off from work in late April and seven days off throughout the month of May. I thought it was important to do as much of the petitioning for my campaign myself, both due to limited resources and in order to help introduce myself to members of my community, and I knew I couldn't get it all done just on weekends and weeknights after work. My aim was to complete petitioning by May 24th, so all those days off were scheduled prior to May 20th, the Friday prior. I am a public defender in Bronx County Family Court and the process of taking time off requires scheduling hearings, conferences, and other court dates around those days many weeks or months ahead of time. As a result of scheduling time off in April and May, my court calendar from May 24th through the end of June is particularly busy, and I will not be able to take many, if any, additional days off to petition on my own.

6. In addition to scheduling time off from work to petition, I also made plans for friends and family members to help collect signatures. I scheduled events, petitioning groups, and even arranged for friends to come stay with me in my home from outside the district to help for days at a time. Many of these friends, family members, and volunteers also took time off from work and scheduled significant periods of time to come help petition, time they are not likely to be able to spare again in the near future. My mother-in-law, Xiaoxia Gu, works in education and was able to use time during her school's spring break and other scheduled days off to petition for me among the Mandarin speaking community in the district; she was able to gather over 100 signatures (which she surprised me with on Mother's Day, no less). She will not have the same availability in the new petitioning period, and is extremely discouraged and disheartened by how those signatures she already gathered are now invalid. Finally, in another

particularly poorly timed plan, I have a friend from outside New York City staying with me to help petition from May 14 until May 20; now, thanks to the new petitioning schedule, he will not be able to collect any signatures for my campaign, and it is far too late for him to change his own travel plans.

7. Requiring my campaign to start over will make it significantly more difficult to get signatures from those voters who already signed my petition, who believe they have already signed and are unaware that their earlier signatures are now invalid. Most of my petitioning, especially after the Court of Appeals decision on April 27th, took place within a mile or less of my home, and it is very likely that many of the same voters will be in whatever new district I end up in. In my experience, many people who would walk by and decline to sign my petition would explain that they had already signed for another candidate this year; most people seem to know you cannot sign for multiple candidates, not to mention multiple times for the same candidate. In the minds of the vast majority of voters who signed my petition already, they will assume they should not stop and sign again, and that doing so would be akin to cheating, like voting twice. I anticipate significant difficulty in getting any of those voters to sign my new petition starting May 21st.

8. One of the most severe harms caused by the change in my petitioning period is that I will not be able to petition alongside other candidates running as Libertarians in the November 2022 elections. Since April 19th, at least ½ of the time I have spent petitioning has been with one candidate or another. I have gathered signatures and attended campaign events with Larry Sharpe, Thomas Quiter, Sean Hayes, and Bill Schmidt, all Libertarian state-wide candidates. Campaigning together has been far more effective than campaigning alone.

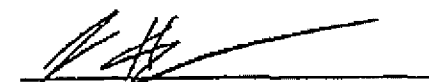
9. My campaign put so much value on campaigning together with other candidates

that in early March of 2022 I coordinated with Thomas Daniel Quiter, candidate for US Senate from New York, also endorsed by the Libertarian Party of New York, to have Mr. Quiter travel from his home in Mount Upton, New York and stay in a hotel near me for two weeks so that we could petition together. Mr. Quiter was born with osteogenesis imperfecta, brittle bone disease, and uses a custom made electric wheelchair and mobility van to get around. The process of having Mr. Quiter travel to the (former) 14th Congressional District involved having a campaign volunteer travel from New York City to Binghamton, NY by bus, then take a cab from Binghamton to his home in Mt. Upton, NY, and then drive both of them back to New York City in the mobility van. The process of campaigning with Mr. Quiter (on those days I took off specifically to do so, plus weekends) involved traveling from my home to his hotel, using a battery jump-box to jumpstart his van, loading and locking him into the van on a mechanical folding ramp, driving to an accessible location with good foot traffic, unlocking and unloading him from the van, and then finding a large enough spot to park his van for several hours in New York City. This process is then repeated on the way back after petitioning, and takes several hours that could have otherwise been spent gathering signatures. However, as we predicted, campaigning together brought us far more signatures and more than made up for the time spent in transit. Mr. Quiter will not be able to schedule or afford another trip to my new district once they are drawn, and all the clear benefit we gained from working together will be lost.

10. The above mentioned harms do not only affect my campaign and the rights of those voters who signed my petitions, they also affect my own rights as a voter. I am much less likely to be able to vote for myself, or for any independent US House or New York State Senate candidates in my eventual districts. Additionally, the fact that fewer of my volunteers (especially close friends and family members) are now interested in petitioning for Larry Sharpe, Thomas

Quiter, and other statewide candidates when they are not able to petition for me as well, makes it less likely that the statewide Libertarian ticket will achieve ballot access in this election, further limiting my rights as a voter to vote for candidates of my choice.

11. I am supporting Mr. Braiman's request for three forms of relief in this action: (1) that the deadline for independent statewide and State Assembly candidates to file their petitions be extended from May 31, 2022 to July 5, 2022, so as to be coordinate with the new deadline set (on May 11, 2022) for independent Congressional and State Senate candidates to file their petitions, permitting the circulation of joint petitions and joint campaigning; (2) that the signature requirements for independent Congressional and State Senate candidates be reduced from the statutory requirement of 3,500 signature and 3,000 signatures, respectively, by at least 50%, in light of the burdens caused by the previous petitioning efforts which cannot be undone and which will cause more burdens in the future, the difficulties caused by constantly-evolving new strains of COVID-19 and associated restrictions and fears, and in the event the statewide filing deadline is not extended, by the lack of assistance and coordination with statewide candidates whose names would otherwise be on the same petitions; and (3) that the signatures collected by independent Congressional and State Senate candidates between April 19 and the date of the Court of Appeals' order, from qualified signers residing within the new district they seek to qualify in, be included in and counted towards their total signatures collected in the new district.


Jonathan Howe

Sworn to before me this
15th day of May 2022


NOTARY PUBLIC

ZHENLING ZHANG
Notary Public, State of New York
Reg. No. 022H6373150
Qualified in Queens County
Commission Expires April 2, 2026

85

**Intervenor Mark Braiman's Proposed Answer to Amended Petition
with Additional Cause of Action Seeking to Modify Provisions
for Independent Congressional and State Senate Candidates,
dated May 16, 2022
[pp. 85 - 88]**

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 558

RECEIVED NYSCEF: 05/16/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
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FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE,

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
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ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

Index No. E2022-0116CV

**PROPOSED ANSWER TO
AMENDED PETITION
WITH ADDITIONAL CAUSE
OF ACTION SEEKING TO
MODIFY PROVISIONS FOR
INDEPENDENT
CONGRESSIONAL AND
STATE SENATE
CANDIDATES**

-----X
Petitioner-Intervenor Mark Braiman ("Petitioner-Intervenor"), by his counsel, the Law Office of
Gary L. Donoyan, for his Proposed Answer to the Amended Petition with Additional Cause of Action
Seeking to Modify Provisions for Independent Congressional and State Senate Candidates, alleges as
follows:

1. Admits paragraphs 1-11, 32-217, 219-223, 235-245, 247-255, 257-263, and 265-274.
2. Upon information and belief, admits paragraphs 12-26, 28-31, 218, and 224-233.
3. Denies paragraph 27.
4. Repeats and realleges his responses to the above paragraphs as appropriate, as his
response to paragraphs 234, 246, 256, and 264.

**NEW CAUSE TO MODIFY PROVISIONS OF THIS COURT'S MAY 11, 2022 DECISION
AND ORDER WHICH SET CRITERIA FOR BALLOT QUALIFICATION FOR
INDEPENDENT CONGRESSIONAL AND STATE SENATE CANDIDATES**

**(N.Y. Const. art. I, §8, U.S. Const. Amends. I and XIV;
Facial Violation of Free Speech Rights)**

5. Petitioner-Intervenor incorporates each of the foregoing paragraphs as if fully set forth herein.

6. Article I, §8 of the New York Constitution provides that "Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

7. Enforcement of this Court's May 11, 2022 Decision and Order which set criteria for ballot qualification for independent Congressional and State Senate candidates without modification would, as applied, severely burden petitioner-intervenor's Free Speech rights under the New York Constitution, Art. I, §8, and the United States Constitution, First and Fourteenth Amendments.

8. As a result of the separation of the filing period for the petitions of independent Congressional and State Senate candidates (June 27 – July 5, 2022), from the filing period for the petitions of independent statewide candidates (May 24 – May 31, 2022), as well as the disqualification of all signatures previously collected by independent Congressional and State Senate candidates, and the maintenance of the same high signature requirements set by the Election Law despite the much greater difficulties now encountered by such candidates due both to the late promulgation of district lines and the restrictions and fears caused by Covid-19, all part of this Court's May 11, 2022 Decision and Order, independent Congressional and State Senate candidates are prevented from fully exercising the core political speech of circulating petitions, and competing in the 2022 election.

9. As a whole, these elements of the May 11, 2022 Decision and Order, to be enforced by Respondent New York State Board of Elections, will be virtually impossible to comply with and consequently will result in a reduction or elimination of independent Congressional and State Senate

87

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 558

RECEIVED NYSCEF: 05/16/2022

candidates for 2022.

10. In particular, failure to continue the longstanding and statutorily endorsed practice of providing for the combination of petition sheets for independent statewide candidates with those for independent Congressional and State Senate candidates, prejudices alike all independent candidates, and independent political parties (known as independent bodies) endeavoring to achieve recognized party status.

11. As such, the Court should remedy the harms caused by these insurmountable obstacles, as it has been mandated to do by the Court of Appeals in its decision of April 27, 2022.

PRAYER FOR RELIEF

WHEREFORE, Petitioner-Intervenor respectfully requests that this Court enter judgment and order against Respondents as follows:

- A. Modifying the May 11, 2022 Decision and Order, which set “political calendar dates” for “the independent nominating process for Member of Congress and New York State Senate, for the November 8, 2022 General Election for State Senate and Member of [United States] House of Representatives,” so to set the same such dates for independent statewide and independent New York State Assembly candidates as well;
- B. Modifying the May 11, 2022 Decision and Order, which ordered “the signature requirements provided for by current law to be unchanged,” so to provide for a 50% reduction in signatures required for independent candidates for Congress from 3,500 to 1,750 signatures, and for independent candidates for State Senate from 3,000 to 1,500;
- C. Modifying the May 11, 2022 Decision and Order, which set May 21, 2022 as “First day to sign” for independent Congressional and State Senate candidates’ petitions, so to provide that valid signatures gathered on otherwise valid petitions between April 19 and April 27, by the same candidates of voters residing within the newly-created districts, as

88

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 558

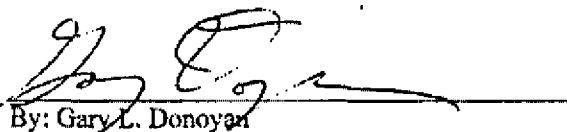
RECEIVED NYSCEF: 05/16/2022

the case may be, shall also count towards the required total number of signatures;

- D. Suspending or enjoining the operation of any other state laws or orders that would undermine this Court's ability to offer effective and complete relief to Petitioner-Intervenor for the November 2022 election;
- E. Awarding Petitioner-Intervenor all of his reasonable attorneys' fees and costs; and
- F. Awarding Petitioner-Intervenor such other and further relief as this Court deems just and proper.

Dated: May 16, 2022
Manhasset, New York

THE LAW OFFICE OF GARY L. DONOYAN



By: Gary L. Donoyan
Attorneys for Petitioner-Intervenor Mark Braiman
565 Plandome Road, #209
Manhasset, New York 11030
(516) 312-8782
gdonoyan@verizon.net

89

**Intervenor Mark Braiman's Memorandum of Law in Support of Motion
to Intervene and Modify Election Scheduling Provisions
[pp. 89 - 101]**

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

NYSCEF DOC. NO. 559

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/16/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

-----X
**MEMORANDUM OF LAW IN SUPPORT OF
PETITIONER-INTERVENOR'S MOTION TO INTERVENE AND
TO MODIFY ELECTION SCHEDULING PROVISIONS**

Gary L. Donoyan
Law Office of Gary L. Donoyan
565 Plandome Road, #209
Manhasset, New York 11030
(516) 312-8782
gdonoyan@garydonoyanlaw.com

Attorneys for Petitioner-Intervenor
Mark Braiman

May 16, 2022

PRELIMINARY STATEMENT

Petitioner-Intervenor Mark Braiman is the candidate for Member of the United States House of Representatives from the (former) 22nd District of New York, of the Libertarian Party of New York ("LPNY"), in the election to be held on November 8, 2022. In support of his campaign, Braiman states at his campaign website: "The core idea of my platform is to change the law to reduce the oppressiveness of the Federal government for as many people as possible. When Congress, even backed by a majority of their voters, passes laws that use government power to oppress a minority unnecessary, they are violating an ethical (and sometimes) a Constitutional responsibility."

Because the LPNY did not meet the current requirements that would entitle it to recognized "party" status, it must circulate independent nominating petitions to place its candidates on the ballot by collecting the requisite number of signatures from potential voters. However, the ability of the LPNY's Congressional and State Senate candidates, including Petitioner-Intervenor, to engage with potential voters and gather their signatures is stymied by the May 11, 2022 scheduling order of this Court – to be enforced by Respondent New York State Board of Elections ("NYSBOE"), who has that responsibility – that (1) their petitions must be filed separately from the petitions of the LPNY's statewide candidates, (2) the number of valid signatures required is identical to the high number required by statute for ordinary circumstances, and (3) signatures collected prior to April 27, 2022, when the Court of Appeals affirmed this Court's ruling eliminating the Legislature's district lines, will not count towards their total number required. Because Petitioner-Intervenor's (and the other independent candidates') free speech rights are severely affected by those provisions, Petitioner-Intervenor now moves to intervene in this action, and for appropriate modifications to the May 11, 2022 scheduling order.

91

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

RECEIVED NYSCEF: 05/16/2022

STATEMENT OF FACTS

The LPNY was organized in 1972 by a group centered around Ed Clark, later the Libertarian Party presidential candidate. The Statue of Liberty is their ballot symbol, and they appear on the ballot as the Libertarian Party. Starting in 1974, the LPNY has run candidates for statewide office (including U.S. Senate and U.S. Presidential electors) every two years except for 1986, the only political organization in the state without recognized "party" status to do so. It is the recognized New York affiliate of the national LP, which is the third-largest political party in the United States in terms of membership, popular vote secured in federal elections, and candidates who run for federal, state, and local office per election.

In November 2018, the LPNY obtained recognized "party" status as a result of its Governor candidate having received sufficient votes in the General Election that month. However, after a change in the Election Law relating to the requirements to keep or maintain recognized "party" status, in November 2020 the LPNY lost that status, as a result of its President candidate not having received sufficient votes in the General Election that month, and since then the LPNY has been an independent body once again. The LPNY fielded candidates for the 2022 state and federal elections, including Petitioner-Intervenor, and is actively engaged in assisting all of its candidates in getting their names on the ballots.

A. Petitioner-Intervenor Must Gather a Sufficient Number of Signatures on an Independent Nominating Petition in Order for His Name to Appear on a Ballot.

For purposes of determining whether a candidate for public office may appear on an election ballot, New York divides candidates into two categories: those nominated by a recognized "party," and those nominated by an independent body. Election Law §§1-104(12), and 6-100 et. seq. A recognized "party" is "any political organization which, excluding blank and void ballots, at the last preceding election for governor received, at least two percent of the total votes cast for

its candidate for governor, or one hundred thirty thousand votes, whichever is greater, in the year in which a governor is elected and at least two percent of the total votes cast for its candidate for president, or one hundred thirty thousand votes, whichever is greater, in a year when a president is elected." Election Law §1-104(3). An independent body is "any organization or group of voters which nominates a candidate or candidates for office to be voted for at an election, and which is not a party as herein provided." Election Law §1-104(12).

Candidates not nominated by a recognized "party" may only be listed on an election ballot if they gather signatures on an independent nominating petition that conforms with Election Law §6-140.

In order to place a candidate on the election ballot, a nominating petition must be supported by the signatures of registered New York voters. The number of signatures necessary for a statewide candidate is 45,000 or one percent of the votes most recently cast for Governor, whichever is less; for a candidate for Member of the U.S. House of Representatives, such as Petitioner-Intervenor, 3,500 or five percent of the votes most recently cast for Governor in that unit, whichever is less; and for a candidate of New York State Senator, 3,000 or five percent of the votes most recently cast for Governor in that unit, whichever is less. Election Law §6-142.

No petitioning candidate is permitted to begin collecting signatures prior to six weeks before the last day permitted to file the said petition in the year of the election in which the candidate wishes to participate. In 2022, that six-week period begins on April 19 and ends on May 31. Election Law §§6-158(9), 6-138(4). However, pursuant to the May 11, 2022 scheduling order, independent Congressional and State Senate candidates will petition between May 21 and July 5, 2022. All other independent candidates must still complete their petitioning and file their petitions by May 31, 2022.

93**FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

RECEIVED NYSCEF: 05/16/2022

B. The Challenged Restrictions Limit Petitioner-Intervenor's Ability to Engage Voters and Collect Signatures.

Between April 19, 2022, when independent Congressional and State Senate candidates began petitioning to qualify for the ballot using the old district lines, and April 27, 2022, when the Court of Appeals affirmed (against the predictions of many) this Court's March 31, 2022 order voiding those old lines, Petitioner-Intervenor and many other such candidates spent countless hours collecting signatures and organizing volunteers and paid petitioners, in the expectation that their completed petitions could be filed six weeks later, on May 31, 2022. In addition, Petitioner-Intervenor made, and other independent Congressional and State Senate candidates typically made, arrangements in their professional and personal lives to set aside those six weeks for the all-important petitioning drive, arrangements many of which could not be undone, and many of which can not be made again.

In addition, Petitioner-Intervenor will be losing a big motivational factor for collecting signatures, and organizing others to collect signatures, because he will not be able to collect also for his favored Governor candidate, Libertarian Larry Sharpe. While he may circulate his petitions (which are combined with four other statewide Libertarian candidates, for Lieutenant Governor, Attorney General, Comptroller, and US Senator), together with his new petitions between May 21 and May 31 (the last day to file the statewide petitions), for the remaining weeks, until the last day to file the Congressional and State Senate petitions which is July 5, he will be petitioning only for himself, while his Libertarian statewide candidate friends (if they have managed to qualify for the ballot at all), in turn, will have less incentive to assist his efforts. Together with the recent and recurring difficulties caused by constantly-evolving new strains of COVID-19 and related restrictions and common fears, which reduce the availability of signers and the efficiency of

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

RECEIVED NYSCEF: 05/16/2022

petition witnesses, this may very well be the most difficult year in New York history for independent candidates for office.

Petitioner-Intervenor is not suggesting that the old petitions, circulated in the old districts, should be accepted for filing in whole by Respondent NYSBOE, or that the new six-week period for circulating independent Congressional and State Senate candidates' petitions should be changed. Petitioner-Intervenor requests only that Respondent NYSBOE be ordered to (1) extend the filing deadline for all other independent candidate petitions to July 5, 2022, so that candidates may continue to circulate and file petition sheets jointly with one another, as is customary, (2) accept independent Congressional and State Senate candidate petitions with 50% of the statutory requirement of valid signatures, and (3) accept signatures on independent Congressional and State Senate candidate petitions collected prior to April 27, 2022, when the Court of Appeals affirmed this Court's ruling eliminating the Legislature's district lines, as part of the total number required. The current absence of those provisions violates the Constitution and should be immediately remedied.

LEGAL STANDARD

Pursuant to the CPLR, a court "shall" permit a person to intervene as a matter of right: 1) "upon timely motion," 2) "when the representation of the person's interest by the parties is or may be inadequate," and 3) when "the person is or may be bound by the judgment." CPLR 1012(a)(2). Separately, a court "may" in its discretion permit a party to intervene "when the person's claim or defense and the main action have a common question of law or fact." CPLR 1013. "in exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party." *Id.*

95

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

RECEIVED NYSCEF: 05/16/2022

New York courts liberally construe these statutes in favor of granting intervention. *See, e.g., Bay State Heating & Air Conditioning Co. v. Am. Ins. Co.*, 78 A.D.2d 147, 149 (4th Dept. 1980) (holding New York's intervention provisions "should be liberally construed"); *Yuppie Puppy Pet Prod., Inc. v. St. Smart Realty, LLC*, 77 A.D.3d 197, 201 (1st Dept. 2010) ("Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action."); *Plantech Hous., Inc. v. Conlan*, 74 A.D.2d 920, 920 (2nd Dept. 1980), *appeal dismissed* 414 N.E.2d 398 ("[U]nder liberal principles of intervention under the CPLR, it was an abuse of discretion to deny intervention in the present case.").

The core consideration in determining if intervention is warranted is whether the proposed intervenor has a "direct and substantial interest in the outcome of the proceeding." *Pier v. Bd. of Assessment Rev. of Town of Niskayuna*, 209 A.D.2d 788, 789 (3rd Dept. 1994). If "intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1014," a proposed intervenor with a "real and substantial interest in the outcome of the proceedings" should be granted intervention under either analysis. *Wells Fargo Bank, Nat'l Ass'n v. McLean*, 70 A.D.3d 676 (2nd Dept. 2010) (quoting *Berkoski v. Bd. of Trs. of Inc. Vill. of Southampton*, 67 A.D.3d 840, 843 (2nd Dept. 2009)); *see also Cnty. Of Westchester v. Dep't of Health of State of N.Y.*, 229 A.D.2d 460, 461 (2nd Dept. 1996) ("Generally, intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings."); *Norstar Apartments, Inc. v. Town of Clay*, 112 A.D.2d 750, 751 (4th Dept. 1985). Concerns "of judicial efficiency and fairness to the original litigants, are more likely to be outweighed, and intervention therefore warranted, when the intervenor has a direct and substantial interest in the outcome of the proceeding." *Id.* At 789.

ARGUMENT

I. Petitioner-Intervenor is entitled to intervention as a matter of right.

Petitioner-Intervenor's motion satisfies the first element of intervention as a matter of right: it is timely. "In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party." Jones v. Town of Carroll, 158 A.D.3d 1325, 1328 (4th Dept. 2018). Indeed, New York courts have held that "[i]ntervention can occur at any time, even after judgment for the purpose of taking and perfecting an appeal," Romco v. N.Y. State Dep't of Educ., 39 A.D.3d 916, 917 (3rd Dept. 2007), and at least one court granted intervention even where the intervenor's motion was made more than one year after an Amended Complaint was filed. See Jeffer v. Jeffer, 958 N.Y.S.2d 61 (Table) (Sup.Ct., Kings Cnty. 2010). Moreover, in Bates v Jones, a federal appellate court allowed candidates and voters to intervene on appeal after the conclusion of oral argument. See 127 F.3d at 873-74 (granting intervention on appeal to candidates and voters in appeal involving the constitutionality of a California initiative imposing legislative term limits).

Petitioner-Intervenor is filing this motion shortly after the May 11, 2022 scheduling order was entered, alongside this merits brief. Intervention would not prejudice the existing parties or delay the proceedings in any way.

Denial of intervention, on the other hand, would cause prejudice to Petitioner-Intervenor, as an independent Congressional candidate. And it would prejudice him as a New York voter as well, who inarguably has an interest in the candidates running in the electoral district in which he resides, but had no notice that all independent candidates across the State of New York were at

97

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

RECEIVED NYSCEF: 05/16/2022

such risk of not qualifying for the November 2022 ballot, until the issuance of this Court's May 11, 2022 scheduling order.

It is also true that Petitioner-Intervenor has a direct and substantial interest that will not be adequately represented by the other petitioners in this litigation. Petitioner-Intervenor, as an independent Congressional candidate, has a unique interest in his campaign that state officials and major parties do not share. These interests may very well diverge from those of all petitioners and respondents in this action, including on potential issues concerning remedy that might emerge during future appeals, such as subsequent alterations to election deadlines. In light of the many permutations in which petitioners' and respondents' representation could prove to be inadequate as this action proceeds, intervention is the only form of participation that will safeguard Petitioner-Intervenor's interests.

Finally, the judgment in this action will unquestionably bind Petitioner-Intervenor. The "is or may be bound" element of intervention is generally understood by examining the "potentially binding nature of the judgment" on the Petitioner-Intervenor. Yuppie Puppy, 77 A.D.3d at 202; *see also Vantage Petroleum v. Bd. of Assessment Rev. of Town of Babylon*, 460 N.E.2d 1088, 1089 (N.Y. 1984) (holding that whether an intervenor "will be bound by the judgment within the meaning of that subdivision is determined by its *res judicata* effect"). If unmodified, the May 11, 2022 scheduling order will leave Intervenor-Petitioner with a nearly impossible burden to overcome if he is to qualify for the ballot, leaving him with no recourse.

II. Alternatively, the Court should grant Petitioner-Intervenor permissive intervention.

Should this Court decline to grant intervention as of right, Petitioner-Intervenor respectfully requests that the Court exercise its discretion to grant permissive intervention under CPLR 1013. As with CPLR 1012(a)(2), the key question for this Court is again whether Petitioner-

Intervenor possesses a “real and substantial interest in the outcome of [the] action.” St. Joseph’s Hosp. Health Ctr. V. Dep’t of Health of State of N.Y., 224 A.D.2d 1008, 1008 (4th Dept. 1996); Berkoski, 67 A.D.3d at 843; United Servs. Auto. Ass’n v. Graham, 21 A.D.657, 657 (1st Dept. 1964). In determining whether to grant permissive intervention, a “court may properly balance the benefit to be gained by intervention, and the extent to which the proposed intervenor may be harmed if it is refused, against other factors, such as the degree to which the proposed intervention will delay and unduly complicate the litigation” but crucially, considerations of delay and complications “are more likely to be outweighed and intervention therefore warranted, when the intervenor has a direct and substantial interest in the outcome of the proceeding.” Pier, 209 A.D.2d at 789.

Granting intervention here would be consistent with grants of intervention in other special proceedings. Petitioner-Intervenor shares in “common many questions of law and fact” with the relief sought in the case. In re UBS Fin. Servs., Inc., 851 N.Y.S.2d 75. “This is not a case where the presence of the intervenor will complicate a lengthy discovery or trial process, as neither discovery nor trial is contemplated in this special proceeding.” *Id.* Instead, “the presence [of intervenors] will simply ensure that both sides of the novel and complex legal issues are presented in this proceeding.” *Id.*

III. Petitioner-Intervenor’s Constitutional Right to Free Speech has been Harmed.

The degree of scrutiny given to an election statute or order increases with the severity of the burden that the challenged measure imposes upon a First Amendment right. Price v. N.Y. State Board of Elections, 540 F.3d 101, 108 (2nd Cir. 2008). People trying to persuade potential voters to sign a ballot access petition engage in “interactive communication concerning political change” (Meyer v. Grant (486 U.S. 414, 420 (1998))), which is “core political speech.” Lerman v. N.Y.C.

99

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

RECEIVED NYSCEF: 05/16/2022

Bd. Of Elections, 232 F.3d 135, 146, 148 (2nd Cir. 2000) (holding that the speech of those gathering signatures for ballot access petitions is “identical” to the speech of those gathering signatures for ballot initiatives at issue in Meyer).

Once this Court determines that strict scrutiny must be applied, it is presumed that the challenged law or order is unconstitutional. Burdick v. Takushi, 504 U.S. 428, 434 (1992); *see generally* Meyer, 486 U.S. at 425 (striking criminal prohibition against the use of paid signature-gatherers and describing the burden of strict scrutiny as “well-nigh insurmountable”). To withstand strict scrutiny, the government must prove that the law or order is necessary to achieve a compelling governmental interest. Federal Election Comm’n v. Wis. Right to Life, Inc., 551 U.S. 449, 450-51 (2007). If this is proved, the state must then demonstrate that the law or order is also narrowly tailored to achieve the asserted interest. *Id.*

In order to meet its burden of proof, the government “must do something more than merely posit the existence of the disease sought to be cured.” Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 664 (1994). In other words, the government must factually prove the existence of the evil and that the challenged statute or order is narrowly tailored to remedy that evil.

Courts will routinely provide relief to petitioning minor party and independent candidates, when the normal petitioning period is shorter than usual, or when special elections are called, in the form of petitioning periods much shorter than normal, an extension of deadlines, or a reduction of signature requirements. *See* Breck v. Stapleton, 259 F.Supp.3d 1126, 1138 (D. Montana 2017) (The court “must determine some figure that would approximate a ‘substantial modicum of support’ in light of the constraints imposed by Montana’s special election schedule. The Court acknowledges that any figure would be arbitrary, but will endeavor to develop a figure that reconciles Montana’s right to impose the standard 5 percent requirement under normal

100

FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

RECEIVED NYSCEF: 05/16/2022

circumstances and the unusual circumstances presented by Montana's special election."); Jones v. McGuffage, 921 F.Supp.2d 888, 903 (N.D. Ill. 2013) ("[S]imply adopting the 5,000 signature requirement would repeat the sins of the state's continued use of the 5% requirement; it would ignore the factors that distinguish this special election process from a normal election cycle, where signatures are gathered in the Spring, where the signature gathering period last[s] 90 days, and where all prospective candidates know well in advance when the election will be held (and therefore when the signature gathering period will commence). Thus, some further reduction to account for these factors is appropriate, and a proportional reduction based on the shortened signature period is a[s] good as any.").

"The loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 353 (1976). Thus, in the context of an alleged violation of First Amendment rights, a plaintiff's claimed irreparable harm is inseparably linked to the likelihood of success on the merits of the plaintiff's First Amendment claim. The harm in this case is clear. Absent intervention and a modification of the May 11, 2022 scheduling order, Petitioner-Intervenor will suffer a severe diminution in his ability to engage in core political speech. Furthermore, absent prompt relief, Petitioner-Respondent will lose the cooperation of the LPNY's statewide candidates, who currently must file their petitions by May 31, 2022. Because Petitioner-Intervenor will be deprived of his First Amendment rights if Respondent NYSBOE enforces the provisions of the May 11, 2022 scheduling order challenged here, emergency relief should issue forthwith.

Respondent NYSBOE and the other parties to this action can claim no harm resulting from the proposed intervention and modification of the May 11, 2022 scheduling order. Even assuming, *arguendo*, that modifying that order as proposed would slightly harm the election process (which

101**FILED: STEUBEN COUNTY CLERK 05/16/2022 04:29 PM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 559

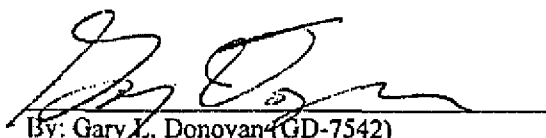
RECEIVED NYSCEF: 05/16/2022

it would not), that harm would not outweigh the diminution in the Petitioner-Intervenor's free speech rights. Accordingly, the balance of equities favors the Petitioner-Intervenors.

CONCLUSION

For the foregoing reasons, Petitioner-Intervenor respectfully requests that the Court issue an order permitting the intervention, and modifying the May 11, 2022 scheduling order to require Respondent NYSBOE to (1) extend the filing deadline for all other independent candidate petitions to July 5, 2022, so that all independent candidates may continue to circulate and file petition sheets jointly with one another, as is customary, (2) accept independent Congressional and State Senate candidate petitions with 50% of the statutory requirement of valid signatures, and (3) accept signatures on independent Congressional and State Senate candidate petitions collected prior to April 27, 2022, when the Court of Appeals affirmed this Court's ruling eliminating the Legislature's district lines, as part of the total number required.

THE LAW OFFICE OF GARY L. DONOYAN



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102

Intervenors The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax's Order to Show Cause Regarding The Parent Party Intervenors' Emergency Motion for Leave to Intervene, dated May 16, 2022
[pp. 102 - 104]

FILED: STEUBEN COUNTY CLERK 05/17/2022 08:30 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 561

RECEIVED NYSCEF: 05/16/2022

At a ~~Special Term~~ of the Supreme Court of the State of New York, held in and for the County of Steuben at 3 East Pulteney Square, Bath, NY 14810, on the 16th day of May 2022.

PRESENT: HON. PATRICK F. MCALLISTER, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

Index No.: E2022-0116CV

**ORDER TO SHOW CAUSE
REGARDING THE PARENT
PARTY INTERVENORS'
EMERGENCY MOTION FOR
LEAVE TO INTERVENE**

Upon the emergency motion of The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax to intervene in this action on the ground that their interests are or may be inadequately represented and they may be bound by the judgment entered herein and on the ground that their intervention will not unduly delay the determination of the action or prejudice the substantial rights of any party; the Affidavits of Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax; the Proposed Petition with Additional Cause of Action

-1-

1 OF 3

103

FILED: STEUBEN COUNTY CLERK 05/17/2022 08:30 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 561

RECEIVED NYSCEF: 05/16/2022

Requesting Modifications to the Independent Nominating Petition Process; the Proposed Order, and the Memorandum of Law, Petitioners and Respondents are hereby

ORDERED TO SHOW CAUSE, on the 26th day of May 2022 at 9:30, or as soon thereafter as counsel can be heard, at Room 3 at the Courthouse located at 3 East Pulteney Square, Bath NY 14810 [Virtual Appearance Permitted], why, under CPLR § 1012 and/or CPLR § 1013, The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax should not be allowed to intervene as Petitioners; and

WHY THIS COURT should not amend its May 11, 2022 Order concerning ballot access (NYSCEF Doc. No. 524) (the "Ballot Access Order") as follows:

1. The political calendar dates for independent nominating petitions listed on page 4 of the Ballot Access Order shall apply to the independent nominating process for the following offices: (a) All Statewide offices; (b) Representative in Congress; (c) New York State Senate; (d) New York State Assembly; and (e) all local public offices for the November 8, 2022 General Election;
2. With respect to the political calendar dates for the independent nominating process listed on page 4 of the Ballot Access Order, the "First day to sign" is hereby modified to read "4/19/22"; and
3. The signature requirements set forth in New York Election Law § 6-142 for independent nominating petitions are hereby reduced by 50%, given the uncertainties caused by this action and related redistricting litigation, and the ongoing COVID-19 pandemic; and

WHY THIS COURT should not grant any such other and further relief as is just and equitable; and it is further

ORDERED that of a copy of this Order and related documents be served on counsel to all parties via NYSCEF, on or before the 18 day of May, 2022, and that such service be deemed sufficient, and it is further;

FILED: STEUBEN COUNTY CLERK 05/17/2022 08:30 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 561

RECEIVED NYSCEF: 05/16/2022

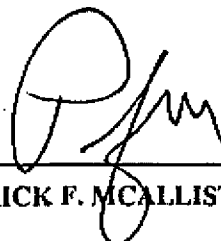
ORDERED that Petitioners and Respondents, including the NEW YORK STATE BOARD OF ELECTIONS, shall file a copy with this Court of their reply/opposition papers, if any, in connection with the above motion to intervene and/or any of the accompanying requests for relief, via NYSCEF, by

May 24, 2022 at _____

DATED: Bath, New York

May 16, 2022

ENTER:



HON. PATRICK F. MCALLISTER, J.S.C.

105

**Notice of Entry, dated May 17, 2022, with Intervenor The Parent
Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela
Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and
Gavin Wax's Order to Show Cause Regarding The Parent Party
Intervenor's Emergency Motion for Leave to Intervene, dated**

May 16, 2022**[pp. 105 - 109]****FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 569

RECEIVED NYSCEF: 05/17/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT, :
LAWRENCE CANNING, PATRICIA CLARINO, :
GEORGE DOOHER, JR., STEPHEN EVANS, :
LINDA FANTON, JERRY FISHMAN, JAY :
FRANTZ, LAWRENCE GARVEY, ALAN :
NEPHEW, SUSAN ROWLEY, JOSEPHINE :
THOMAS, AND MARIANNE VOLANTE, :
:

Petitioners, :
:

v. :
:

GOVERNOR KATHY HOCHUL, LIEUTENANT :
GOVERNOR AND PRESIDENT OF THE :
SENATE BRIAN A. BENJAMIN, SENATE :
MAJORITY LEADER AND PRESIDENT PRO :
TEMPORE OF THE SENATE ANDREA :
STEWART-COUSINS, SPEAKER OF THE :
ASSEMBLY CARL HEASTIE, NEW YORK :
STATE BOARD OF ELECTIONS, AND THE :
NEW YORK STATE LEGISLATIVE TASK :
FORCE ON DEMOGRAPHIC RESEARCH AND :
REAPPORTIONMENT, :
:

Respondents. :
:

Index No.: E2022-0116CV

PLEASE TAKE NOTICE that the within is a true copy of the Order to Show Cause
(NYSCEF No. 561, Motion No. 15) entered in the Steuben County Clerk's office on May 16,
2022.

106

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 569

RECEIVED NYSCEF: 05/17/2022

In addition, attached hereto are copies of related papers, which are now again being served on all counsel via NYSCEF.

Dated: May 17, 2022
New York, NY

Respectfully submitted,

/s/ Aaron Foldenauer

Aaron S. Foldenauer, Esq.
LAW OFFICE OF AARON S. FOLDENAUER
30 Wall Street, 8th Floor
New York, NY 10005
Telephone: (212) 961-6505
Email: aaron@nyelectionlaw.com

Counsel for the Parent Party Intervenors

107

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 569

RECEIVED NYSCEF: 05/18/2022

At a ~~Special Term~~ of the Supreme Court of the State of New York, held in and for the County of Steuben at 3 East Pulteney Square, Bath, NY 14810, on the 16th day of May 2022.

PRESENT: HON. PATRICK F. MCALLISTER, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

Index No.: E2022-0116CV

**ORDER TO SHOW CAUSE
REGARDING THE PARENT
PARTY INTERVENORS'
EMERGENCY MOTION FOR
LEAVE TO INTERVENE**

Upon the emergency motion of The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax to intervene in this action on the ground that their interests are or may be inadequately represented and they may be bound by the judgment entered herein and on the ground that their intervention will not unduly delay the determination of the action or prejudice the substantial rights of any party; the Affidavits of Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax; the Proposed Petition with Additional Cause of Action

108

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 569

RECEIVED NYSCEF: 05/18/2022

Requesting Modifications to the Independent Nominating Petition Process; the Proposed Order, and the Memorandum of Law, Petitioners and Respondents are hereby

ORDERED TO SHOW CAUSE, on the 26th day of May 2022 at 9:30, or as soon thereafter as counsel can be heard, at Room 3 at the Courthouse located at 3 East Pulleney Square, Bath NY 14810 [Virtual Appearance Permitted], why, under CPLR § 1012 and/or CPLR § 1013, The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pool Stewart, Otis D. Danne Jr., and Gavin Wax should not be allowed to intervene as Petitioners; and

WHY THIS COURT should not amend its May 11, 2022 Order concerning ballot access (NYSCEF Doc. No. 524) (the "Ballot Access Order") as follows:

1. The political calendar dates for independent nominating petitions listed on page 4 of the Ballot Access Order shall apply to the independent nominating process for the following offices: (a) All Statewide offices; (b) Representative in Congress; (c) New York State Senate; (d) New York State Assembly; and (e) all local public offices for the November 8, 2022 General Election;
2. With respect to the political calendar dates for the independent nominating process listed on page 4 of the Ballot Access Order, the "First day to sign" is hereby modified to read "4/19/22"; and
3. The signature requirements set forth in New York Election Law § 6-142 for independent nominating petitions are hereby reduced by 50%, given the uncertainties caused by this action and related redistricting litigation, and the ongoing COVID-19 pandemic; and

WHY THIS COURT should not grant any such other and further relief as is just and equitable; and it is further

ORDERED that of a copy of this Order and related documents be served on counsel to all parties via NYSCEF, on or before the 18 day of May, 2022, and that such service be deemed sufficient, and it is further;

109

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 569

RECEIVED NYSCEF: 05/18/2022

ORDERED that Petitioners and Respondents, including the NEW YORK STATE BOARD OF ELECTIONS, shall file a copy with this Court of their reply/opposition papers, if any, in connection with the above motion to intervene and/or any of the accompanying requests for relief, via NYSCEF, by

May 24, 2022 at _____.

DATED: Bath, New York

May 16, 2022

ENTER:



HON. PATRICK F. MCALLISTER, J.S.C.

110**Exhibit A-**

(i) The Parent Party Intervenors' Memorandum of Law in Support of Motion to Intervene and New Cause of Action Requesting Modifications to the Independent Nominating Petition Process, dated May 16, 2022
(Reproduced herein at pages 17 to 31)

Exhibit A-

(ii) Affidavit of Patrick Donohue in Support of Emergency Motion to Intervene, sworn to May 15, 2022
(Reproduced herein at pages 32 to 38)

Exhibit A-

(iii) Affidavit of William Noel in Support of Emergency Motion to Intervene, sworn to May 15, 2022
(Reproduced herein at pages 39 to 41)

Exhibit A-

(iv) Affidavit of Brian Robinson in Support of Emergency Motion to Intervene, sworn to May 15, 2022
(Reproduced herein at pages 42 to 43)

Exhibit A-

(v) Affidavit of Danyela Souza Egorov in Support of Emergency Motion to Intervene, sworn to May 15, 2022
(Reproduced herein at pages 44 to 45)

Exhibit A-

(vi) Affidavit of Kevin Pazmino in Support of Emergency Motion to Intervene, sworn to May 15, 2022
(Reproduced herein at pages 46 to 47)

Exhibit A-

(vii) Affidavit of Pool Stewart in Support of Emergency Motion to Intervene, sworn to May 14, 2022
(Reproduced herein at pages 48 to 49)

Exhibit A-

(viii) Affidavit of Otis D. Danne Jr. in Support of Emergency Motion to Intervene, sworn to May 15, 2022
(Reproduced herein at pages 50 to 51)

111

Exhibit A-
(ix) Affidavit of Gavin Wax in Support of Emergency Motion
to Intervene,
sworn to May 15, 2022
(Reproduced herein at pages 52 to 53)

Exhibit A-
(x) [Proposed] Order Amending May 11, 2022 Ballot Access
Order
(Reproduced herein at pages 54 to 55)

112

Exhibit A-
(xi) Intervenor The Parent Party's Proposed Petition with
Additional Cause of Action Requesting Modifications to the
Independent Nominating Petition Process,
dated May 16, 2022
[pp. 112 - 116]

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VOLANTE,

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE
SENATE BRIAN A. BENJAMIN, SENATE
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK
STATE BOARD OF ELECTIONS, AND THE
NEW YORK STATE LEGISLATIVE TASK
FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

Index No.: E2022-0116CV

THE PARENT PARTY
INTERVENORS' PROPOSED
PETITION WITH
ADDITIONAL CAUSE OF ACTION
REQUESTING MODIFICATIONS
TO THE INDEPENDENT
NOMINATING
PETITION PROCESS

PLEASE TAKE NOTICE that Petitioner-Intervenors the Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi Stewart, Otis D. Danne Jr., and Gavin Wax (collectively, the "Parent Party Intervenor" or "Petitioner-Intervenors") allege as follows and for their Proposed Petition with Additional Cause of Action Requesting Modifications to the Independent Nominating Petition Process:

1. Petitioner-Intervenors incorporate paragraphs 1-26 and 28-233 in the Amended Petition filed by Petitioners in this action as if fully set forth herein, except Petitioner-Intervenors aver that they understand that this Court denied a previous motion to intervene concerning the

113

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

potential redrawing of the State Assembly map and that they are not seeking that relief here.

**NEW CAUSE OF ACTION REQUESTING MODIFICATIONS TO THE
INDEPENDENT NOMINATING PETITION PROCESS**

(First and Fourteenth Amendments of the U.S. Constitution; Free Speech and Freedom of
Association; N.Y. Const. art I. § 8)

2. It is settled that “[t]he right to associate with the political party of one’s choice is an integral part of th[e] basic constitutional freedom [of association].” *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986) (internal quotation omitted). Indeed, “[t]he freedom of association protected by the First and Fourteenth Amendments includes partisan political organization.” *Id.*; see also *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 204 (2008) (“We have . . . acknowledged an individual’s associational right to vote in a party primary without undue state-imposed impediment.”).

3. Ballot access rules implicate “two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.” *Williams v. Rhodes*, 393 U.S. 23, 30 (1968); see *Bullock v. Carter*, 405 U.S. 134, 143 (1972) (“[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.”); see also *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 192 (1999) (internal quotation marks and citations omitted) (“[N]o litmus-paper test will separate valid ballot access provisions from invalid interactive speech restrictions . . . [b]ut the First Amendment requires [courts] to be vigilant in making those judgments, to guard against undue hindrances to political conversations and the exchange of ideas.”)

4. Where a challenged regulation “governs the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, [it] inevitably affects—at

least to some degree—the individual’s right to vote and his right to associate with others for political ends.” *Price v. New York State Bd. of Elections*, 540 F.3d 101, 107-08 (2d Cir. 2008) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (internal quotation marks omitted)).

5. As the Second Circuit has recognized, circulating petitions “clearly constitute[s] core political speech,” because it “of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change.” *Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 146 (2d Cir. 2000); see also *Credico v. New York State Bd. of Elections*, 751 F. Supp. 2d 417, 420 (E.D.N.Y. 2010) (finding irreparable injury where plaintiffs alleged that the [BOE’s] refusal to place a candidate’s name on the ballot violated plaintiffs’ First and Fourteenth Amendment rights to “fully express their political association with the parties or candidates of their choice”).

6. The Court’s May 11, 2022 Order (NYSCEF Doc. No. 524) (the “Ballot Access Order”) would severely burden the Parent Party Intervenors’ Constitutional rights to Free Speech and Freedom of Association pursuant to the United States Constitution and New York State Constitution.

7. The Court should amend the Ballot Access Order to vindicate the Parent Party Intervenors’ freedom to associate with a political organization and participate in the political process as it concerns the following 2022 elections in New York State: (a) All Statewide offices; (b) Representative in Congress; (c) New York State Senate; (d) New York State Assembly; and (e) all local public offices for the November 8, 2022 General Election.

115

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

PRAYER FOR RELIEF

WHEREFORE, Petitioner-Intervenors respectfully demand that this Court enter judgment and order against Respondents as follows:

A. Issuing an Order that amends the Court's May 11, 2022 Order concerning ballot access (NYSCEF Doc. No. 524) (the "Ballot Access Order") as follows:

1. The political calendar dates for independent nominating petitions listed on page 4 of the Ballot Access Order shall apply to the independent nominating process for the following offices: (a) All Statewide offices; (b) Representative in Congress; (c) New York State Senate; (d) New York State Assembly; and (e) all local public offices for the November 8, 2022 General Election;

2. With respect to the political calendar dates for the independent nominating process listed on page 4 of the Ballot Access Order, the "First day to sign" is hereby modified to read "4/19/22"; and

3. The signature requirements set forth in New York Election Law § 6-142 for independent nominating petitions are hereby reduced by 50%, given the uncertainties caused by this action and related redistricting litigation, and the ongoing COVID-19 pandemic;

B. Awarding Petitioner-Intervenors all of their reasonable attorneys' fees and costs; and

116

FILED: STEUBEN COUNTY CLERK 05/17/2022 11:12 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/17/2022

C. Awarding such other and further relief as this Court may deem just and proper.

Dated: May 16, 2022
New York, NY

Respectfully submitted,

/s/ Aaron Foldenauer

Aaron S. Foldenauer, Esq.
LAW OFFICE OF AARON S. FOLDENAUER
30 Wall Street, 8th Floor
New York, NY 10005
Telephone: (212) 961-6505
Email: aaron@nyelectionlaw.com

Counsel for the Parent Party Intervenors

117

Exhibit A-

**(xii) Intervenor The Parent Party of New York, Patrick Donohue, William
Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino, Pooi
Stewart, Otis D. Danne Jr., and Gavin Wax's Order to Show
Cause Regarding The Parent Party Intervenor's Emergency
Motion for Leave to Intervene, dated May 16, 2022
(Reproduced herein at pages 102 to 104)**

118

**Intervenor Mark Braiman's Order to Show Cause Regarding Emergency
Motion for Leave to Intervene, dated May 17, 2022
[pp. 118 - 120]**

FILED: STEUBEN COUNTY CLERK 05/17/2022 03:51 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 583

RECEIVED NYSCEF: 05/17/2022

At a Special Term of the Supreme
Court of the State of New York,
held in and for the County of
Steuben, at Three East Pulteney
Square, Bath, New York, on the
17 day of May 2022.

PRESENT: HON. PATRICK F. MCALLISTER, J.S.C.

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE,

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

-----X
UPON the emergency motion of Mark Braiman to intervene in this action on the ground that his
interests are or may be inadequately represented and that he may be bound by the judgment entered
herein; the annexed affidavits of Mark Braiman, Cody Anderson, and Jonathan Howe; the Proposed
Answer to Amended Petition with Additional Cause of Action Seeking to Modify Provisions for
Independent Congressional and State Senate Candidates; and the accompanying Memorandum of Law
of Gary L. Donoyan, Esq, Petitioners and Respondents are hereby

ORDERED TO SHOW CAUSE, on the 26 day of May 2022, at 9:30 or as soon

119

FILED: STEUBEN COUNTY CLERK 05/17/2022 03:51 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 583

RECEIVED NYSCEF: 05/17/2022

thereafter as counsel can be heard, at Part _____ [Room 3] at the Courthouse located at Three East Pulteney Square, Bath, New York 14810, under CPLR 1012 and 1013,

- (a) WHY PETITIONER-INTERVENOR should not be allowed to intervene to protect his rights as a voter and independent Congressional candidate, and
- (b) WHY AN ORDER should not be issued modifying this Court's May 11, 2022 Decision and Order, which set "political calendar dates" for "the independent nominating process for Member of Congress and New York State Senate, for the November 8, 2022 General Election for State Senate and Member of [United States] House of Representatives," so to set the same such dates for independent statewide and independent New York State Assembly candidates as well; and
- (c) WHY AN ORDER should not be issued modifying the May 11, 2022 Decision and Order, which ordered "the signature requirements provided for by current law to be unchanged," so to provide for a 50% reduction in signatures required for independent candidates for Congress from 3,500 to 1,750 signatures, and for independent candidates for State Senate from 3,000 to 1,500; and
- (d) WHY AN ORDER should not be issued modifying the May 11, 2022 Decision and Order, which set May 21, 2022 as "First day to sign" for independent Congressional and State Senate candidates' petitions, so to provide that valid signatures gathered on otherwise valid petitions between April 19 and April 27, by the same candidates of voters residing within the newly-created districts, as the case may be, shall also count towards the required total number of signatures; and
- (e) WHY THIS COURT should not grant such other and further relief as is just and equitable, and it is further

120**FILED: STEUBEN COUNTY CLERK 05/17/2022 03:51 PM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 583

RECEIVED NYSCEF: 05/17/2022


ORDERED that service of a copy of this Order and accompanying documents be made on counsel for all parties by NYSCEF, on or before the 19th day of May 2022, and that such service be deemed sufficient, and it is further

ORDERED that Petitioners and Respondents, including Respondent New York State Board of Elections, shall file with this Court, by NYSCEF, a copy of their opposition papers, if any, in connection with the above motion to intervene and/or any of the accompanying requests for relief, on or before May 24th, 2022.

Dated: Bath, New York

May 17, 2022

ENTER:



Hon. Patrick F. McAllister, J.S.C.

121

**Upstate Jobs Party and Unite New York's Motion for Leave to File
Brief as Amicus Curiae, dated May 18, 2022
[pp. 121 - 123]**

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 597

RECEIVED NYSCEF: 05/18/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VIOLANTE,
Petitioners,

Index No.:
E2022-0116CV

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY
LEADER AND PRESIDENT PRO TEMPORE OF
THE SENATE ANDREA STEWART-COUSINS,
SPEAKER OF THE ASSEMBLY CARL HEASTIE,
NEW YORK STATE BOARD OF ELECTIONS,
AND THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH
AND REAPPORTIONMENT,

Respondents.

**MOTION OF UPSTATE JOBS PARTY AND UNITE NEW YORK
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

Upstate Jobs Party and Unite New York respectfully move this Court for leave to file the attached brief as amicus curiae in support of the Libertarian Party.¹ In support of the Motion, they state:

¹ No party's counsel authored the attached brief in whole or in part, and no one other than Amicus contributed money to fund the brief's preparation or submission.

122

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 597

RECEIVED NYSCEF: 05/18/2022

INTEREST OF AMICUS CURIAE

Upstate Jobs Party ("UJP") and Unite New York ("UNY") are two related entities that form one independent body under New York law. This independent body is currently circulating independent nominating petitions under the brand name Unite. This independent body is currently circulating petitions on behalf of candidates for governor, senate, and state assembly. UJP first circulated independent nominating petitions in 2016.

UJP and UNY submit this brief in support of the Libertarian Party's Motion to Intervene and to suggest the Court consider additional relief beyond that requested in the Motion. UJP and UNY further submit this brief to inform the Court about various issues pertaining to the ability of independent bodies to comply with New York's statutory requirements for the submission of independent candidate nominating petitions, and to urge the Court to consider alternative relief sufficient to enable independent bodies to qualify their candidates for statewide office on the November 2022 general election ballot.

ARGUMENT

UJP and UNY's brief will be helpful to the Court because it outlines unique challenges impinging on the ability of independent bodies to satisfy statutory petitioning requirements for the 2022 general election. The most important factor is the continuing lack of a congressional district map, despite the fact that signature collection for independent bodies depends on circulators knowing in which districts petition signers live. A recent upsurge in COVID-19 cases and severe winter weather in upstate New York have further compounded independent bodies' dilemma. Despite these intersecting crises, each of which has made signature collection in compliance with New York's statutory requirements more difficult, thus far no relief in terms of reduced signature thresholds or extended deadlines has been awarded for independent statewide candidates. Similar

123**FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 597

RECEIVED NYSCEF: 05/18/2022

relief to that already awarded for congressional and state senate candidates is necessary in this context as well.

CONCLUSION

For the foregoing reasons, UJP and UNY respectfully move this Court for leave to file the accompanying brief as amicus curiae in this case.

DATED: May 18, 2022

Respectfully submitted,

/s/ Michael Burger

Michael Burger
Fernando Santiago
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fernando@litgrp.com
Counsel for Amicus Curiae

124

**Brief of the Upstate Jobs Party and Unite New York as Amicus
Curiae, dated May 18, 2022
[pp. 124 - 132]**

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY
FRANTZ, LAWRENCE GARVEY, ALAN
NEPHEW, SUSAN ROWLEY, JOSEPHINE
THOMAS, AND MARIANNE VIOLANTE,
Petitioners,

Index No.:
E2022-0116CV

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY
LEADER AND PRESIDENT PRO TEMPORE OF
THE SENATE ANDREA STEWART-COUSINS,
SPEAKER OF THE ASSEMBLY CARL HEASTIE,
NEW YORK STATE BOARD OF ELECTIONS,
AND THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH
AND REAPPORTIONMENT,

Respondents.

**BRIEF OF THE UPSTATE JOBS PARTY AND UNITE NEW YORK AS AMICUS
CURIAE**

Upstate Jobs Party ("UJP") and Unite New York ("UNY") are two related entities that form one independent body under New York law. This independent body is currently circulating independent nominating petitions under the brand name Unite. This independent body is circulating petitions on behalf of candidates for governor, senate, and state assembly. UJP and UNY submit this brief in support of the Libertarian Party's Motion to Intervene and in support of their requested relief. UJP and UNY further submit this brief to inform the Court about various issues pertaining to the ability of independent bodies to comply with New York's statutory

125

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

requirements for the submission of independent candidate nominating petitions, and to urge the Court to consider alternative relief sufficient to enable independent bodies to qualify their candidates for statewide office on the November 2022 general election ballot.

New York law sets a high signature threshold and tight time constraints on the circulation and filing of nominating petitions by independent candidates. Statewide independent candidate nominating petitions must be signed by at least 45,000 New York voters, with at least 500 signatures drawn from each of thirteen of New York's 26 congressional districts. N.Y. Elec. § 6-142(1). Independent candidates are not permitted to begin collecting signatures until six weeks before the filing deadline; signatures collected earlier than six weeks out are not counted. *Id.* § 6-138(4). Petitions can then be filed only within a narrow seven-day window "not earlier than twenty-four weeks and not later than twenty-three weeks preceding" a general election. *Id.* § 6-158(9). In 2022, the signature collection period began on April 19, 2022, and the petition filing period lasts from May 24 through May 31, now less than two weeks away. Moreover, independent candidates cannot collect signatures from any registered voter who has already signed another petition "designating or nominating . . . a different person for the same office." *Id.* § 6-138(1).

Ordinarily, independent candidates for statewide office would be able to comply with these statutory requirements, but multiple factors have conspired to make the timely collection and submission of nominating petitions impossible this year. First and foremost among these factors is the continuing failure of New York to adopt a final congressional district map that can withstand judicial scrutiny. On April 27, 2022, a mere eight days into the signature collection period for independent candidates, the New York Court of Appeals held that New York's congressional and state senate maps were unconstitutional. *See Matter of Harkenrider v. Hochul*, No. 60, 2022 N.Y. LEXIS 874, at *2 (Apr. 27, 2022). The Court of Appeals remanded the case to the trial court with

126

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

an instruction to work with a special master to devise constitutionally compliant senate and congressional maps “with all due haste,” but did not prescribe a specific deadline for map enactment or order any additional relief to accommodate candidates running for office this year. *Id.* at *36-37.

On May 5, 2022, after more than two weeks of the six-week signature collection period had already elapsed, the trial court released an advisory opinion declining to extend the petition submission deadline for independent statewide candidates or to lower their signature threshold from the statutorily required 45,000. *See Adv. Op., Harkenrider v. Hochul*, Index No. E2022-0116CV, at *2 (May 5, 2022). The court indicated that a new congressional district map would be finalized no later than May 20, 2022—*i.e.*, eleven days before the close of the petition filing period. On May 11, 2022, the trial court issued an order extending the filing period for independent candidates for Congress and State Senate to June 27 through July 5, but it did not alter any deadlines applicable to independent *statewide* candidates. *See Order, Harkenrider v. Hochul*, Index No. E2022-0116CV, at *4 (May 11, 2022). Even assuming that a final congressional district map is enacted by the date specified by the trial court, that would still leave independent statewide candidates with less than two weeks to collect the statutorily required number of signatures from the statutorily required number of congressional districts.

Additionally, independent candidate signature collection efforts have also been stymied by two coinciding natural disasters. First, the State of New York has experienced a steady increase in COVID-19 cases for the last two months, from a daily average of 1,644 cases on March 4 to a current daily average of 9,544 on May 10.¹ The increased risk of infection has understandably

¹ *Tracking Coronavirus in New York: Latest Map and Case Count*, N.Y. Times <https://www.nytimes.com/interactive/2021/us/new-york-covid-cases.html> (last visited May 11, 2022).

127

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

made many New Yorkers reluctant to interact with petition circulators who they do not know. In fact, the CDC has designated all but one county in New York as medium to high risk for COVID infections. On May 13, 2022, the New York Department of Health stated that the CDC had increased the number of New York counties that were high risk from 36 to 45.² During the 2020 general election, the Governor acted to reduce the number of signatures required on independent candidate nominating petitions to 30,000 to accommodate the difficulty of collecting signatures during a deadly pandemic;³ this year, however, no such relief has been forthcoming even though the COVID-19 state of emergency declared by the Governor remains in effect.⁴

In the midst of this COVID-19 surge, upstate New York was also hit by a late-season snowstorm on April 19. Binghamton, for example, reported record snowfall and declared a state of emergency. Additionally, some 150,000 New York residents were without power. This occurred on the very first day of signature collection, further hampering collection efforts for an entire week.⁵

Hence, independent statewide candidates are currently faced with a new statutory requirement that they collect at least 45,000 signatures overall—three times the previous statutory

² See *State Department of Health Recommends Those Living In High-Risk Counties or Personally At-Risk Wear Masks Indoors During Surge According to CDC Recommendations*, (N.Y. State Dept. of Health, May 13, 2022) available at https://health.ny.gov/press/releases/2022/2022-05-13_covid_mask_recommendation.htm (last visited May 16, 2022).

³ N.Y. State Bd. of Elections, *Election Law Update 2020* 69, <https://www.elections.ny.gov/NYSBOE/download/law/2020ElectionLawUpdate.pdf> (last visited May 13, 2022).

⁴ Gov. Kathy Hochul, Exec. Order 11.5, (Apr. 15, 2022), available at: <https://www.governor.ny.gov/executive-order/no-115-declaring-disaster-emergency-state-new-york>.

⁵ Jesus Jiménez & Eduardo Medina, *April Snowstorm Knocks Out Power Across Northeast*, N.Y. Times (Apr. 19, 2022), <https://www.nytimes.com/2022/04/18/us/northeast-snowstorm.html> (last visited May 11, 2022).

128

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

amount—and 500 signatures from thirteen of New York’s congressional districts by the end of this month, even though no constitutional congressional district map is currently in place and likely will not be before May 20. *See Adv. Op., Matter of Harkenrider*, Index No. E2022-0116CV, at *2. And independent bodies must satisfy this new statutory requirement while competing with record-breaking snowstorms and an increasing spread of disease that has killed more than one million Americans.

Even if independent bodies can safely navigate these two natural disasters, petition circulators for independent candidates have no way of knowing where district lines will be drawn, and in the absence of any relief will be forced to guess. They are also collecting signatures at the same time and for the same offices as circulators of party designating petitions; according to state law, if a registered voter signs both an independent candidate nominating petition and a party designating petition, their signature on the latter will take precedence *even if signed later in time*. N.Y. Elec. § 6-138(1). Furthermore, there has been no guarantee forthcoming from any state court that signatures collected *before* the May 20 release of a final map will be valid, even if by sheer luck they were collected within the “correct” district. Scores of already collected signatures could be rendered uncountable in the congressional districts where they were collected, and independent candidates would be left with barely more than one week in which to eliminate any deficit. The relief granted on May 11 by the trial court has only made matters worse, because it ensures that independent bodies must have circulators in the field during two different timeframes—once during the final week of May for their statewide candidates, and then again in June for their congressional and state senate candidates. Generally, to save on time and money, petition circulators for independent bodies circulate petitions for all of the independent body’s candidates at once. Additionally, independent body candidates for statewide office generally work with down-

129

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

ballot candidates circulating petitions in their local districts to obtain a sufficient number of signatures to get their names on the independent ballot line. Accordingly, this Court's order staggering the petition circulation periods for different offices causes a costly duplication of efforts.

Additionally, petitioners are struggling to find willing signers, as they are finding voters confused about the process due to the multiple court actions and near-daily decisions being announced. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.").

The current state of play is also a nightmare for election administrators and those state and local officials tasked with verifying petitions. Like independent bodies, administrators lack judicial guidance on whether signatures collected before May 20 should be counted towards the 500-signature threshold for the congressional districts in which they were collected. Administrators also lack clear guidance on whether they should count signatures on independent nominating petitions when the same voter later signed a party designating petition for a candidate for the same office, although state law seems to indicate that independent bodies always lose in such a scenario. The different signature collection periods for independent candidates dependent on the office for which they are competing adds an additional logistical headache. The lack of definitive answers to these questions will inevitably lead to the application of inconsistent standards, thereby imperiling the federal equal protection rights of independent statewide candidates.

Under New York law, independent statewide candidate signature collection depends on a single baseline condition: An approved final congressional map that enables candidates to collect the requisite number of signatures from at least half of the State's congressional districts with

130

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

certainty that they are collecting signatures in the right places. Although the trial court extended signature collection and petition filing deadlines for congressional and state senate candidates, it did not do so for independent statewide candidates even though their signature collection efforts similarly depend on an approved congressional district map. The different signature collection periods impose an additional burden on independent bodies by forcing them to collect signatures for different candidates at different times, as opposed to asking one person to sign petitions for all of the independent body's candidates at one time. Independent bodies cannot even be assured that their diligence in signature collection will be rewarded, because state law appears to privilege signatures on party designating petitions even if collected after identical voter signatures on independent nominating petitions. *Compare* N.Y. Elec. Law § 6-138(1) (stating that a signature on an independent nominating petition is invalid if the same signatory appears on another independent nominating or party designating petition); *with* N.Y. Elec. Law § 6-134(3) (stating that a signature on a party designating petition is invalid if it appears on another party designating petition bearing the same date, but if the signature appears on different party designating petitions with different dates, the earlier dated petition remains valid).

Accordingly, extending the independent candidate signature collection period so that it begins *after* the party designating petition filing deadline will enhance efficiency for independent bodies, by enabling them to collect signatures for all offices at the same time, while also reducing the administrative burden for election administrators by reducing the overall number of duplicate signatures and the possibility of inconsistent standards for the rejection thereof.⁶ Something must

⁶ The U.S. Court of Appeals for the Second Circuit has previously acknowledged that New York's petitioning process places a heavy burden on small parties. Finding even a few signatures can be like finding a needle in a haystack. Amici here do not concede that New York's petitioning process is consistent with the Fourteenth Amendment's Equal Protection Clause. For purposes of

131

FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

yield, or independent candidates will be unfairly punished for the failure of the New York State Independent Redistricting Commission to adopt a constitutional congressional map. UIP asserts that the relief requested by the Libertarian Party of New York in its Motion to Intervene is a good start and would eliminate prejudice to independent statewide candidates without necessitating further changes to the State's congressional map. However, although an extension of the May 31 deadline and a reduction in the 45,000 signature requirement would certainly help, that relief alone would not solve every problem without also ensuring that independent bodies are able to collect signatures for all their supported candidates at the same time and begin collection after party designating petitions have been circulated and filed.

Accordingly, UIP urges the Court to consider the following amendments to the Court's May 11, 2022 order:

1. A consolidation of petition filing deadlines for independent statewide candidates with the deadlines for independent congressional and state senate candidates;
2. Moving the start of the independent nominating petitioning period to June 14, 2022, after Party designating petitions have been circulated and filed, with the independent nominating petition filing period during the week of July 19, 2022 through July 26, 2022;
3. A reduction in the total required number of signatures for an independent statewide candidate nominating petition from the statutory threshold of 45,000 to 15,000 (which was the statutorily required number of signatures for decades before the law was revised in 2020);

this brief, however, Amici are attempting to abide by the rules currently in place. *See Lerman v. Board of Elections*, 232 F.3d 135, 146-48 (2d Cir. 2000).

132**FILED: STEUBEN COUNTY CLERK 05/18/2022 10:04 AM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 598

RECEIVED NYSCEF: 05/18/2022

4. A reduction in the number of signatures required from each congressional district from the statutory threshold of 500, or a reduction in the number of congressional districts from which signatures must be collected from the statutory threshold of thirteen; and
5. An order that all signatures collected on independent nominating petitions before the release of a final congressional district map on May 20 and that were otherwise valid under the district lines in place prior to May 20, are valid.

DATED: May 18, 2022

Respectfully submitted,

/s/ Michael Burger

Michael Burger
Fernando Santiago
SANTIAGO BURGER LLP
2280 East Avenue
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mike@litgrp.com
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Counsel for Amicus Curiae

133

**Notice of Entry of Order to Show Cause Regarding Mark Braiman's
Emergency Motion for Leave to Intervene, dated May 18, 2022
[pp. 133 - 136]**

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 637

RECEIVED NYSCEF: 05/18/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE,

Index No. E2022-0116CV

NOTICE OF ENTRY

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

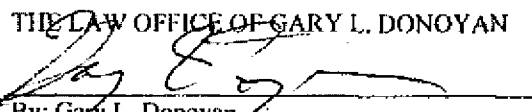
Respondents.

-----X
PLEASE TAKE NOTICE that the within is a true copy of the Order to Show Cause (NYSCEF
Doc. No. 583, Motion No. 17) entered in the above-captioned proceeding in the Office of the Steuben
County Clerk on May 17, 2022.

In addition, served herewith by NYSCEF on counsel for all parties is a copy of the
accompanying documents.

Dated: May 18, 2022
Manhasset, New York

THE LAW OFFICE OF GARY L. DONOYAN


By: Gary L. Donoyan
Attorneys for Petitioner-Intervenor Mark Braiman
565 Plandome Road, #209
Manhasset, New York 11030
(516) 312-8782
gdonoyan@verizon.net

134

FILED: STEUBEN COUNTY CLERK 05/19/2022 05:06 PM
FILED: STEUBEN COUNTY CLERK 05/19/2022 05:06 PMNYSCEF DOC. NO. 647
NYSCEF DOC. NO. 583

INDEX NO: E2022-0116CV

RECEIVED NYSCEF: 05/19/2022

At a Special Term of the Supreme Court of the State of New York, held in and for the County of Steuben, at Three East Pulteney Square, Bath, New York, on the 17 day of May 2022.

PRESENT: HON. PATRICK F. MCALLISTER, J.S.C.

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE,

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

Index No. E2022-0116CV

ORDER TO SHOW CAUSE
REGARDING MARK
BRAIMAN'S EMERGENCY
MOTION FOR LEAVE TO
INTERVENE

UPON the emergency motion of Mark Braiman to intervene in this action on the ground that his interests are or may be inadequately represented and that he may be bound by the judgment entered herein; the annexed affidavits of Mark Braiman, Cody Anderson, and Jonathan Howe; the Proposed Answer to Amended Petition with Additional Cause of Action Seeking to Modify Provisions for Independent Congressional and State Senate Candidates; and the accompanying Memorandum of Law of Gary L. Donoyan, Esq, Petitioners and Respondents are hereby

ORDERED TO SHOW CAUSE, on the 26 day of May 2022, at 9:30 or as soon

135

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM
NYSCEF DOC. NO. 583
FILED: STEUBEN COUNTY CLERK 05/17/2022 03:51 PM

INDEX NO. E2022-0116CV
INDEX NO. E2022-0116CV
RECEIVED NYSCEF: 05/18/2022
RECEIVED NYSCEF: 05/17/2022

thereafter as counsel can be heard, at Part _____ [Room 3] at the Courthouse located at Three East Pulteney Square, Bath, New York 14810, under CPLR 1012 and 1013,

- (a) WHY PETITIONER-INTERVENOR should not be allowed to intervene to protect his rights as a voter and independent Congressional candidate, and
- (b) WHY AN ORDER should not be issued modifying this Court's May 11, 2022 Decision and Order, which set "political calendar dates" for "the independent nominating process for Member of Congress and New York State Senate, for the November 8, 2022 General Election for State Senate and Member of [United States] House of Representatives," so to set the same such dates for independent statewide and independent New York State Assembly candidates as well; and
- (c) WHY AN ORDER should not be issued modifying the May 11, 2022 Decision and Order, which ordered "the signature requirements provided for by current law to be unchanged," so to provide for a 50% reduction in signatures required for independent candidates for Congress from 3,500 to 1,750 signatures, and for independent candidates for State Senate from 3,000 to 1,500; and
- (d) WHY AN ORDER should not be issued modifying the May 11, 2022 Decision and Order, which set May 21, 2022 as "First day to sign" for independent Congressional and State Senate candidates' petitions, so to provide that valid signatures gathered on otherwise valid petitions between April 19 and April 27, by the same candidates of voters residing within the newly-created districts, as the case may be, shall also count towards the required total number of signatures; and
- (e) WHY THIS COURT should not grant such other and further relief as is just and equitable, and it is further

136

FILED: STEUBEN COUNTY CLERK 05/18/2022 03:03 PM
NYSCEF DOC. NO. 633INDEX NO: E2022-0116CV
RECEIVED NYSCEF: 05/19/2022


ORDERED that service of a copy of this Order and accompanying documents be made on counsel for all parties by NYSCEF, on or before the 19th day of May 2022, and that such service be deemed sufficient, and it is further

ORDERED that Petitioners and Respondents, including Respondent New York State Board of Elections, shall file with this Court, by NYSCEF, a copy of their opposition papers, if any, in connection with the above motion to intervene and/or any of the accompanying requests for relief, on or before May 24th, 2022.

Dated: Bath, New York

May 17, 2022

ENTER:


Hon. Patrick F. McAllister, J.S.C.

137

**Affidavit of Mark Braiman in Support of Emergency Motion for
Leave to Intervene, sworn to May 15, 2022
[pp. 137 - 162]**

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

NYSCEF DOC. NO. 638

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/19/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT, LAWRENCE CANNING, PATRICIA CLARINO, GEORGE DOOHER, JR., STEHPAN EVANS, LINDA FANTON, JERRY FISHMAN, JAY FRANTZ, LAWRENCE GARVEY, ALAN NEPHEW, SUSAN ROWLEY, JOSEPHINE THOMAS, and MARIANNE VIOLANTE.

AFFIDAVIT IN SUPPORT

Index No. E2022-0116CV

Petitioners.

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE BRIAN BENJAMIN, SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE SENATE ANDREA STEWART-COUSINS, SPEAKER OF THE ASSEMBLY CARL HEASTIE, NEW YORK STATE BOARD OF ELECTIONS, and THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT.

Respondents.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Mark Braiman, being duly sworn, depose and say:

1. I am a candidate for Member of the United States House of Representatives, formerly running in the 22nd District of New York, having been endorsed by the Libertarian Party of New York, an independent body.
2. I submit this affidavit in support of my emergency request to intervene in the above-captioned action. I am fully familiar with the facts and circumstances stated herein.
3. I am moving for leave to intervene by order to show cause so that my rights as a voter and candidate for a non-recognized party, known as an independent body, will be protected.

4. I seek to intervene as of right in this action, on the ground that my interests are not adequately represented by the present parties and since I may be bound by any judgment rendered herein. CPLR §1012(a)(2) ("Upon timely motion, any person shall be permitted to intervene in any action ... when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment.")

5. In the alternative, I seek to intervene by permission in this action, on the ground that my claim and the main action "have a common question of law or fact." CPLR §1013.

6. The Legislature's unconstitutional redistricting has harmed voters' and candidates' interests in fair representation. In addition, this Court's Decision and Order of May 11, 2022 also harms the interests and rights of independent Congressional and State Senate candidates. Pursuant to that order, Respondent New York State Board of Elections will now require independent Congressional and State Senate candidates to start collecting signatures no sooner than May 21, 2022, and file their petitions six weeks thereafter, by July 5, 2022. None of the signatures collected between April 19, 2022 and April 27, 2022, even if within the new districts for the same candidates, will be considered valid (though previously-collected signatures for recognized party candidates for the same offices will count to permit some of those candidates to qualify for the ballot without any further petitioning at all). The number of signatures required has not changed from the statutory requirement, which is 3,500 signatures for each independent Congressional candidate, and 3,000 signatures for each independent State Senate candidate. However, none of the independent Congressional and State Senate candidates will be able to gather signatures on joint petitions with any independent statewide candidates, because the two sets of petitions must be filed separately, which is absolutely not the statutory structure intended by the Legislature. Those independent statewide petitions must still be filed by May 31, 2022, while the independent Congressional and State Senate petitions may not be filed before June 27, 2022, eliminating the possibility of joint

139

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

filings with joint petitions.

7. The redrawing of Congressional and State Senate district lines has resulted in a likelihood that the signatures gathered by independent Congressional and State Senate candidates will not meet the statutory requirements, and sufficient signatures cannot be gathered between the new starting date for petitioning of May 21, 2022, and the deadline for filing on July 5, 2022. Between April 19, 2022, when independent Congressional and State Senate candidates began petitioning to qualify for the ballot using the old district lines, and April 27, 2022, when the Court of Appeals affirmed (against the predictions of many) this Court's March 31, 2022 voiding of those old lines, I and many other such candidates spent countless hours collecting signatures and organizing volunteers and paid petitioners, in the expectation that our completed petitions could be filed six weeks later, on May 31, 2022. In addition, I made, and other independent Congressional and State Senate candidates typically made, arrangements in our professional and personal lives to set aside those six weeks for the all-important petitioning drive, arrangements many of which could not be undone, and many of which can not be made again.

8. In addition, I will be losing a big motivational factor for collecting signatures, and organizing others to collect signatures, because I will not be able to collect also for my favorite Governor candidate, Libertarian Larry Sharpe. While I can circulate his petitions (which are combined with four other statewide Libertarian candidates, for Lieutenant Governor, Attorney General, Comptroller, and US Senator), together with my new petitions between May 21 and May 31 (the last day to file the statewide petitions), for the remaining weeks, until the last day to file the Congressional and State Senate petitions which is July 5, I will be petitioning only for myself, while my Libertarian statewide candidate friends (if they have managed to qualify for the ballot at all), in turn, will have less incentive to assist my efforts. When you add on the recent and recurring difficulties caused by constantly-evolving new strains of COVID-19 and related restrictions and

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

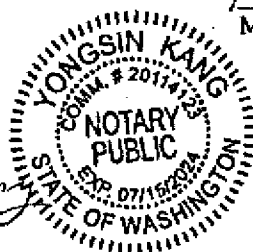
common fears, which reduce the availability of signers and efficiency of petition witnesses, this must be the most difficult year in New York history for independent candidates for office.

9. I am requesting three forms of relief in this action: (1) that the deadline for independent statewide and State Assembly candidates to file their petitions be extended from May 31, 2022 to July 5, 2022, so as to be coordinate with the new deadline set (on May 11, 2022) for independent Congressional and State Senate candidates to file their petitions, permitting the circulation of joint petitions; (2) that the signature requirements for independent Congressional and State Senate candidates be reduced from the statutory requirement of 3,500 signature and 3,000 signatures, respectively, by at least 50%, in light of the burdens caused by the previous petitioning efforts which cannot be undone and which will cause more burdens in the future, the difficulties caused by constantly-evolving new strains of COVID-19 and associated restrictions and fears, and in the event the statewide filing deadline is not extended, by the lack of assistance and coordination with statewide candidates whose names would otherwise be on the same petitions; and (3) that the signatures collected by independent Congressional and State Senate candidates between April 19 and April 27, 2022, from qualified signers residing within the new district they seek to qualify in, be included in and counted towards their total signatures collected in the new district.

10. I have not made any prior application for the relief requested herein, in this or any court.

Sworn to before me this
15 day of May 2022

Yongsin Kang
NOTARY PUBLIC



Mark S. Braiman 5/15/22
Mark Braiman

141

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
 TIM HARKENRIDER, GUY C. BROUGHT,
 LAWRENCE CANNING, PATRICIA CLARINO,
 GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
 FANTON, JERRY FISHMAN, JAY FRANTZ,
 LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
 ROWLEY, JOSEPHINE THOMAS, and MARGARET
 VOLANTE,

AFFIDAVIT IN SUPPORT

Index No. E2022-0116CV

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
 GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
 BENJAMIN, SENATE MAJORITY LEADER AND
 PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
 STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
 CARL HEASTIE, NEW YORK STATE BOARD OF
 ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
 TASK FORCE ON DEMOGRAPHIC RESEARCH AND
 REAPPORTIONMENT,

Respondents.

-----X
 STATE OF NEW YORK)
) ss.:
 COUNTY OF SCHOHARIE)

1. William Cody Anderson, being duly sworn, depose and say:

1. I am Chair and de facto President of the Libertarian Party of New York ("LPNY"), an independent body and unincorporated association.

2. I, on behalf of the LPNY, submit this affidavit in support of the motion of proposed intervenor Mark Braiman, who is the LPNY's candidate for Member of the U.S. House of Representatives ("Congress") from the (former) 22nd District of New York, to intervene in the above-captioned action. I am fully familiar with the facts and circumstances stated herein.

3. In 2018 the LPNY's Governor candidate crossed the vote threshold required for the

LPNY to obtain recognized party status, the first time in its fifty year history it had achieved such status. However, the Legislature passed a new election law in 2020, which truncated the period of the status enjoyed by all recognized parties into two years rather than four. Under the new law, in addition to the Governor candidates, the President candidates are also required to meet a certain vote threshold, and in addition, that vote threshold was set at a number more than double what it had been for decades. Sure enough, in November 2020, and also due to the limited campaigning that was a result of New York's Covid-19 travel restrictions, the LPNY's President candidate did not meet the new vote threshold, and the LPNY was reduced to independent body status again.

4. The LPNY's current Governor candidate, Larry Sharpe, now provides the only opportunity for the LPNY to regain its recognized party status, and it must gather a minimum of 45,000 valid signatures in order even to appear on the 2022 ballot.

5. In past years, in every even numbered year from the 1980s up to and including 2018, LPNY candidates for Congress and New York State Senate (as well as for New York State Assembly) were always actively recruited, particularly for those districts across New York for which their petitions would be filed with Respondent New York State Board of Elections ("NYSBOE").¹ One important value of such candidates for the LPNY, in the years in which it is an independent body, is that such petitions can be and typically are combined with that of the LPNY's statewide candidates, which have qualified for the ballot every two years since the 1980s, thus providing an assist both to our statewide candidates, and to our Congress and State Senate candidates. But even local candidates whose petitions are not combined with the statewide candidates' petition provide assistance, by commonly circulating both petitions and seeking to obtain signatures on each one. One exception to that pattern was in 2020,

¹ Candidates running in districts wholly within a county, or within New York City, will file their petitions with the board of elections for that county, or for New York City, respectively. Candidates running in districts that encompass parts of more than one county, other than those wholly within New York City, will file their petitions with Respondent NYSBOE.

143

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

when our President candidate qualified for the ballot by election at a national party convention, because as noted, that year the LPNY was a recognized party. The enthusiasm of those local candidates and their familiarity with their communities and local political activists always provides a substantial boost to our statewide candidates' efforts to qualify for the ballot, whether or not each Congress or State Senate candidate him or herself qualifies for the ballot, because all collected signatures will count towards the statewide total regardless.

6. In 2022, the LPNY and/or its local county affiliates endorsed four Congress candidates, two State Senate candidates, and three State Assembly candidates, as follows:

- Howard Rabin, for Member of the U.S. House of Representatives (1st District)
- Michael Rakebrandt, for Member of the U.S. House of Representatives (2nd District)
- Jonathan Howe, for Member of the U.S. House of Representatives (14th District)
- Mark Braiman, for Member of the U.S. House of Representatives (22nd District)
- James Coll, for State Senate (6th District)
- Blay Tarnoff, for State Senate (7th District)
- Joseph Maffia, for State Assembly (75th District)
- Pietro Geraci, for State Assembly (104th District)
- Matthew Schieber, for State Assembly (144th District)

A copy of each of those candidates' petition sheets is annexed hereto as Exhibit 1.

7. To my knowledge, all nine of those candidates had petitions prepared and plans made to circulate them, as of April 19, 2022, which was the start of the petitioning period for all independent candidates, according to the Election Law. Those candidates who were eligible to, combined their petitions with our statewide candidates' petition, and those who were not, obtained both petitions so as to circulate their own petitions as well as our statewide candidates' petition, a more cumbersome but still helpful process.

8. Eight days later, on April 27, 2022, the Court of Appeals handed down its decision affirming this Court's ruling, which came as a surprise to many of us. It was a happy surprise in some respects, because I and most of my colleagues in the LPNY thought it was the right decision, but it also caused immediate difficulties for all of our candidates. Our four Congressional and two State Senate

candidates now had no districts to run in, and it soon became apparent that further petitioning for their own races would likely be of no use. Our statewide candidates also no longer had any ability to keep track of which Congress districts their signatures were being collected in, which made it impossible to ensure they would meet the state law requirement that their petition include 500 signatures in each of half of the Congress districts.

9. LPNY Governor candidate Larry Sharpe and the LPNY, as well as independent US Senate candidate Diane Sare, began to explore our legal options, and retained attorney Jonathan O'Brien, Esq., to prepare papers and file an order to show cause, seeking to intervene in this action on our behalf, for relief from the extreme difficulties suffered by all statewide independent candidates caused by the elimination of Congress and State Senate district lines, as affirmed by the Court of Appeals on April 27, 2022. Our proposed order to show cause was filed on May 12, 2022, and the order was signed on May 13, 2022, setting the return date of our motion for May 19, 2022.

10. Meanwhile, on May 11, 2022, the order of this Court was issued setting out the new requirements for qualification for the ballot, for all Congress and State Senate candidates, in anticipation of the proclamation of new district lines on or before May 20, 2022. The May 11 order harms the interests and rights of independent Congress and State Senate candidates. Pursuant to that order, Respondent New York State Board of Elections will now require independent Congress and State Senate candidates to start collecting signatures no sooner than May 21, 2022, and file their petitions six weeks thereafter, by July 5, 2022. None of the signatures collected between April 19, 2022 and April 27, 2022, even if within the new districts for the same candidates, will be considered valid (though previously-collected signatures for recognized party candidates for the same offices will count to permit some of those candidates to qualify for the ballot without any further petitioning at all). The number of signatures required has not changed from the statutory requirement, which is 3,500 signatures for each independent Congress candidate, and 3,000 signatures for each independent State Senate candidate.

145

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

However, none of the independent Congress and State Senate candidates will be able to gather signatures on joint petitions with any independent statewide candidates, because the two sets of petitions must be filed separately, which is absolutely not the statutory structure intended by the Legislature. Those independent statewide (and State Assembly) petitions must still be filed by May 31, 2022, while the independent Congress and State Senate petitions may not be filed before June 27, 2022, eliminating the possibility of joint filings with joint petitions.

11. The terms of the May 11 order have resulted in a likelihood that the signatures gathered by independent Congress and State Senate candidates will not meet the statutory requirements, and sufficient signatures cannot be gathered between the new starting date for petitioning of May 21, 2022, and the deadline for filing on July 5, 2022. Between April 19, 2022, when independent Congress and State Senate candidates began petitioning to qualify for the ballot using the old district lines, and April 27, 2022, when the Court of Appeals affirmed (against the predictions of many) this Court's March 31, 2022 voiding of those old lines, movant-candidate Mark Braiman and the other five LPNY Congress and State Senate candidates spent countless hours collecting signatures and organizing volunteers and paid petitioners, in the expectation that their completed petitions could be filed six weeks later, on May 31, 2022. In addition, movant-candidate Mark Braiman and the other five LPNY Congress and State Senate candidates made arrangements in their professional and personal lives to set aside those six weeks for the all-important petitioning drive, arrangements many of which could not be undone, and many of which can not be made again.

12. In addition, during the new six-week period proclaimed in the May 11 order during which all six Congress and State Senate LPNY candidates may collect signatures, each of them will have lost a big motivational factor for collecting signatures, and organizing others to collect signatures, because they will not be able to collect also for our Governor candidate, Libertarian Larry Sharpe. While they may circulate his petitions (which are combined with four other statewide Libertarian

146

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

candidates, for Lieutenant Governor, Attorney General, Comptroller, and US Senator), together with their new petitions between May 21 and May 31 (the last day to file the statewide petitions), for the remaining weeks, until the last day to file the independent Congress and State Senate petitions which is July 5, each of those six LPNY candidates will be petitioning only for themselves, while our LPNY statewide candidates (if they have managed to qualify for the ballot at all), in turn, will have less incentive to assist the efforts of those six of our candidates. When you add on the recent and recurring difficulties caused by constantly-evolving new strains of COVID-19 and related restrictions and common fears, which reduce the availability of signers and efficiency of petition witnesses, this must be the most difficult year in New York history for independent candidates for office.

13. Furthermore, two of our State Assembly candidates (those campaigning for the 104th and 144th Districts) whose petitions must be filed with Respondent NYSBOE (and whose petitions are thus joint with our statewide candidates), and all other such independent State Assembly candidates, would be harmed and likely unable to qualify for the ballot at all, should their filing deadline not also be extended to July 5, 2022, if this Court extends the filing deadline for independent statewide candidates to July 5, as it should. That is because their petition sheets would have to be withheld from filing until after May 31, if those joint petition sheets are to be included in the whole petition to be filed on behalf of the statewide candidates, on July 5, and there would be little time after such a ruling, for such independent State Assembly candidates to create new separate petition sheets and then meet the signature requirement in the remaining time. And to be fair to those independent State Assembly candidates who do not file their petitions with Respondent NYSBOE, their deadline for filing should also be extended to July 5, 2022, in line with that of all other independent candidates, in that event.

14. I urge this court to consider the harm that will likely result to every truly independent political party and candidate in New York State, as well as to every New York voter, myself included, should the relief requested by movant-candidate Mark Braiman not be granted, not just this year but for

147

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

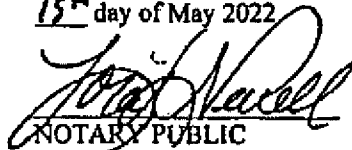
RECEIVED NYSCEF: 05/19/2022

several years into the future, as a failure to qualify a Governor candidate for the ballot prevents it not only from having an opportunity to keep or regain its recognized party status, but also eliminates all of its enrolled members from the rolls of Respondent NYSBOE, as those rolls are maintained only for "Other" independent bodies that have run a Governor (and now also, apparently, a President) candidate in the last election. There are no parties presently appearing in this action who represent or have advocated for the interests of independent bodies and candidates in this state, at all. For all those reasons and many others, I urge this Court to grant the relief sought by movant-candidate Mark Braiman, and I thank the Court for its consideration of these issues.



William Cody Anderson

Sworn to before me this
15th day of May 2022


NOTARY PUBLIC

LORA L. NEWELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 019888888
Qualified in Schoharie County
My Commission Expires October 01, 2024

148

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

NYSCEF DOC. NO. 638

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/19/2022

EXHIBIT 1

149

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

Independent Nominating Petition

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate

Larry Sharpe
Andrew C. Hollister
Sean C. Hayes
William K. Schmidt
Thomas D. Quiter
Howard Rabin

Public Office

Governor of New York
Lieutenant Governor of New York
Attorney General of New York
Comptroller of New York
U.S. Senator from New York
U.S. Congressman, District 1

Place of Residence (also Post Office address if not identical)

23-14 24th Ave., Astoria, NY 11102
710 James Road, Rochester, NY 14612
200 Rector Place Apt. 19L, New York, NY 10280
1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566
1789 State Highway 8, Mount Upton, NY 13809
88 Virginia Ave., Plainview, NY 11803

I do hereby appoint:

William Cady Anderson P.O. Box 910, Middleburgh, NY 12122
Anthony D'Onofrio 122 West Filbert Street, East Rochester, NY 14445
Dwight J. Whitmer 3806 East Lake, Lakeview, NY 14083
Andrew M. Kulstee 35 Fairfield Avenue, Jamestown, NY 14701
Lora L. Newell P.O. Box 331, Middleburgh, NY 12122

Robert M. Anigo 24 Preserve Way, Saratoga Springs, NY 12866
Gabriella S. Condova 65-60 Wetherole Street, Apt. 4A, Bago Park, NY 11374
Pietro S. Genesi 26 Rockwood Drive, Newburgh, NY 12550
Paul M. Grindie 157 Star Street, Apt. 4R, Brooklyn, NY 11237
Richard P. Parrell 4 Holmes Avenue, Apalachin, NY 13731

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	Date	Name of Signer (printed name may be added)	Residence	Town or City Except in NYC, County
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7	/ / 2022 X	printed name:		
8	/ / 2022 X	printed name:		
9	/ / 2022 X	printed name:		
10	/ / 2022 X	printed name:		

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date

Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town or City: _____

County: _____

Sheet No. _____

150

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate**Public Office****Place of Residence (also Post Office address if not identical)**

Larry Sharpe

Governor of New York

23-14 24th Ave., Astoria, NY 11102

Andrew C. Hollister

Lieutenant Governor of New York

710 Jacobs Road, Rochester, NY 14612

Sean C. Hayes

Attorney General of New York

200 Rector Place Apt. 19L, New York, NY 10280

William K. Schmidt

Comptroller of New York

1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566

Thomas D. Quilter

U.S. Senator from New York

1789 State Highway 8, Mount Upton, NY 13809

Mike Rakebrandt

U.S. Congressman, District 2

125 Ballad Circle, Holbrook, NY 11741

I do hereby appoint:

William Cody Anderson

P.O. Box 910, Middleburgh, NY 12122

Robert M. Amigo

24 Preserve Way, Saratoga Springs, NY 12866

Anthony D'Orazio

122 West Filson Street, East Rochester, NY 14445

Gabriel S. Cordova

65 60 Weiserole Street, Apt. 4A, Rego Park, NY 11374

Dante J. Whitmer

3806 East Lane, Lakeview, NY 14085

Pietro S. Gerasi

26 Rockwood Drive, Newburgh, NY 12550

Andrew M. Kukulski

35 Fairfield Avenue, Jamestown, NY 14701

Paul M. Grindis

157 Starr Street, Apt. 4R, Brooklyn, NY 11237

Lora L. Newell

P.O. Box 321, Middleburgh, NY 12122

Richard P. Portelli

4 Holmer Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	Date	Name of Signer (printed name may be added)	Residence	Town or City except in NYC, County
1	/ / 2022 X	printed name:		
2	/ / 2022 X	printed name:		
3	/ / 2022 X	printed name:		
4	/ / 2022 X	printed name:		
5	/ / 2022 X	printed name:		
6	/ / 2022 X	printed name:		
7	/ / 2022 X	printed name:		
8	/ / 2022 X	printed name:		
9	/ / 2022 X	printed name:		
10	/ / 2022 X	printed name:		

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit used, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date

Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town or City: _____

County: _____

Sheet No. _____

151

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 808 533

Independent Nominating Petition

RECEIVED NYSCEF 05/18/2022

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate	Public Office	Place of Residence (also Post Office address if not identical)
Larry Sharpe	Governor of New York	23-14 24th Ave., Astoria, NY 11102
Andrew C. Hollister	Lieutenant Governor of New York	710 James Road, Rochester, NY 14612
Sean C. Hayes	Attorney General of New York	200 Rector Place Apt. 19L, New York, NY 10280
William K. Schmidt	Comptroller of New York	1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566
Thomas D. Quiter	U.S. Senator from New York	1789 State Highway 8, Mount Upton, NY 13809
Mark S. Brainman	Representative in Congress, 22 nd District	4775 East Lake Road, Cazenovia, NY 13035

I do hereby appoint:

William Cody Anderson	P.O. Box 910, Middleburgh, NY 12122	Robert M. Arigo	24 Preserve Way, Saratoga Springs, NY 12866
Anthony D'Yonico	121 West Filbert Street, East Rochester, NY 14445	Gabrielle S. Cordova	63-40 Wetherole Street, Apt. 4A, Rego Park, NY 11374
Dennis J. Weinert	5806 East Lane, Lakewood, NY 14083	Pietro S. Ganci	24 Rockwood Drive, Newburgh, NY 12550
Andrew M. Kolacz	35 Fairfield Avenue, Jameson, NY 14701	Paul M. Grindle	157 Starr Street, Apt. 4R, Brooklyn, NY 11237
Lara L. Newell	P.O. Box 321, Middleburgh, NY 12122	Richard F. Patch	4 Holmes Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	Date	Name of Signer (printed name may be added)	Residence	Town or City <small>EXCEPT IN NYC, COUNTY</small>
1	/ / 2022	X		
	Printed name:			
2	/ / 2022	X		
	Printed name:			
3	/ / 2022	X		
	Printed name:			
4	/ / 2022	X		
	Printed name:			
5	/ / 2022	X		
	Printed name:			
6	/ / 2022	X		
	Printed name:			
7	/ / 2022	X		
	Printed name:			
8	/ / 2022	X		
	Printed name:			

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date _____ Signature of Witness _____

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition to be valid.

Town or City: _____ County: _____

C.D. 22

4 of 4

Sheet No. _____

152

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

Independent Nominating Petition

RECEIVED NYSCEF: 5/19/2022

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate

Public Office

Place of Residence (also Post Office address if not identical)

James L. Coll

State Senate, District 6

579 Arlington Drive, Seaford, NY 11783

I do hereby appoint: Jonathan Gaucher

636 Stewart Ave., Bostpage, NY 11714

Howard Rubin

88 Virginia Ave., Plainville, NY 11803

Bly Tamoff

35 Bayview Ave., Port Washington, NY 11050

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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153

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INDEX NO. E2022-0116CV

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RECEIVED NYSCEF: 05/19/2022

Independent Nominating Petition

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Name of Candidate

Public Office

Place of Residence (also: Post Office address if not identical)

Blay Tarnoff

State Senator, District 7

55 Bayview Ave., Port Washington, NY 11050

I do hereby appoint:

Gary Donagan

186 Bayview Road, Manhattan, NY 11030

Randy Tarnoff

55 Bayview Ave., Port Washington, NY 11050

Caryn Cohen Tarnoff

55 Bayview Ave., Port Washington, NY 11050

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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(residence address)

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154

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NYSCEF DOC. NO. 638

Independent Nominating Petition

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Name of Candidate

Public Office

Place of Residence (also Past Office address if not identical)

Joseph A. Maffia

Member, New York Assembly, 75th Assembly District

100 West 57th, #14J, New York, NY 10019

I do hereby appoint:

Mary-Jane Maffia

100 West 57 Street, #14J, New York 10019

Paul Housheer

100 West 57 Street, #14F, New York 10019

Debra LaRue

9 West 64th Street New York, NY 10023

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

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155

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Name of Candidate

Larry Sharpe
Andrew C. Hollister
Sean C. Hayes
William K. Schmidt
Thomas D. Quiter
Pietro S. Geraci

Public Office

Governor of New York
Lieutenant Governor of New York
Attorney General of New York
Comptroller of New York
U.S. Senator from New York
New York State Assembly, District 104

Place of Residence (also Post Office address if not identical)

23-14 24th Ave., Astoria, NY 11102
710 James Road, Rochester, NY 14612
200 Rector Place Apt. 19L, New York, NY 10280
1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566
1789 State Highway 8, Mount Upton, NY 13809
26 Rockwood Drive Newburgh, NY 12550

I do hereby appoint

William Cady Anderson
Anthony D'Onofrio
Doreen J. Whitmer
Andrew M. Kolassa
Liam L. Newell

P.O. Box 910, Middleburgh, NY 12122
122 West Fulton Street, East Rochester, NY 14445
5806 East Lane, Lakeview, NY 14085
35 Fairfield Avenue, Jamestown, NY 14701
P.O. Box 321, Middleburgh, NY 12122

Robert M. Anigo
Gabriella S. Cordova
Pietro S. Geraci
Paul M. Grillo
Richard P. Parcell

24 Preserve Way, Saratoga Springs, NY 12866
65-60 Webster Street, Apt. 4A, Rego Park, NY 11374
26 Rockwood Drive, Newburgh, NY 12550
157 Star Street, Apt. 4R, Brooklyn, NY 11237
4 Holmes Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

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3	/ / 2022 X	printed name:		
4	/ / 2022 X	printed name:		
5	/ / 2022 X	printed name:		
6	/ / 2022 X	printed name:		
7	/ / 2022 X	printed name:		
8	/ / 2022 X	printed name:		
9	/ / 2022 X	printed name:		
10	/ / 2022 X	printed name:		

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the date above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date

Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town or City:

County:

Sheet No. _____

156

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

Independent Nominating Petition

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named persons as candidates for election to public offices to be voted for at the election to be held on the 8th day of November, 2022, and that I select the name Libertarian Party as the name of the independent body making the nominations and the image to the right as the emblem of such body.

Name of Candidate

Public Office

Place of Residence (also Post Office address if not identical)

Larry Sharpe

Governor of New York

23-14 24th Ave., Astoria, NY 11102

Andrew C. Hollister

Lieutenant Governor of New York

710 James Road, Rochester, NY 14612

Sean C. Hayes

Attorney General of New York

200 Rector Place Apt. 19L, New York, NY 10280

William K. Schmidt

Comptroller of New York

1874 Crompond Rd., Apt. 3 B7, Peekskill, NY 10566

Thomas D. Quiter

U.S. Senator from New York

1789 State Highway 8, Mount Upton, NY 13809

Matthew M. Schieber

New York State Assembly, District 144

199 Two Rod Road, Alden, NY 14004

I do hereby appoint:

William Cody Anderson

P.O. Box 910, Middleburgh, NY 12122

Robert M. Arigo

24 Preserve Way, Saratoga Springs, NY 12866

Anthony D'Orsini

122 West Elbert Street, East Rochester, NY 14445

Gabrielle S. Cordova

65-60 Wetherole Street, Apt. 4A, Rego Park, NY 11374

Duane J. Whitner

5806 East Lane, Lakeview, NY 14085

Victor S. Gencel

26 Rockwood Drive, Newburgh, NY 12550

Andrew M. Kozlowski

35 Fairfield Avenue, Jamestown, NY 14701

Paul M. Grimaldi

157 Starr Street, Apt. 4R, Brooklyn, NY 11237

Leon L. Newell

P.O. Box 321, Middleburgh, NY 12122

Richard F. Postell

4 Holmes Avenue, Apalachin, NY 13732

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	Date	Name of Signer (printed name may be added)	Residence	Town or City Except in NYC, County
1	/ / 2022 X	printed name:		
2	/ / 2022 X	printed name:		
3	/ / 2022 X	printed name:		
4	/ / 2022 X	printed name:		
5	/ / 2022 X	printed name:		
6	/ / 2022 X	printed name:		
7	/ / 2022 X	printed name:		
8	/ / 2022 X	printed name:		
9	/ / 2022 X	printed name:		
10	/ / 2022 X	printed name:		

STATEMENT OF WITNESS

I, _____ (name of witness) state: I am a duly qualified voter of the State of New York and now reside at _____ (residence address).

Each of the individuals whose names are subscribed to this petition sheet containing _____ (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date

Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

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157

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INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
FANTON, JERRY FISIMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPIEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARGARET
VOLANTE,

AFFIDAVIT IN SUPPORT

Index No. E2022-0116CV

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

I, Jonathan Howe, being duly sworn, depose and say:

1. I am a candidate for Member of the United States House of Representatives,
formerly running in the 14th District of New York, having been endorsed by the Libertarian
Party of New York, an independent body.

2. I submit this affidavit in support of Mark Braiman's emergency request to
intervene in the above-captioned action. I am fully familiar with the facts and circumstances
stated herein.

158

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

3. My candidacy has also been significantly impacted by this Court's order, dated May 11, 2022, setting a new petitioning period for independent U.S. House of Representatives and N.Y. State Senate candidates. As a candidate for the United States House of Representatives, I am required to follow the New York State 2022 Official Political Calendar posted by Respondent New York State Board of Elections on their website in order to know when to collect signatures for ballot access, as well as other important dates relevant to the election. The election calendar dated April 1, 2022 has remained on the Board's website since that date, and continues to be hosted there and presented as the current election calendar.¹ That calendar indicates that the petitioning period for Independent Nominating Petitions was to run from April 19th to May 31st.

4. I began collecting signatures on April 19th and continued to do so through the Court of Appeals decision which affirmed the invalidation of the newly drawn election districts on April 27th. After reading the Court of Appeals ruling, checking the NY State Board of Elections website for a new calendar, and consulting with other candidates, I was unable to find any guidance as to whether I could or should continue in the petitioning process. With no guidance and the clock ticking down, I chose to continue gathering signatures. In an effort to ensure that these signatures would be valid and from voters in my eventual district, I focused on petitioning in my immediate neighborhood, with the hope that those neighbors would be in the same new district, whenever those might be drawn. On May 11th, after reading the order from this Court which issued a new election calendar, I stopped petitioning, and asked my friends, family, and volunteers to do the same. As of the afternoon of May 11th when I received the Court's order, my campaign had collected just over 1000 signatures.

5. I have been working with my campaign team and various volunteers since September 2021 to plan for the petitioning period. We all knew that petitioning for signatures

¹ <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf>

159

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

during the Covid-19 pandemic would be a challenge. As soon as the NY State Board of Elections Political Calendar was published in early 2022 I used it to schedule four days off from work in late April and seven days off throughout the month of May. I thought it was important to do as much of the petitioning for my campaign myself, both due to limited resources and in order to help introduce myself to members of my community, and I knew I couldn't get it all done just on weekends and weeknights after work. My aim was to complete petitioning by May 24th, so all those days off were scheduled prior to May 20th, the Friday prior. I am a public defender in Bronx County Family Court and the process of taking time off requires scheduling hearings, conferences, and other court dates around those days many weeks or months ahead of time. As a result of scheduling time off in April and May, my court calendar from May 24th through the end of June is particularly busy, and I will not be able to take many, if any, additional days off to petition on my own.

6. In addition to scheduling time off from work to petition, I also made plans for friends and family members to help collect signatures. I scheduled events, petitioning groups, and even arranged for friends to come stay with me in my home from outside the district to help for days at a time. Many of these friends, family members, and volunteers also took time off from work and scheduled significant periods of time to come help petition, time they are not likely to be able to spare again in the near future. My mother-in-law, Xiaoxia Gu, works in education and was able to use time during her school's spring break and other scheduled days off to petition for me among the Mandarin speaking community in the district; she was able to gather over 100 signatures (which she surprised me with on Mother's Day, no less). She will not have the same availability in the new petitioning period, and is extremely discouraged and disheartened by how those signatures she already gathered are now invalid. Finally, in another

particularly poorly timed plan, I have a friend from outside New York City staying with me to help petition from May 14 until May 20; now, thanks to the new petitioning schedule, he will not be able to collect any signatures for my campaign, and it is far too late for him to change his own travel plans.

7. Requiring my campaign to start over will make it significantly more difficult to get signatures from those voters who already signed my petition, who believe they have already signed and are unaware that their earlier signatures are now invalid. Most of my petitioning, especially after the Court of Appeals decision on April 27th, took place within a mile or less of my home, and it is very likely that many of the same voters will be in whatever new district I end up in. In my experience, many people who would walk by and decline to sign my petition would explain that they had already signed for another candidate this year; most people seem to know you cannot sign for multiple candidates, not to mention multiple times for the same candidate. In the minds of the vast majority of voters who signed my petition already, they will assume they should not stop and sign again, and that doing so would be akin to cheating, like voting twice. I anticipate significant difficulty in getting any of those voters to sign my new petition starting May 21st.

8. One of the most severe harms caused by the change in my petitioning period is that I will not be able to petition alongside other candidates running as Libertarians in the November 2022 elections. Since April 19th, at least $\frac{1}{2}$ of the time I have spent petitioning has been with one candidate or another. I have gathered signatures and attended campaign events with Larry Sharpe, Thomas Quiter, Sean Hayes, and Bill Schmidt, all Libertarian state-wide candidates. Campaigning together has been far more effective than campaigning alone.

9. My campaign put so much value on campaigning together with other candidates

161

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

that in early March of 2022 I coordinated with Thomas Daniel Quiter, candidate for US Senate from New York, also endorsed by the Libertarian Party of New York, to have Mr. Quiter travel from his home in Mount Upton, New York and stay in a hotel near me for two weeks so that we could petition together. Mr. Quiter was born with *osteogenesis imperfecta*, brittle bone disease, and uses a custom made electric wheelchair and mobility van to get around. The process of having Mr. Quiter travel to the (former) 14th Congressional District involved having a campaign volunteer travel from New York City to Binghamton, NY by bus, then take a cab from Binghamton to his home in Mt. Upton, NY, and then drive both of them back to New York City in the mobility van. The process of campaigning with Mr. Quiter (on those days I took off specifically to do so, plus weekends) involved traveling from my home to his hotel, using a battery jump-box to jumpstart his van, loading and locking him into the van on a mechanical folding ramp, driving to an accessible location with good foot traffic, unlocking and unloading him from the van, and then finding a large enough spot to park his van for several hours in New York City. This process is then repeated on the way back after petitioning, and takes several hours that could have otherwise been spent gathering signatures. However, as we predicted, campaigning together brought us far more signatures and more than made up for the time spent in transit. Mr. Quiter will not be able to schedule or afford another trip to my new district once they are drawn, and all the clear benefit we gained from working together will be lost.

10. The above mentioned harms do not only affect my campaign and the rights of those voters who signed my petitions, they also affect my own rights as a voter. I am much less likely to be able to vote for myself, or for any independent US House or New York State Senate candidates in my eventual districts. Additionally, the fact that fewer of my volunteers (especially close friends and family members) are now interested in petitioning for Larry Sharpe, Thomas

162

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

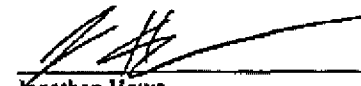
INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 638

RECEIVED NYSCEF: 05/19/2022

Quiter, and other statewide candidates when they are not able to petition for me as well, makes it less likely that the statewide Libertarian ticket will achieve ballot access in this election, further limiting my rights as a voter to vote for candidates of my choice.

11. I am supporting Mr. Braiman's request for three forms of relief in this action: (1) that the deadline for independent statewide and State Assembly candidates to file their petitions be extended from May 31, 2022 to July 5, 2022, so as to be coordinate with the new deadline set (on May 11, 2022) for independent Congressional and State Senate candidates to file their petitions, permitting the circulation of joint petitions and joint campaigning; (2) that the signature requirements for independent Congressional and State Senate candidates be reduced from the statutory requirement of 3,500 signature and 3,000 signatures, respectively, by at least 50%, in light of the burdens caused by the previous petitioning efforts which cannot be undone and which will cause more burdens in the future, the difficulties caused by constantly-evolving new strains of COVID-19 and associated restrictions and fears, and in the event the statewide filing deadline is not extended, by the lack of assistance and coordination with statewide candidates whose names would otherwise be on the same petitions; and (3) that the signatures collected by independent Congressional and State Senate candidates between April 19 and the date of the Court of Appeals' order, from qualified signers residing within the new district they seek to qualify in, be included in and counted towards their total signatures collected in the new district.


Jonathan Howe

Sworn to before me this
15th day of May 2022


NOTARY PUBLIC

ZHENLING ZHANG
Notary Public, State of New York
Reg. No. 022H6373150
Qualified in Queens County
Commission Expires April 2, 2028

163

**Intervenor Mark Braiman's Proposed Answer to Amended Petition
with Additional Cause of Action Seeking to Modify Provisions
for Independent Congressional and State Senate Candidates,
dated May 16, 2022
[pp. 163 - 166]**

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 639

RECEIVED NYSCEF: 05/18/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEHPAN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE,

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

Index No. E2022-0116CV

**PROPOSED ANSWER TO
AMENDED PETITION
WITH ADDITIONAL CAUSE
OF ACTION SEEKING TO
MODIFY PROVISIONS FOR
INDEPENDENT
CONGRESSIONAL AND
STATE SENATE
CANDIDATES**

-----X
Petitioner-Intervenor Mark Braiman ("Petitioner-Intervenor"), by his counsel, the Law Office of
Gary L. Donoyan, for his Proposed Answer to the Amended Petition with Additional Cause of Action
Seeking to Modify Provisions for Independent Congressional and State Senate Candidates, alleges as
follows:

1. Admits paragraphs 1-11, 32-217, 219-223, 235-243, 247-255, 257-263, and 265-274.
2. Upon information and belief, admits paragraphs 12-26, 28-31, 218, and 224-233.
3. Denies paragraph 27.
4. Repeats and realleges his responses to the above paragraphs as appropriate, as his
response to paragraphs 234, 246, 256, and 264.

**NEW CAUSE TO MODIFY PROVISIONS OF THIS COURT'S MAY 11, 2022 DECISION
AND ORDER WHICH SET CRITERIA FOR BALLOT QUALIFICATION FOR
INDEPENDENT CONGRESSIONAL AND STATE SENATE CANDIDATES**

**(N.Y. Const. art. I, §8, U.S. Const. Amends. I and XIV;
Facial Violation of Free Speech Rights)**

5. Petitioner-Intervenor incorporates each of the foregoing paragraphs as if fully set forth herein.

6. Article I, §8 of the New York Constitution provides that "Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

7. Enforcement of this Court's May 11, 2022 Decision and Order which set criteria for ballot qualification for independent Congressional and State Senate candidates without modification would, as applied, severely burden petitioner-intervenor's Free Speech rights under the New York Constitution, Art. I, §8, and the United States Constitution, First and Fourteenth Amendments.

8. As a result of the separation of the filing period for the petitions of independent Congressional and State Senate candidates (June 27 – July 5, 2022), from the filing period for the petitions of independent statewide candidates (May 24 – May 31, 2022), as well as the disqualification of all signatures previously collected by independent Congressional and State Senate candidates, and the maintenance of the same high signature requirements set by the Election Law despite the much greater difficulties now encountered by such candidates due both to the late promulgation of district lines and the restrictions and fears caused by Covid-19, all part of this Court's May 11, 2022 Decision and Order, independent Congressional and State Senate candidates are prevented from fully exercising the core political speech of circulating petitions, and competing in the 2022 election.

9. As a whole, these elements of the May 11, 2022 Decision and Order, to be enforced by Respondent New York State Board of Elections, will be virtually impossible to comply with and consequently will result in a reduction or elimination of independent Congressional and State Senate

165

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 639

RECEIVED NYSCEF: 05/18/2022

candidates for 2022.

10. In particular, failure to continue the longstanding and statutorily endorsed practice of providing for the combination of petition sheets for independent statewide candidates with those for independent Congressional and State Senate candidates, prejudices alike all independent candidates, and independent political parties (known as independent bodies) endeavoring to achieve recognized party status.

11. As such, the Court should remedy the harms caused by these insurmountable obstacles, as it has been mandated to do by the Court of Appeals in its decision of April 27, 2022.

PRAYER FOR RELIEF

WHEREFORE, Petitioner-Intervenor respectfully requests that this Court enter judgment and order against Respondents as follows:

- A. Modifying the May 11, 2022 Decision and Order, which set "political calendar dates" for "the independent nominating process for Member of Congress and New York State Senate, for the November 8, 2022 General Election for State Senate and Member of [United States] House of Representatives," so to set the same such dates for independent statewide and independent New York State Assembly candidates as well;
- B. Modifying the May 11, 2022 Decision and Order, which ordered "the signature requirements provided for by current law to be unchanged," so to provide for a 50% reduction in signatures required for independent candidates for Congress from 3,500 to 1,750 signatures, and for independent candidates for State Senate from 3,000 to 1,500;
- C. Modifying the May 11, 2022 Decision and Order, which set May 21, 2022 as "First day to sign" for independent Congressional and State Senate candidates' petitions, so to provide that valid signatures gathered on otherwise valid petitions between April 19 and April 27, by the same candidates of voters residing within the newly-created districts, as

166

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 639


RECEIVED NYSCEF: 05/18/2022

the case may be, shall also count towards the required total number of signatures;

- D. Suspending or enjoining the operation of any other state laws or orders that would undermine this Court's ability to offer effective and complete relief to Petitioner-Intervenor for the November 2022 election;
- E. Awarding Petitioner-Intervenor all of his reasonable attorneys' fees and costs; and
- F. Awarding Petitioner-Intervenor such other and further relief as this Court deems just and proper.

Dated: May 16, 2022
Manhasset, New York

THE LAW OFFICE OF GARY L. DONOYAN



By: Gary L. Donoyan
Attorneys for Petitioner-Intervenor Mark Braiman
565 Plandome Road, #209
Manhasset, New York 11030
(516) 312-8782
gdonoyan@verizon.net

167

**Intervenor Mark Braiman's Memorandum of Law in Support of Motion
to Intervene and to Modify Election Scheduling Provisions, filed
May 18, 2022
[pp. 167 - 179]**

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

NYSCEF DOC. NO. 640

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/18/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X
TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
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ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VIOLANTE,

Index No. E2022-0116CV

Petitioners,

- against -

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE BRIAN
BENJAMIN, SENATE MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE ANDREA
STEWART-COUSINS, SPEAKER OF THE ASSEMBLY
CARL HEASTIE, NEW YORK STATE BOARD OF
ELECTIONS, and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

-----X
**MEMORANDUM OF LAW IN SUPPORT OF
PETITIONER-INTERVENOR'S MOTION TO INTERVENE AND
TO MODIFY ELECTION SCHEDULING PROVISIONS**

Gary L. Donoyan
Law Office of Gary L. Donoyan
565 Plandome Road, #209
Manhasset, New York 11030
(516) 312-8782
gdonoyan@garydonoyanlaw.com

Attorneys for Petitioner-Intervenor
Mark Braiman

May 16, 2022

168

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

PRELIMINARY STATEMENT

Petitioner-Intervenor Mark Braiman is the candidate for Member of the United States House of Representatives from the (former) 22nd District of New York, of the Libertarian Party of New York ("LPNY"), in the election to be held on November 8, 2022. In support of his campaign, Braiman states at his campaign website: "The core idea of my platform is to change the law to reduce the oppressiveness of the Federal government for as many people as possible. When Congress, even backed by a majority of their voters, passes laws that use government power to oppress a minority unnecessary, they are violating an ethical (and sometimes) a Constitutional responsibility."

Because the LPNY did not meet the current requirements that would entitle it to recognized "party" status, it must circulate independent nominating petitions to place its candidates on the ballot by collecting the requisite number of signatures from potential voters. However, the ability of the LPNY's Congressional and State Senate candidates, including Petitioner-Intervenor, to engage with potential voters and gather their signatures is stymied by the May 11, 2022 scheduling order of this Court – to be enforced by Respondent New York State Board of Elections ("NYSBOE"), who has that responsibility – that (1) their petitions must be filed separately from the petitions of the LPNY's statewide candidates, (2) the number of valid signatures required is identical to the high number required by statute for ordinary circumstances, and (3) signatures collected prior to April 27, 2022, when the Court of Appeals affirmed this Court's ruling eliminating the Legislature's district lines, will not count towards their total number required. Because Petitioner-Intervenor's (and the other independent candidates') free speech rights are severely affected by those provisions, Petitioner-Intervenor now moves to intervene in this action, and for appropriate modifications to the May 11, 2022 scheduling order.

169

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

STATEMENT OF FACTS

The LPNY was organized in 1972 by a group centered around Ed Clark, later the Libertarian Party presidential candidate. The Statue of Liberty is their ballot symbol, and they appear on the ballot as the Libertarian Party. Starting in 1974, the LPNY has run candidates for statewide office (including U.S. Senate and U.S. Presidential electors) every two years except for 1986, the only political organization in the state without recognized "party" status to do so. It is the recognized New York affiliate of the national LP, which is the third-largest political party in the United States in terms of membership, popular vote secured in federal elections, and candidates who run for federal, state, and local office per election.

In November 2018, the LPNY obtained recognized "party" status as a result of its Governor candidate having received sufficient votes in the General Election that month. However, after a change in the Election Law relating to the requirements to keep or maintain recognized "party" status, in November 2020 the LPNY lost that status, as a result of its President candidate not having received sufficient votes in the General Election that month, and since then the LPNY has been an independent body once again. The LPNY fielded candidates for the 2022 state and federal elections, including Petitioner-Intervenor, and is actively engaged in assisting all of its candidates in getting their names on the ballots.

A. Petitioner-Intervenor Must Gather a Sufficient Number of Signatures on an Independent Nominating Petition in Order for His Name to Appear on a Ballot.

For purposes of determining whether a candidate for public office may appear on an election ballot, New York divides candidates into two categories: those nominated by a recognized "party," and those nominated by an independent body. Election Law §§1-104(12), and 6-100 et. seq. A recognized "party" is "any political organization which, excluding blank and void ballots, at the last preceding election for governor received, at least two percent of the total votes cast for

170

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

its candidate for governor, or one hundred thirty thousand votes, whichever is greater, in the year in which a governor is elected and at least two percent of the total votes cast for its candidate for president, or one hundred thirty thousand votes, whichever is greater, in a year when a president is elected." Election Law §1-104(3). An independent body is "any organization or group of voters which nominates a candidate or candidates for office to be voted for at an election, and which is not a party as herein provided." Election Law §1-104(12).

Candidates not nominated by a recognized "party" may only be listed on an election ballot if they gather signatures on an independent nominating petition that conforms with Election Law §6-140.

In order to place a candidate on the election ballot, a nominating petition must be supported by the signatures of registered New York voters. The number of signatures necessary for a statewide candidate is 45,000 or one percent of the votes most recently cast for Governor, whichever is less; for a candidate for Member of the U.S. House of Representatives, such as Petitioner-Intervenor, 3,500 or five percent of the votes most recently cast for Governor in that unit, whichever is less; and for a candidate of New York State Senator, 3,000 or five percent of the votes most recently cast for Governor in that unit, whichever is less. Election Law §6-142.

No petitioning candidate is permitted to begin collecting signatures prior to six weeks before the last day permitted to file the said petition in the year of the election in which the candidate wishes to participate. In 2022, that six-week period begins on April 19 and ends on May 31. Election Law §§6-158(9), 6-138(4). However, pursuant to the May 11, 2022 scheduling order, independent Congressional and State Senate candidates will petition between May 21 and July 5, 2022. All other independent candidates must still complete their petitioning and file their petitions by May 31, 2022.

171

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

B. The Challenged Restrictions Limit Petitioner-Intervenor's Ability to Engage Voters and Collect Signatures.

Between April 19, 2022, when independent Congressional and State Senate candidates began petitioning to qualify for the ballot using the old district lines, and April 27, 2022, when the Court of Appeals affirmed (against the predictions of many) this Court's March 31, 2022 order voiding those old lines, Petitioner-Intervenor and many other such candidates spent countless hours collecting signatures and organizing volunteers and paid petitioners, in the expectation that their completed petitions could be filed six weeks later, on May 31, 2022. In addition, Petitioner-Intervenor made, and other independent Congressional and State Senate candidates typically made, arrangements in their professional and personal lives to set aside those six weeks for the all-important petitioning drive, arrangements many of which could not be undone, and many of which can not be made again.

In addition, Petitioner-Intervenor will be losing a big motivational factor for collecting signatures, and organizing others to collect signatures, because he will not be able to collect also for his favored Governor candidate, Libertarian Larry Sharpe. While he may circulate his petitions (which are combined with four other statewide Libertarian candidates, for Lieutenant Governor, Attorney General, Comptroller, and US Senator), together with his new petitions between May 21 and May 31 (the last day to file the statewide petitions), for the remaining weeks, until the last day to file the Congressional and State Senate petitions which is July 5, he will be petitioning only for himself, while his Libertarian statewide candidate friends (if they have managed to qualify for the ballot at all), in turn, will have less incentive to assist his efforts. Together with the recent and recurring difficulties caused by constantly-evolving new strains of COVID-19 and related restrictions and common fears, which reduce the availability of signers and the efficiency of

petition witnesses, this may very well be the most difficult year in New York history for independent candidates for office.

Petitioner-Intervenor is not suggesting that the old petitions, circulated in the old districts, should be accepted for filing in whole by Respondent NYSBOE, or that the new six-week period for circulating independent Congressional and State Senate candidates' petitions should be changed. Petitioner-Intervenor requests only that Respondent NYSBOE be ordered to (1) extend the filing deadline for all other independent candidate petitions to July 5, 2022, so that candidates may continue to circulate and file petition sheets jointly with one another, as is customary, (2) accept independent Congressional and State Senate candidate petitions with 50% of the statutory requirement of valid signatures, and (3) accept signatures on independent Congressional and State Senate candidate petitions collected prior to April 27, 2022, when the Court of Appeals affirmed this Court's ruling eliminating the Legislature's district lines, as part of the total number required. The current absence of those provisions violates the Constitution and should be immediately remedied.

LEGAL STANDARD

Pursuant to the CPLR, a court "shall" permit a person to intervene as a matter of right: 1) "upon timely motion," 2) "when the representation of the person's interest by the parties is or may be inadequate," and 3) when "the person is or may be bound by the judgment." CPLR 1012(a)(2). Separately, a court "may" in its discretion permit a party to intervene "when the person's claim or defense and the main action have a common question of law or fact." CPLR 1013. "in exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party." *Id.*

173

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

New York courts liberally construe these statutes in favor of granting intervention. *See, e.g., Bay State Heating & Air Conditioning Co. v. Am. Ins. Co.*, 78 A.D.2d 147, 149 (4th Dept. 1980) (holding New York's intervention provisions "should be liberally construed"); *Yuppie Puppy Pet Prod., Inc. v. St. Smart Realty, LLC*, 77 A.D.3d 197, 201 (1st Dept. 2010) ("Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action."); *Plantech Hous., Inc. v. Conlan*, 74 A.D.2d 920, 920 (2nd Dept. 1980), *appeal dismissed* 414 N.E.2d 398 ("[U]nder liberal principles of intervention under the CPLR, it was an abuse of discretion to deny intervention in the present case.").

The core consideration in determining if intervention is warranted is whether the proposed intervenor has a "direct and substantial interest in the outcome of the proceeding." *Pier v. Bd. of Assessment Rev. of Town of Niskayuna*, 209 A.D.2d 788, 789 (3rd Dept. 1994). If "intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1014," a proposed intervenor with a "real and substantial interest in the outcome of the proceedings" should be granted intervention under either analysis. *Wells Fargo Bank, Nat'l Ass'n v. McLean*, 70 A.D.3d 676 (2nd Dept. 2010) (quoting *Berkoski v. Bd. of Trs. of Inc. Vill. of Southampton*, 67 A.D.3d 840, 843 (2nd Dept. 2009)); *see also Cnty. Of Westchester v. Dep't of Health of State of N.Y.*, 229 A.D.2d 460, 461 (2nd Dept. 1996) ("Generally, intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings."); *Norstar Apartments, Inc. v. Town of Clay*, 112 A.D.2d 750, 751 (4th Dept. 1985). Concerns "of judicial efficiency and fairness to the original litigants, are more likely to be outweighed, and intervention therefore warranted, when the intervenor has a direct and substantial interest in the outcome of the proceeding." *Id.* At 789.

ARGUMENT

1. **Petitioner-Intervenor is entitled to intervention as a matter of right.**

Petitioner-Intervenor's motion satisfies the first element of intervention as a matter of right: it is timely. "In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party." Jones v. Town of Carroll, 158 A.D.3d 1325, 1328 (4th Dept. 2018). Indeed, New York courts have held that "[i]ntervention can occur at any time, even after judgment for the purpose of taking and perfecting an appeal," Romeo v. N.Y. State Dep't of Educ., 39 A.D.3d 916, 917 (3rd Dept. 2007), and at least one court granted intervention even where the intervenor's motion was made more than one year after an Amended Complaint was filed. See Jeffer v. Jeffer, 958 N.Y.S.2d 61 (Table) (Sup.Ct., Kings Cnty. 2010). Moreover, in Bates v. Jones, a federal appellate court allowed candidates and voters to intervene on appeal after the conclusion of oral argument. See 127 F.3d at 873-74 (granting intervention on appeal to candidates and voters in appeal involving the constitutionality of a California initiative imposing legislative term limits).

Petitioner-Intervenor is filing this motion shortly after the May 11, 2022 scheduling order was entered, alongside this merits brief. Intervention would not prejudice the existing parties or delay the proceedings in any way.

Denial of intervention, on the other hand, would cause prejudice to Petitioner-Intervenor, as an independent Congressional candidate. And it would prejudice him as a New York voter as well, who inarguably has an interest in the candidates running in the electoral district in which he resides, but had no notice that all independent candidates across the State of New York were at

175

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

such risk of not qualifying for the November 2022 ballot, until the issuance of this Court's May 11, 2022 scheduling order.

It is also true that Petitioner-Intervenor has a direct and substantial interest that will not be adequately represented by the other petitioners in this litigation. Petitioner-Intervenor, as an independent Congressional candidate, has a unique interest in his campaign that state officials and major parties do not share. These interests may very well diverge from those of all petitioners and respondents in this action, including on potential issues concerning remedy that might emerge during future appeals, such as subsequent alterations to election deadlines. In light of the many permutations in which petitioners' and respondents' representation could prove to be inadequate as this action proceeds, intervention is the only form of participation that will safeguard Petitioner-Intervenor's interests.

Finally, the judgment in this action will unquestionably bind Petitioner-Intervenor. The "is or may be bound" element of intervention is generally understood by examining the "potentially binding nature of the judgment" on the Petitioner-Intervenor. Yuppie Puppy, 77 A.D.3d at 202; *see also Vantage Petroleum v. Bd. of Assessment Rev. of Town of Babylon*, 460 N.E.2d 1088, 1089 (N.Y. 1984) (holding that whether an intervenor "will be bound by the judgment within the meaning of that subdivision is determined by its *res judicata* effect"). If unmodified, the May 11, 2022 scheduling order will leave Intervenor-Petitioner with a nearly impossible burden to overcome if he is to qualify for the ballot, leaving him with no recourse.

II. Alternatively, the Court should grant Petitioner-Intervenor permissive intervention.

Should this Court decline to grant intervention as of right, Petitioner-Intervenor respectfully requests that the Court exercise its discretion to grant permissive intervention under CPLR 1013. As with CPLR 1012(a)(2), the key question for this Court is again whether Petitioner-

176

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

Intervenor possesses a “real and substantial interest in the outcome of [the] action.” St. Joseph’s Hosp. Health Ctr. V. Dep’t of Health of State of N.Y., 224 A.D.2d 1008, 1008 (4th Dept. 1996); Berkoski, 67 A.D.3d at 843; United Servs. Auto. Ass’n v. Graham, 21 A.D.657, 657 (1st Dept. 1964). In determining whether to grant permissive intervention, a “court may properly balance the benefit to be gained by intervention, and the extent to which the proposed intervenor may be harmed if it is refused, against other factors, such as the degree to which the proposed intervention will delay and unduly complicate the litigation” but crucially, considerations of delay and complications “are more likely to be outweighed and intervention therefore warranted, when the intervenor has a direct and substantial interest in the outcome of the proceeding.” Pier, 209 A.D.2d at 789.

Granting intervention here would be consistent with grants of intervention in other special proceedings. Petitioner-Intervenor shares in “common many questions of law and fact” with the relief sought in the case. In re UBS Fin. Servs., Inc., 851 N.Y.S.2d 75. “This is not a case where the presence of the intervenor will complicate a lengthy discovery or trial process, as neither discovery nor trial is contemplated in this special proceeding.” *Id.* Instead, “the presence [of intervenors] will simply ensure that both sides of the novel and complex legal issues are presented in this proceeding.” *Id.*

III. Petitioner-Intervenor’s Constitutional Right to Free Speech has been Harmed.

The degree of scrutiny given to an election statute or order increases with the severity of the burden that the challenged measure imposes upon a First Amendment right. Price v. N.Y. State Board of Elections, 540 F.3d 101, 108 (2nd Cir. 2008). People trying to persuade potential voters to sign a ballot access petition engage in “interactive communication concerning political change” (Meyer v. Grant (486 U.S. 414, 420 (1998))), which is “core political speech.” Lerman v. N.Y.C.

177

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

Bd. Of Elections, 232 F.3d 135, 146, 148 (2nd Cir. 2000) (holding that the speech of those gathering signatures for ballot access petitions is “identical” to the speech of those gathering signatures for ballot initiatives at issue in Meyer).

Once this Court determines that strict scrutiny must be applied, it is presumed that the challenged law or order is unconstitutional. Burdick v. Takushi, 504 U.S. 428, 434 (1992); *see generally Meyer*, 486 U.S. at 425 (striking criminal prohibition against the use of paid signature-gatherers and describing the burden of strict scrutiny as “well-nigh insurmountable”). To withstand strict scrutiny, the government must prove that the law or order is necessary to achieve a compelling governmental interest. Federal Election Comm’n v. Wis. Right to Life, Inc., 551 U.S. 449, 450-51 (2007). If this is proved, the state must then demonstrate that the law or order is also narrowly tailored to achieve the asserted interest. *Id.*

In order to meet its burden of proof, the government “must do something more than merely posit the existence of the disease sought to be cured.” Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 664 (1994). In other words, the government must factually prove the existence of the evil and that the challenged statute or order is narrowly tailored to remedy that evil.

Courts will routinely provide relief to petitioning minor party and independent candidates, when the normal petitioning period is shorter than usual, or when special elections are called, in the form of petitioning periods much shorter than normal, an extension of deadlines, or a reduction of signature requirements. *See Breck v. Stapleton*, 259 F.Supp.3d 1126, 1138 (D. Montana 2017) (The court “must determine some figure that would approximate a ‘substantial modicum of support’ in light of the constraints imposed by Montana’s special election schedule. The Court acknowledges that any figure would be arbitrary, but will endeavor to develop a figure that reconciles Montana’s right to impose the standard 5 percent requirement under normal

178

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

RECEIVED NYSCEF: 05/18/2022

circumstances and the unusual circumstances presented by Montana's special election."); Jones v. McGuffage, 921 F.Supp.2d 888, 903 (N.D. Ill. 2013) ("[S]imply adopting the 5,000 signature requirement would repeat the sins of the state's continued use of the 5% requirement; it would ignore the factors that distinguish this special election process from a normal election cycle, where signatures are gathered in the Spring, where the signature gathering period last[s] 90 days, and where all prospective candidates know well in advance when the election will be held (and therefore when the signature gathering period will commence). Thus, some further reduction to account for these factors is appropriate, and a proportional reduction based on the shortened signature period is a[s] good as any.").

"The loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 353 (1976). Thus, in the context of an alleged violation of First Amendment rights, a plaintiff's claimed irreparable harm is inseparably linked to the likelihood of success on the merits of the plaintiff's First Amendment claim. The harm in this case is clear. Absent intervention and a modification of the May 11, 2022 scheduling order, Petitioner-Intervenor will suffer a severe diminution in his ability to engage in core political speech. Furthermore, absent prompt relief, Petitioner-Respondent will lose the cooperation of the LPNY's statewide candidates, who currently must file their petitions by May 31, 2022. Because Petitioner-Intervenor will be deprived of his First Amendment rights if Respondent NYSBOE enforces the provisions of the May 11, 2022 scheduling order challenged here, emergency relief should issue forthwith.

Respondent NYSBOE and the other parties to this action can claim no harm resulting from the proposed intervention and modification of the May 11, 2022 scheduling order. Even assuming, *arguendo*, that modifying that order as proposed would slightly harm the election process (which

179

FILED: STEUBEN COUNTY CLERK 05/18/2022 05:06 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 640

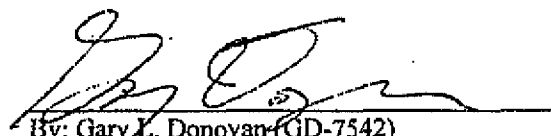
RECEIVED NYSCEF: 05/18/2022

it would not), that harm would not outweigh the diminution in the Petitioner-Intervenor's free speech rights. Accordingly, the balance of equities favors the Petitioner-Intervenors.

CONCLUSION

For the foregoing reasons, Petitioner-Intervenor respectfully requests that the Court issue an order permitting the intervention, and modifying the May 11, 2022 scheduling order to require Respondent NYSBOE to (1) extend the filing deadline for all other independent candidate petitions to July 5, 2022, so that all independent candidates may continue to circulate and file petition sheets jointly with one another, as is customary, (2) accept independent Congressional and State Senate candidate petitions with 50% of the statutory requirement of valid signatures, and (3) accept signatures on independent Congressional and State Senate candidate petitions collected prior to April 27, 2022, when the Court of Appeals affirmed this Court's ruling eliminating the Legislature's district lines, as part of the total number required.

THE LAW OFFICE OF GARY L. DONOYAN



By: Gary L. Donoyan (GD-7542)

Attorneys for Petitioner-Intervenor Mark Braiman

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Manhasset, New York 11030

(516) 312-8782

gdonoyan@garydonoyanlaw.com

180

Order to Show Cause Regarding Tyrrell Ben-Avi's Emergency Motion
for Leave to Intervene, dated May 13, 2022
[pp. 180 - 182]

FILED: STEUBEN COUNTY CLERK 05/23/2022 02:14 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 673

RECEIVED NYSCEF: 05/23/2022

STATE OF NEW YORK
SUPREME COURT: COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR. STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALEN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

ORDER TO SHOW CAUSE
REGARDING TYRRELL
BEN-AVI'S EMERGENCY
MOTION FOR LEAVE TO
INTERVENE

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

WHEREAS, Tyrrell Ben-Avi seeks leave to intervene in this action on the grounds that (1) he
has an absolute statutory right to seek relief regarding apportionment of New York
Congressional maps, (2) his interests are or may be inadequately represented by the existing
parties and he is or may be bound by the judgment, and (3) his claim has common questions of
law or fact with those pending before this Court;

UPON the Affirmation of Tyrrell Ben-Avi, the Proposed Petition in Intervention, the

ORDER TO SHOW CAUSED



Judith M. Hunter, County Clerk

E2022-0116CV
05/23/2022 02:14 PM

Clerk: HA

181

FILED: STEUBEN COUNTY CLERK 05/23/2022 02:14 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 673

RECEIVED NYSCEF: 05/23/2022

accompanying Memorandum of Law, and upon all of the pleadings and proceedings heretofore

had herein;

LET Respondents or their counsel show cause before this Court, at IAS Part , Room

, at the Courthouse located at 3 East Pulteney Square Bath, NY 14810, on the day of 26th

May, 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, why an Order
Virtual Appearance Permitted
should not be

entered:

1. Granting Tyrrell Ben-Avi leave to intervene pursuant to CPLR 1012 and/or CPLR

1013;

2. Upon grant of intervention:

a. declaring pursuant to CPLR § 3001 that the 2022 New York State Congressional map, see

2021-2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168, is void based

upon the procedural flaws in its adoption previously set forth by the Court

of Appeals;

b. enjoining Respondents to adjourn the primary election date for the New

York Assembly from June 28, 2022, to August 23, 2022 (thus, aligning the

primary election date for the United States Senate with the adjourned primary

election dates for the State Senate and U.S. Congress);

c. enjoining the deadline for military and overseas ballots to July 8, 2022, or a

FILED: STEUBEN COUNTY CLERK 05/23/2022 02:14 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 673

RECEIVED NYSCEF: 05/23/2022

Board of Elections or other governmental body, that would undermine this

Court's ability to offer effective and complete relief to Petitioner for the

November 2022 elections and related primaries; and

3. granting such other and further relief as is just and proper.

IT IS HEREBY ORDERED that service of a copy of this Order and accompanying documents be served on counsel to all parties via NYSCEF, on or before May 18, 2022; and it is further

ORDERED that Petitioners and Respondents shall file a copy with this Court of their opposition papers, if any, via NYSCEF, on or before May 24, 2022, at 5:00 PM; and


4

ORDERED that ~~Greenberg shall file a copy with this Court of any reply papers via ECF~~
on or before May 24, 2022, at 5:00 PM.

DATED: Bath, New York

May 13, 2022

ENTER:



Hon. Patrick F. McAllister, A.J.S.C.

183

Affidavit of Tyrrell Ben-Avi in Support of Request for Leave
to Intervene, dated May 5, 2022
[pp. 183 - 184]

FILED: STEUBEN COUNTY CLERK 05/23/2022 02:14 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 674

RECEIVED NYSCEF: 05/23/2022

STATE OF NEW YORK
SUPREME COURT: COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR. STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALEN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

AFFIDAVIT OF TYRRELL
BEN-AVI IN SUPPORT OF
REQUEST FOR LEAVE TO
INTERVENE

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

I, TYRRELL BEN-AVI, being duly sworn, depose and state the following:

1. I am a citizen of the State of New York, residing at 2041 Adam Clayton Powell Jr. Blvd,
Apt 1b, New York, New York 10027 in New York County. I am registered to vote in the
State of New York.
2. I respectfully submit this affidavit in support of my emergency request to intervene in the
above-captioned action. I am fully familiar with the facts and circumstances below.

AFFIDAVIT



Judith M. Hunter, County Clerk

E2022-0116CV
05/23/2022 02:14 PM

Clerk: HA

184

FILED: STEUBEN COUNTY CLERK 05/23/2022 02:14 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 674

RECEIVED NYSCEF: 05/23/2022

3. I am moving for leave to intervene by order to show cause to that my pleadings may be considered in connect with this proceeding.
4. I seek to intervene as of right in this action, on the ground that my interests may not be adequately represented by the present parties and since I may be bound by any judgment rendered herein. NY CPLR 1012 (a) (2) ("Upon timely motion, an person shall be
5. permitted to intervene in any action... when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment.")
6. I have not submitted any prior application for the relief I seek.

Tyrrell Ben-Avi

Date May 5, 2022

185

**Intervenor Tyrrell Ben-Avi's Notice of Motion for Permission
to Intervene, dated May 5, 2022
[pp. 185 - 186]**

FILED: STEUBEN COUNTY CLERK 05/23/2022

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 675

RECEIVED NYSCEF: 05/24/2022

STATE OF NEW YORK
SUPREME COURT: COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR. STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALEN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE.

Index No. E2022-0116CV

Petitioners,

-against-

NOTICE OF MOTION
FOR PERMISSION TO
INTERVENE

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

PLEASE TAKE NOTICE that, upon the affirmation of Tyrrell L.S. Ben-Avi
dated May 5, 2022, the proposed intervenor, Tyrrell L.S. Ben-Avi will move this
Court, Hon. Patrick F. McAlister president, at a date and time to be determined by
the Court, in Courtroom 3, Steuben County Supreme Court, 3 East Pulteney
Square, Bath, for an Order that:

- (a) Proposed intervenor is permitted to intervene to protect his
rights as a candidate for the United States Senate for New York.

186

FILED: STEUBEN COUNTY CLERK 05/23/2022

NYSCEF DOC. NO. 675

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

(b) Granting such further relief as the Court deems just and proper.

Dated Manhattan, New York

May 5, 2022



TYRRELL L.S. BEN-AVI

Pro-Se Petitioner

Candidate, U.S. Senate N.Y.

2041 Adam Clayton Powell Jr. Blvd.

New York, New York 10027

tyrrellnewyork@gmail.com

187**Letter from Brian L. Quail to the Honorable Patrick F. McAllister, dated
May 24, 2022**

Peter S. Kosinski
Co-Chair

Anthony J. Casale
Commissioner

Todd D. Valentine
Co-Executive Director

**Board of
Elections**

40 NORTH PEARL STREET, SUITE 5
ALBANY, N.Y. 12207-2109

Phone: 518/474-8100 Fax: 518/486-4068
<http://www.elections.ny.gov>

Douglas A. Kellner
Co-Chair

Andrew J. Spano
Commissioner

Kristen Zebrowski Stavisky
Co-Executive Director

May 24, 2022

Hon. Patrick F. McAllister
Supreme Court, Steuben County
3 East Pulteney Square
Bath, New York 14810

Re: Harkenrider v Hochul et al (E2022-0116cv, Steuben County Supreme Court)

Your Honor:

Motion 15 and 16

The New York State Board of Elections is submitting in opposition to Motion 15 and 16 a single Memorandum of Law.

Also, the Board asks that the affidavit of Kristen Zebrowski Stavisky dated May 18, 2022 (NYSCEF # 616) be considered submitted in opposition to Motion 15 and 16.

Ben-Avi Order to Show Cause

With respect to the motion and Order to Show Cause by Tyrell Ben-Avi submitted on May 23, 2022 (NYSCEF # 673), the application to intervene contains no factual averment as to the reason for such intervention and no articulation of the proposed intervenor's relationship to this proceeding, and as such should be denied.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "B. Quail", written over a horizontal line.

Brian L. Quail
Co-Counsel
New York State Board of Elections
40 North Pearl Street - Suite 5
Albany, New York 12207
(518) 473-5088
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188

**Respondent New York State Board of Elections Memorandum of Law
in Opposition to Motions to Intervene, filed May 24, 2022
[pp. 188 - 200]**

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677

RECEIVED NYSCEF: 05/24/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

**TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS,
AND MARIANNE VIOLANTE,**

Index No.
E2022-0116CV

Petitioners,

-against-

**GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, AND THE NEW YORK
STATE LEGISLATIVE TASK FORCE ON
DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,**

Respondents.

**RESPONDENT NEW YORK STATE BOARD OF ELECTIONS
MEMORANDUM IN OPPOSITION TO INTERVENTION MOTIONS 15, 16**

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189

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677

RECEIVED NYSCEF: 05/24/2022

PRELIMINARY STATEMENT

This Memorandum of Law is submitted in opposition to motions 15 and 16 seeking nearly identical relief. By intervention the movants attempt to excuse themselves from New York's independent nominating ballot access requirements and seek several forms of extraordinary, emergency relief.

Bralman Order to Show Cause***Summary of relief sought:***

- (1) Set the same independent nominating dates applicable under this court's order for candidates for Member of Congress and New York State Senate for independent statewide and independent New York State Assembly candidates as well;
- (2) Provide for a 50% reduction in signatures required for independent candidates for Congress from 3,500 to 1,750 signatures, and for independent candidates for State Senate from 3,000 to 1,500
- (3) Apply "First day to sign" for independent Congressional and State Senate candidates' petitions, so to provide that valid signatures gathered on otherwise valid petitions to be valid if collected after April 19, 2022 and still applicable.

Parent Party Order to Show Cause***Summary of relief sought:***

- (1) Apply the political calendar dates for independent nominating petitions listed on page 4 of the Ballot Access Order to all independent nominating process for all offices following offices.
- (2) With respect to the political calendar dates for the independent nominating process listed on page 4 of the Ballot Access Order, the "First day to sign" is hereby modified to read "4/19/22"; and
- (3) Cut all signature requirements on independent nominating petitions by 50%

Intervenors cannot establish entitlement to such drastic remedies. The State of New York is entitled to impose reasonable measures to determine whether a candidate has real support among members of the voting public before placing them on the ballot. New York's signature requirements, repeatedly upheld by courts, remains a rational means of ensuring that there is support for a candidate within their district and ensuring an orderly election process to avoid ballot chaos.

The ballot access time periods for signature collection in 2022 is not shortened from the six week period provided for by statute since 1946 thus no reduction in signatures is required. There has been no disruption to the signature collection process which could conceivably allow the intervenors to meet the exceptionally high burden required to set aside New York's statutory framework for independent nominations.

As this Court observed at NYSCEF # 409 on May 5, 2022: "this court does not intend to alter the time frame for gathering signatures for Independent Nominating Petitions for statewide elections. Election Law § 138 (4) sets a six week time period for the gathering of signatures for Independent petitions Once the Congressional map has been established it will be up to the candidate to make sure he/she has the appropriate number of signatures from the appropriate number of different districts." This Court also denied an application for intervention seeking relief similar to that requested in this application on May 19, 2022 (NYSCEF # 668).

191

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677

RECEIVED NYSCEF: 05/24/2022

FACTS*New York's Independent Nomination Petitioning Process*

For an independent candidate (i.e., one supported by an organization or group that is not a "party") to secure nomination and access to the November General Election ballot, the requisite number of valid signatures of registered New York voters who reside in the political unit for which the nomination is sought must be collected, within a limited period of six weeks, on an independent nominating petition, which must then be filed with either the State Board of Elections or in some cases local boards. N.Y. Election Law §§ 138(4), 144. The form of the independent nominating petition is prescribed by Election Law § 6-140. It identifies the candidate(s), public office(s) and relevant political subdivisions as well as the "independent body" ballot label under which the candidate will seek office. See

<https://www.elections.ny.gov/NYSBOE/download/law/IndependentNominatingPetition.pdf> which is the sample independent nominating petition form prescribed by Election Law § 6-140. The Libertarian Party of New York has been such an "independent body" for candidates in many past New York elections.

To be nominated for such a statewide office, 45,000 valid signatures are required on an independent nominating petition from among the 12,982,819 registered voters in New York State, with at least 500 from each of half of New York's Congressional districts. See <https://www.elections.ny.gov/EnrollmentCounty.html>; N.Y. Election Law § 6-142(1). All New York registered voters are eligible to sign a statewide independent

nominating petition, provided they have not already signed a valid petition for the same office, and, pursuant to N.Y. Election Law § 6-138(1).

New York's statewide signature requirement (which amounts to 0.35% of New York's registered voter population) is significantly lower than that of many other states, both in absolute numbers and percentage of registered voters, thus comparatively imposing much less of a burden on candidates and their supporters.

An independent nomination petition for a Congressional petition requires 3,500 valid signatures and a valid independent nomination petition for State Senate requires 3,000. These requirements are provided for in Election Law § 6-142.

The 6-week or 42-day collection period for signatures was adopted in 1946. 1946 by N.Y. Sess. Laws, Ch. 17, § 137(4).

Political Calendar in 2022

The independent nominating period pursuant to the Election Law for 2022 spanned from April 19 to May 31, with filings permitted between May 24 and May 31.

As a result of the invalidation of New York's congressional lines and state senate district lines on April 27, during the independent nominating period, and with new lines not to be promulgated until May 20, this court issued a new political calendar setting a full independent nominating period for congress and state senate to run from May 21, 2022 to July 5, 2022. (NYSCEF # 524).

193**FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677

RECEIVED NYSCEF: 05/24/2022

This court expressly did not alter the political calendar for statewide or other independent candidates. (NYSCEF # 409).

Pandemic Petition Circulation

Currently there is no public health emergency in New York preventing petitioning, albeit indoor masking is strongly recommended in most places and required in some. Nothing in current New York law prevents persons circulating independent nominating petitions from calling voters by phone, emailing voters or using social media to solicit signature and then make comfortable arrangements for the actual signature collection.

The signature collection process can easily be accomplished applying social distancing. For example, the clip board or folder containing the petition sheet the voter needs to sign can be placed for the signer to pick up at a comfortable distance after the witness steps back, or the witness can hand the petition clipboard or folder to the signer at mutual arms' lengths. Social distancing concern may add additional aspects to the signature collection process, but it does not render the collection process undoable.

No Requirement For Petitioning Periods For All Offices to Align

Proposed intervenors posit that their inability to petition along with Congressional and State Senate candidates should permit a reduction of signatures and extension of time. Between 2012 and 2018, by design New York had a period for independent nominations for federal offices apart from state and local offices as a result of a series of

federal court orders designed to move up the federal independent nominating period to ensure compliance with federal laws ensuring timely transmission of ballots. The current situation in 2022 is not dissimilar. While the parsing of the independent nominating period is not ideal, the reason it is required is because of the delays occasioned to come to new district lines for congress and state senate that meet constitutional muster. This burden is not one that reasonably diligent candidates cannot meet.

ARGUMENT

Intervention should be denied because (i) the relief sought is almost entirely beyond the scope of political calendar issues placed before this court by the Court of Appeals ruling in this matter date April 27, 2022, (ii) the reasonableness of the period for signature collection and the signature requirement itself has been upheld by other courts and nothing about the current circumstances demonstrates a Constitutional violation that would necessitate departing from the statutory framework, and (iii) the plaintiffs plainly misstate the burden of the requirement to provide a schedule of the pages of their statewide petition identifying at least 500 signature from each of one-half of New York's congressional districts.

The State has a strong interest in assuring that there is public support for independent candidacies. *See Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Prestia v. O'Connor*, 178 F.3d 86, 88–89 (2d Cir. 1999) (upholding the constitutionality of a 5% signature ballot access requirement as a reasonable requirement that furthered the important state interest in assuring that a candidate has a significant modicum of

195

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677

RECEIVED NYSCEF: 05/24/2022

support); *Gottlieb v. Lamont*, 2020 WL 3046205, at * 9 (D. Conn. June 8, 2020) (the “state has an important interest in ensuring that candidates on the ballot have a ‘significant’ modicum of support.... [and the] state’s signature requirement, reduced by Executive Order from 5% to 3.5%, undoubtedly serves this important state interest.”). To prevail on their new claim, intervenors must show that a reasonably diligent candidate or organization could not meet the signature requirements, and this they have not shown. *See Libertarian Party of Conn.*, 977 F.3d at 179.

A. The Intervention Is Beyond the Scope of What Is Reasonably Included in This Proceeding

Intervention grafts parties and claims into an existing case. Intervention is appropriate only if there is a sufficient relationship between the stem and the graft. *See e.g. Greater NY Health v DeBuono*, 91 N.Y.2d 716 (1998) (observing “[t]hus, a stranger could not intervene in a pending proceeding to interpose an otherwise time-barred claim”). The proposed new claim bears *no* resemblance to the underlying claims related to redistricting. The intervenor’s claim attacks various aspects of New York law claiming them to be as presently applied unconstitutional because this court did not alter them. The proposed intervenors have a new claim they want to assert and no interest in the undergirding litigation, making this intervention improper.

The Court of Appeals Remittitur provided “[w]e are confident that, in consultation with the Board of Elections, Supreme Court can swiftly *develop a schedule to facilitate*

an August primary election, allowing time for the adoption of new congressional maps, the dissemination of correct information to voters, *the completion of the petitioning process*, and compliance with federal voting laws, including the Uniformed and Overseas Citizen Absentee Voting Act..." The Court recognized both the breadth of this charge but also the limits of that mission when the Court observed (ECF # 409, May 5, 2022) that "this court does not intend to alter the time frame for gathering signatures for Independent Nominating Petitions for statewide elections. Election Law § 138 (4) sets a six week time period for the gathering of signatures for Independent petitions Once the Congressional map has been established it will be up to the candidate to make sure he/she has the appropriate number of signatures from the appropriate number of different districts."

None of the court's orders in *Harkenrider* caused the statewide independent nominating period to be shortened or materially changed. Fundamentally, the intervenors seek to eliminate specific statutory provisions by claiming undue burden. Albeit their claims are unmeritorious, the mechanism to assert these new claims is in a new proceeding with proper venue.

B. Intervenor's Claims Lack Merit: New York's 45,000 Signature Independent Nominating Requirement Held Constitutional

The Libertarian Party, along with the Green Party and SAM Party, in 2020 engaged in extensive litigation challenging the application of New York's 45,000

197

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677

RECEIVED NYSCEF: 05/24/2022

independent nominating signature requirement. The United States Second Circuit Court of Appeals not only found New York's Independent Body signature requirement was Constitutional but implied a signature requirement significantly higher would pass muster:

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, 91 S.Ct. 1970, 29 L.Ed.2d 554 (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, 91 S.Ct. 1970. While a 15% signature requirement imposes a severe burden, see *Williams v. Rhodes*, 393 U.S. 23, 25, 89 S.Ct. 5, 21 L.Ed.2d 24 (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, 91 S.Ct. 1970; 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.

SAM Party of New York v Kosinski, 987 F.3d 267 (2nd Cir 2021)

In his decision denying a preliminary injunction related to New York's party qualification regimen, Judge Koeltl of U.S. Federal District Court, SDNY, *last year* observed the reasonableness of New York increasing its signature threshold for statewide candidates from 15,000 to 45,000 for statewide independent nominations:

From 1922 to November 2020, New York experienced over a four-fold increase in the number of enrolled voters... 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.

Libertarian Party of New York v New York State Board of Elections, 539 F.Supp.3d 310 (SDNY 2021),

Having failed to secure a reduction in the 45,000 signature requirement in prior litigation, the Libertarians are simply trying again. Unlike in previous instances where the Legislature has reduced signature collection requirements when the time to petition was shortened, here the time to petition for statewide office has not been reduced. The full six week statutory period remains undisturbed. *See* Election Law § 6-138 (4). And courts have repeatedly held New York's petitioning period to be reasonable. As Judge Koeltl observed, incisively examining the true burden of New York's signature collection requirements:

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

199

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677

RECEIVED NYSCEF: 05/24/2022

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).

Id.

C. COVID-19 Challenges Do Not Make 45,000 Signature Requirement Unconstitutional

New York's legislature and the executive have adjusted petitioning requirements in the past to respond to the pandemic. Presently—in stark contrast to 2020 or 2021—there are no business activity or other recreational restrictions in place as a result of a health emergency. This Court made clear that the deference to the legislature continues as to the political calendar, and the legislature is free to adjust the political calendar if this becomes necessary. This Court should continue to observe the judicial deference to the other branches that have been the hallmark of the response to the pandemic. Like all other aspects of life, people have figured out how to function in the pandemic environment, including petitioning for ballot access.

As Judge Philip M. Halpern observed in denying a request for relief from signature requirements in July 2020 “No one disputes that getting...petition signatures now is challenging in the best of times, and obviously more challenging than if we were

200

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:15 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 677


RECEIVED NYSCEF: 05/24/2022

not in this pandemic ... The question is whether it is so burdensome on these plaintiffs as to be unconstitutional. On this record, the answer is no." *Eisen v Cuomo*, No. 20-cv-05121 (PMH) (SDNY July 27, 2020)

While the parsing of the independent nominating period is not ideal, the reason it is required is because of the delays occasioned to come to new district lines for congress and state senate that meet constitutional muster. This burden is not one that a reasonably diligent candidate cannot meet.

D. Creating Schedule Indicating Compliance With 500 Signatures From Half of New York's Congressional Districts Is Not Unduly Burdensome

The only part of the statewide petitioning process implicated by the decision in *Harkenrider* is the requirement to file a schedule indicating the pages of the petition on which at least 500 signatures from each of half of the congressional districts appear. This requirement applies to 6,500 of the 45,000 required signatures. The congressional districts have been known as of May 20, 2022, which is approximately eleven days from the end of the Independent petitioning period on May 31, 2022. This is not a burden a reasonably diligent candidate cannot meet.



Brian L. Quail

201

**Petitioners' Response Memorandum of Law in Opposition to Tyrrell
L.S. Ben-Avi's Motion to Intervene, dated May 24, 2022
[pp. 201 - 206]**

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:16 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 678

RECEIVED NYSCEF: 05/24/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, AND MARIANNE
VOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, AND THE NEW YORK
STATE LEGISLATIVE TASK FORCE ON
DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

-----X

**PETITIONERS' RESPONSE MEMORANDUM IN OPPOSITION TO
TYRRELL L.S. BEN-AVI'S INTERVENTION REQUEST**

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TABLE OF CONTENTS

PRELIMINARY STATEMENT & ARGUMENT.....	1
CONCLUSION.....	1

203

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:16 PM

NYSCEF DOC. NO. 678

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

TABLE OF AUTHORITIES

	Page(s)
Statutes And Rules	
CPLR § 1012.....	1
CPLR § 1013.....	1

PRELIMINARY STATEMENT & ARGUMENT

Consistent with Petitioners' position on belated interventions throughout these proceedings, *see* NYSCEF No.427 at 1, Petitioners respectfully submit that this Court should deny Proposed Intervenor Tyrrell L.S. Ben-Avi's intervention motion currently pending before this Court as untimely, CPLR §§ 1012, 1013. If Proposed Intervenor Ben-Avi wanted to participate as a party in the Special Proceedings that Petitioners filed on February 3, he should have sought to intervene three months ago. Moreover, Proposed Intervenor Ben-Avi describes himself as a New York candidate for United States Senate, NYSCEF 675 at 1, so it is unclear what Proposed Intervenor Ben-Avi's actual interests are in this litigation, *See* CPLR § 1012(a)(2). It is further unclear how the vague relief he requests, *see* NYSCEF No.673 at 2-3, relates in any way to his interests. Given that Proposed Intervenor Ben-Avi has not articulated how intervention at this exceptionally late stage in the litigation would "protect his rights as a candidate for the United States Senate for New York," NYSCEF No.675 at 1, Petitioners submit that intervention is improper under both CPLR §§ 1012 and 1013.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Court deny as untimely Proposed Intervenor Ben-Avi's motion to intervene.

205

FILED: STEUBEN COUNTY CLERK 05/24/2022 04:16 PM

NYSCEF DOC. NO. 678

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

Dated: New York, New York

May 24, 2022

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206**FILED: STEUBEN COUNTY CLERK 05/24/2022 04:16 PM**

NYSCEF DOC. NO. 678

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

CERTIFICATION

I hereby certify that the foregoing memorandum complies with the bookmarking requirement and word count limitations set forth in Rule 202.8-b of the Uniform Rules of Supreme and County Courts. *See* 22 NYCRR § 202.8-b. This memorandum contains 206 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: New York, New York
May 24, 2022

TROUTMAN PEPPER HAMILTON
SANDERS LLP

By: /s/ Bennet J. Moskowitz

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207

Letter from Craig R. Bucki to the Honorable Patrick F. McAllister, dated
May 24, 2022 (Motion Seq. 015)

**Phillips Lytle LLP**

Via NYSCEF

May 24, 2022

Hon. Patrick F. McAllister
Acting New York State Supreme Court Justice
Steuben County Supreme Court
3 East Pulteney Square
Bath, New York 14810

Re: *Matter of Harkenrider v. Hochul* (Steuben County Index No. E2022-0116CV)

Dear Justice McAllister:

As co-counsel to New York State Assembly Speaker Carl Heastie, we oppose the motion to intervene filed by the Parent Party of New York, Gavin Wax, and others (the "Parent Party Motion") (Dkt. No. 561). The motion is untimely, and the Speaker reiterates the timeliness arguments he made in opposition to the three motions to intervene filed by Gavin Wax, Gary Greenberg, Benjamin Carlisle, and others from May 1 through 3, 2022 (Dkt. Nos. 325, 326, 360).

This Court denied those three motions as untimely (Dkt. No. 520 at pp. 4-5), and the Parent Party Motion is even less timely. Two unsuccessful motions to intervene in this proceeding are particularly relevant: one filed by Mr. Carlisle and others (Dkt. No. 326), and another filed by Larry Sharpe and others (Dkt. No. 541). Those motions did not challenge an additional map; rather, they sought to influence the rules governing this year's elections. The Parent Party Motion seeks to do likewise, and should be denied for the same reasons (*see* Dkt. No. 520 at pp. 4-5; Dkt. No. 668). In addition, it is improper for Gavin Wax to seek to intervene in this proceeding a second time.

Respectfully,

Phillips Lytle LLP

by *Craig R. Bucki*

Craig R. Bucki

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208

Letter from Craig R. Bucki to the Honorable Patrick F. McAllister, dated
May 24, 2022 (Motion Seq. 016)

**Phillips Lytle LLP**

Via NYSCEF

May 24, 2022

Hon. Patrick F. McAllister
Acting New York State Supreme Court Justice
Steuben County Supreme Court
3 East Pulteney Square
Bath, New York 14810

Re: *Matter of Harkenrider v. Hochul* (Steuben County Index No. E2022-0116CV)

Dear Justice McAllister:

As co-counsel to New York State Assembly Speaker Carl Heastie, we oppose the motion to intervene filed by Mark Braiman (the "Braiman Motion") (Dkt. No. 583). The motion is untimely, and the Speaker reiterates the timeliness arguments he made in opposition to the three motions to intervene filed by Gavin Wax, Gary Greenberg, Benjamin Carlisle, and others from May 1 through 3, 2022 (Dkt. Nos. 325, 326, 360).

This Court denied those three motions as untimely (Dkt. No. 520 at pp. 4-5), and the Braiman Motion is even less timely. Two unsuccessful motions to intervene in this proceeding are particularly relevant: one filed by Mr. Carlisle and others (Dkt. No. 326), and another filed by Larry Sharpe and others (Dkt. No. 541). Those motions did not challenge an additional map; rather, they sought to influence the rules governing this year's elections. The Braiman Motion seeks to do likewise, and should be denied for the same reasons (see Dkt. No. 520 at 4-5; Dkt. No. 668).

Respectfully,

Phillips Lytle LLP

by *Craig R. Bucki*

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209

Letter from Craig R. Bucki to the Honorable Patrick F. McAllister
in Opposition to Tyrrell Ben-Avi's Motion to Intervene, dated
May 24, 2022
[pp. 209 - 210]



Phillips Lytle LLP

Via NYSCEF

May 24, 2022

Hon. Patrick F. McAllister
Acting New York State Supreme Court Justice
Steuben County Supreme Court
3 East Pulteney Square
Bath, New York 14810

Re: *Matter of Harkenrider v. Hochul* (Steuben County Index No. E2022-0116CV)

Dear Justice McAllister:

As co-counsel with Graubard Miller to New York State Assembly Speaker Carl Heastie (the "Speaker"), we oppose the motions to intervene filed by Tyrrell Ben-Avi (the "Ben-Avi Motion") (Dkt. Nos. 673 & 675).

The Ben-Avi Motion is brought by both order to show cause (Dkt. No. 673) and notice of motion (Dkt. No. 75) at the same time. If Mr. Ben-Avi is allowed to intervene, he would request a declaration that the Congressional map enacted by the Legislature in February 2022 is unconstitutional (*id.* at p. 2). This is odd, because the Court of Appeals already struck down that map on April 27. Mr. Ben-Avi also seeks to "adjourn the primary election date for the New York Assembly from June 28, 2022 to August 23, 2022" (*id.*). In an accompanying affidavit, Mr. Ben-Avi states that he is a New York resident and voter, but he otherwise does not explain his interest in this special proceeding (Dkt. No. 674).

The Motion should be denied as untimely, and the Speaker reiterates the timeliness arguments he made in opposition to the three motions to intervene filed by Gavin Wax, Gary Greenberg, Benjamin Carlisle, and others from May 1 through 3, 2022 (Dkt. Nos. 325, 326, 360). This Court denied those motions as untimely (Dkt. No. 520), and the result should be no different here. Specifically, as this Court recognized, "[i]ntervention under CPLR §§ 1012 or 1013 requires a timely motion to intervene" (*id.* at p. 3). Further, "[t]o permit intervention [at] this time would create total confusion" (*id.* at p. 4).

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210



Hon. Patrick F. McAllister
Page 2

May 24, 2022

Two additional, independent reasons also require dismissal of the Ben-Avi Motion.

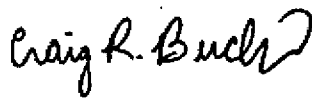
First, it was not timely served. The order to show cause states that it must be "served ... via NYSCEF, on or before May 18, 2022," yet no such service was ever made. *See Matter of Sorli v. Coveney*, 51 N.Y.2d 713, 714 (1980) (Mem) ("Inasmuch as petitioner failed to follow the provisions for service specified in the order to show cause, the petition must be dismissed."). The Speaker learned of the motion for the first time on May 23, 2022, when this Court uploaded the order to show cause (Dkt. No. 673) to NYSCEF.

Second, Mr. Ben-Avi has not provided the proposed intervention pleading required by CPLR 1014. *See Rozewicz v. Ciminelli*, 116 A.D.2d 990, 990 (4th Dep't 1986) ("In the absence of a timely motion ... accompanied by a proposed pleading as required by CPLR 1014, it [is] error for Special Term to even entertain the request ... to intervene in this action.").

For any or all of these three reasons – untimeliness of the motion, untimeliness of the motion's service, and failure to provide a proposed pleading – the Ben-Avi Motion should be denied.

Respectfully,

Phillips Lytle LLP

by 

Craig R. Bucki

211

**Executive Respondents' Memorandum of Law in Opposition to Motion
to Intervene by The Parent Party of New York, Patrick Donohue, William
Noel, Brian Robinson, Danyela Souza Egorov, Kevin Pazmino,
Pooi Stewart, Otis D. Danne Jr., and Gavin Wax,
dated May 24, 2022**

[pp. 211 - 224]**FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VOLANTE,

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

Index No. E2022-0116CV

McAllister, J.S.C.

Return Date:

May 26, 2022

**Executive Respondents' Memorandum of Law in Opposition to
Motion to Intervene by the Parent Party of New York, Patrick Donohue, William Noel,
Brian Robinson, Danyela Souza Egorov, Pooi Stewart, Otis D. Danne, Jr., and Gavin Wax**

(Motion # 15 via NYSCEF)

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Contents

PRELIMINARY STATEMENT	1
STANDARD OF REVIEW	4
ARGUMENT	4
A. The proposed intervenors cannot satisfy the elements for mandatory or discretionary intervention.....	4
B. The proposed intervenors have not demonstrated a sufficiently “severe burden” on their right to association or free speech to justify intervention.	6
CONCLUSION.....	11
CERTIFICATION	12

213

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

NYSCEF DOC. NO. 682

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

PRELIMINARY STATEMENT

Respondent Governor Kathy Hochul, Governor of the State of New York¹ (the "Executive Respondent"), respectfully submits this memorandum of law opposing the pending motion to intervene by The Parent Party of New York, Patrick Donohue, William Noel, Brian Robinson, Danyela Souza Egorov, Pooi Stewat, Otis D. Danne, Jr., and Gavin Wax (collectively, "the proposed intervenors"). See NYSCEF No. 561 ("Motion #15").

Proposed intervenors seek the following extraordinary relief at a time after the June primary election (that includes all statewide races, races for all 150 seats in the State Assembly and numerous other election contests has been underway for close to two weeks:

- a) to apply the Ballot Access Order—which currently applies to only congressional offices and the State Senate (NYSCEF #524)—to all statewide offices, the New York State Assembly, and all local offices;
- b) first day to sign is modified to read "4/19/22"; and
- c) reduce the signature requirements for independent nominating petitions by 50%.

In perhaps the most novel filing of these proceedings, proposed interveners stray far from the redistricting issues at the heart of this case, stating that one of their goals is "to become an official ballot access party in New York State", and that because redistricting has condensed timeframes around ballot access that will no longer be possible. This, they argue, infringes upon their First Amendment right to free association and speech. To remedy this alleged infraction, instead of obtaining the requisite number of signatures required by the law and this Court's Order through traditional methods, they would again change the elections process to the detriment of voters, other candidates, and elections administrators. This includes candidates for statewide and assembly offices

¹ The office of the Lieutenant Governor and President of the Senate is currently vacant.

214

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

already in the midst of their election. They make these arguments with no legal basis, and with a disregard for this Court and the Fourth Department's prior decisions on intervention in this case. In short, this motion to intervene should be easily denied.

To date, five other motions to intervene brought by various registered voters, candidates, and potential candidates (including independent candidates) were denied, four recently by this Court, and one in April by the Appellate Division, Fourth Department. *See* NYSCEF Nos. 441 & 520. One such motion this Court denied was brought by five candidates for Congress and State Senate, who sought to "intervene to protect their rights as candidates" to appear on primary party ballots and/or as independent candidates on the general election ballot. *See* NYSCEF Nos. 327 & 339 (Motion #12). Regarding independent nominating petitions, those proposed intervenors asserted that "[i]f said petition periods are truncated, the Court should reduce the number of signatures accordingly." NYSCEF No. 331 ¶ 11. In its Decision and Order filed May 11, 2022, this Court, *inter alia*, denied intervention as untimely, and held that "the existing parties will be able to adequately represent the interests of these people going forward." NYSCEF No. 520 at p. 4-5.

Further, like here, in the most recent motion to intervene denied by this Court (NYSCEF No. 541, "Motion #14"), the proposed intervenors sought an Order to extend the time for petitioning 4 weeks beyond the statutory May 31 deadline, waiving the NY Election Law requirement of 45,000 signatures to petition onto the ballot for non-recognized-party statewide candidates and reducing that requirement to 30,000 or 15,000, and to waive the 500-signature requirement for each of 13 congressional district.

In denying that motion, this Court held:

A reduction in the Independent nominating signature requirement would be in contravention of Election Law §6-142(1). A similar reduction in signatures was requested in a case last year, *Libertarian Party of N.Y. v. New York Bd. of Education*, 539 F.Supp 3rd 310

215

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

(SDNY 2021). That court denied a similar motion to reduce the signature requirements. “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 the New York’s 13.55 million registered voters.” *Libertarian Party of N.Y. v. New York Bd. of Education*; (supra. at 317).

The entire purpose of requiring a number of signatures is to show that a candidate has widespread support. Similarly, the requirement that a candidate be able to garner at least 500 signatures from at least ½ of the congressional districts is an indication of widespread support. The court is not inclined to decrease the signature requirement or to waive the 500 signatures per district requirement.

This court issued an advisory opinion on May 5, 2022 to warn potential candidates that were seeking to get on the November ballot via an Independent nominating petition that she/he should continue collecting signatures as the court was not inclined to change the signature period for those persons. Six weeks is six weeks.

(NYSCEF #668). Here, the proposed intervenors seek similar remedies for even further attenuated concerns as those raised in Motion #14, and their motion should likewise be denied.

The proposed intervenors’ concerns about timing and signature requirements for independent nominating petitions are untimely, as they were foreseeable from commencement of this proceeding challenging the congressional districts and were already raised by the existing parties.

Furthermore, intervention is inappropriate because the proposed intervenors cannot demonstrate a sufficiently “severe burden” on their First Amendment rights to overcome the State’s well-recognized, substantial interest in (a) regulating access to the general election ballot by independent candidates to avoid voter confusion and declutter the ballot by ensuring only those candidates with sufficient support appear on the ballot; and (b) upholding reasonable election deadlines to preserve orderly and efficient elections.

STANDARD OF REVIEW

Two provisions of New York State Civil Practice Law and Rules ("CPLR") govern intervention by third parties in a pending action or proceeding. First, CPLR § 1012(a)(2) permits intervention as of right: "[u]pon timely motion, any person shall be permitted to intervene in any action . . . when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Second, CPLR § 1013 allows intervention in the discretion of the court:

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

By their terms, "[i]ntervention pursuant to either CPLR 1012 or 1013 requires a timely motion." *Rutherford Chemicals, LLC v. Assessor of Town of Woodbury*, 115 A.D.3d 960, 961 (2d Dept 2014). The same generally applicable defenses, including lack of standing, apply to intervenor claims. *See generally Kobrick v. New York State Div. of Hous. & Cmty. Renewal*, 126 A.D.3d 538, 540 (1st Dept 2015) ("Supreme Court properly found that the proposed intervenor lacked standing to intervene in this proceeding.").

ARGUMENT

A. The proposed intervenors cannot satisfy the elements for mandatory or discretionary intervention.

This motion to intervene is untimely because it raises concerns readily ascertainable upon Petitioners' filing of the original petition three months ago. "Consideration of any motion to intervene begins with the question of whether the motion is timely." *In re HSBC Bank U.S.A.*, 135 A.D.3d 534, 534 (1st Dept 2016). "[I]ntervention . . . will not be allowed merely to permit the intervenor to

217

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

accomplish now what it could have done as of right but . . . omitted to do earlier.” *Darlington v. City of Ithaca, Bd. of Zoning Appeals*, 202 AD2d 831, 834 (3d Dept 1994), quoting *Siegel*, N.Y. Prac. §183, at 276 (2d ed.).

As it relates to the instant motion, the ultimate relief sought in this action always included a remedial congressional map. Since its commencement, it was obvious this proceeding could disrupt the 2022 electoral calendar, necessitate a modification of that calendar to accommodate any remedial maps this Court would order, and possibly truncate the period in which candidates, including independent candidates, could file petitions to obtain ballot access. However, it is now three months after this action began and the proposed intervenors make no serious attempt to justify their late filing. Although the date by which remedial maps could be achieved was not immediately known, such specificity was not required to foresee that candidates’ interests were implicated. In fact, existing respondents raised of concerns about inadequate time and ongoing petitioning throughout these proceedings (see, e.g., NYSCEF Nos. 88 and 617). Therefore, any purported reliance upon this Court’s May 11, 2022 order is unavailing. *See* NYSCEF No. 529 at p. 6. Even assuming the potential intervenors’ prior three-month delay could be overlooked, this Court’s May 5, 2022 Advisory Opinion set out the terms for independent candidates to appear on the ballot, yet proposed intervenors dragged their feet for another eleven days before submitting their papers. *See* NYSCEF No. 520 at p. 5, citing *Matter of Fink v. Salerno*, 105 A.D.2d 489 (3d Dept 1984) (affirming denial of intervention due to expedited process for election matters where proceeding commenced October 3rd, Court set a return date of October 9th, and putative intervenor sought intervention on October 8th).

To the extent they relate to this ongoing proceeding, the potential intervenors’ concerns were already adequately represented by the existing parties. Previously, Executive Respondent objected to moving Congressional and Senate races due to the timing, logistics, and impact on election

administration. *See* NYSCEF 82 at p. 25-26. As the State's Chief Executive, Executive Respondent continues to have a strong interest in ensuring that the rights of all candidates to appear on the ballot are respected and believe that the schedule proposed by the State Board of Elections and adopted by this Court guarantees those rights. The proposed intervenors cannot explain how their interests sufficiently diverge from the concerns already expressed and balanced by this Court.

Insofar as the proposed intervenors complain about portions of the Election Law not already raised by the existing parties, they seek to drag this Court far astray from the redistricting issues at the heart of this action. Even discretionary intervention is limited to intervenors who raise claims or defenses involving "common question of law or fact." *See* CPLR 1013. Because this Court's orders did not reduce or otherwise affect the petitioning period for independent nominating petitions, it should deny intervention.

B. The proposed intervenors have not demonstrated a sufficiently "severe burden" on their right to association or free speech to justify intervention.

The proposed intervenors premise their need to intervene upon their claim that "polarized, tribal political culture is broken", and a desire to form a new political party—the Parent Party—and their intent to secure a third-party ballot line for the November general election. They claim that the Parent Party intended to circulate nominating petitions as "slate petitions" (NYSCEF #546, ¶13). And that by "utilizing this slate petitioning . . . the signatures gathered count for all the candidates on each petition sheet, thus allowing the candidates on each petition sheet, thus allowing the candidates to work with each other and make the process of gathering signatures a synergistic one." (NYSCEF #546, ¶13). Proposed intervenors claim they could not obtain signatures on nominating petitions before now because "[i]t was only when the Court issued its [Ballot Access Order] that candidates for office and political advocates . . . began to have some guidance as to the future of the independent nominating petitioning process." (NYSCEF #546, ¶19). However, utilizing a "slate petition" is not a

219

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

right that requires changing the dates for independent nominating petitions. Nothing prohibited these candidates from collecting petitions before the Order was issued. Moreover, intervenors have no inherent right to form a new political party.

“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.’” *SAM Party of New York v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021), quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). To ensure effective democratic electoral processes, “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Id.* Instead of strict scrutiny, therefore, voting regulations like those challenged by the proposed intervenors are analyzed under the *Anderson-Burdick* framework.

As the Second Circuit recently reiterated:

“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.” [*Burdick v. Takushi*, 504 U.S. 428, 434 (1992)]. 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).

SAM Party of New York, 987 F.3d at 274.

In applying this sliding scale test, the severity of the restrictions imposed determines the level

220

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

of judicial review. “Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (internal quotations omitted); *see also Price v. New York State Bd. of Elections*, 540 F.3d 101, 109 (2d Cir. 2008) (State’s reasonable and nondiscriminatory restrictions are generally sufficient to uphold the statute if they serve important state interests, and judicial review in such circumstances will be quite deferential). Notably, “[c]andidacy is not a fundamental right in our political system, and not all restrictions imposed by the States on candidates’ eligibility for the ballot impose constitutionally suspect burdens on voters’ rights to associate or to choose among candidates.” *Fulani v. McAuliffe*, 2005 WL 2276881, at *3 (SDNY 2005), *citing Anderson*, 460 U.S. at 788, and *Clements v. Fashing*, 457 U.S. 957, 963 (1982).

The Election Law requirements for independent nominating petitions were previously upheld, and the proposed intervenors cannot demonstrate a sufficiently “severe burden” upon their First Amendment right to association or speech to warrant intervention at the risk of extending these proceedings. The Southern District of New York recently found New York’s requirement that “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),” to be “in line with other states’ requirements,” and in fact, *less strict* than seventeen other states when compared by population of eligible signatories. *SAM Party of New York v. Kosinski*, 2021 WL 6061301, at *8 (SDNY 2021).

Even during the height of the COVID-19 pandemic response, amidst strict social distancing and quarantine orders, courts found the timing and signature requirements to be “not severe, but

221

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

reasonable and nondiscriminatory,” and deferred to the State’s strong interest, as articulated by the State Board of Elections, “in assuring that there is a modicum of public support for independent candidacy, and substantial regulation of elections if they are to be fair, honest, and orderly.” See NYSCEF #629, Declaration of Heather L. McKay, Exhibit 1, ¶25-26 (denying TRO request by plaintiff-candidates Joshua Eisen and Gary Greenburg); see also *Eisen v. Cuomo*, 2020 WL 7978403, at *2 (N.Y. Sup. Ct. 2020) (“The United States Supreme Court has recognized that a state has a legitimate interest in limiting the names printed on a ballot to candidates who have demonstrated some degree of support. See *Kuntz v. New York State Senate*, 113 F.3d 326, 327 (2d Cir. 1997); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Candidates who have won their party’s primary have already demonstrated a substantial level of support, unlike independent candidates.” *Kuntz*, 113 F.3d at 328.).

Proposed intervenors’ entire argument is premised on their belief that they are entitled to delay this election further so they can attempt to form a new political party. And that they need more time and/or need the petitioning requirements reduced so that they can utilize a slate nominating process. However, proposed intervenors cite no precedent that makes utilizing slate petitions a right and have not commented on why collection of the required number of signatures is impossible or impracticable under the time constraints determined by the court. While proposed intervenors cite to court decisions dealing with the right of association, that right is not implicated by the ability to utilize slate petitions, the proposed intervenors’ decision not to obtain the required number of signatures under the law using a different mechanism for petitioning, or the proposed intervenors decision not to seek intervention until over three months after this action began.

Proposed intervenors utterly fail to demonstrate that either (a) the 45,000 signatures required for independent candidates to appear on the general ballot for statewide office; (b) the requirement to

222

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

obtain sufficient signatures from half the congressional districts; or (c) the modified political calendar adopted by this Court at the request of the State Board of Elections will severely burden their right of association or speech. Other than citing court decisions generally about the right of association, the proposed intervenors offer no factual or legal analysis (let alone any compelling evidence) to support their conclusory claim that their interests are “severely burdened”.

Proposed intervenors thus conflate the steps required under the *Anderson-Burdick* framework. Regardless of the nature of the speech, the first question under that framework is the extent to which that right is burdened, and “[t]he hallmark of a severe burden is exclusion or virtual exclusion from the ballot,” which is not demonstrated here. *Libertarian Party v. Lamont*, 977 F.3d 173 (2d Cir. 2020), quoting *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016). Proposed intervenors failed to show that absent their proposed changes, they will be excluded or virtually excluded from the ballot. In fact—the proposed intervenors could be among a number of candidates who presumably will obtain enough signatures for ballot access before the petitioning period concludes.

Furthermore, *Lerman v. Bd. Of Elections in City of New York*, 232 F.3d 135 (2d Cir. 2000), cited by proposed intervenors, involved a challenge to a substantive restriction on petitioning—i.e., that witnesses to the signing of designating petitions be residents of the political subdivision in which the office or position is to be voted for—whereas proposed intervenors here object to the overall signature and timing requirements, which are “reasonable, nondiscriminatory restrictions.” See *SAM Party of New York*, 987 F.3d at 274. “What 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.’” *Libertarian Party*, 977 F.3d at 177-78, quoting *Stone v. Bd. of Election Comm’rs*, 750 F.3d 678, 682 (7th Cir. 2014).

Under the circumstances here and given the above precedent, Executive Respondents agree

223

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 682

RECEIVED NYSCEF: 05/24/2022

with and defer to the expert judgment of the Board of Elections (see NYSCEF #617) that the proposed intervenors failed to show a sufficient burden on their First and Fourteenth Amendment rights from application of the standard signature requirement and the modified political calendar adopted by this Court, so as to outweigh the State's substantial interest in limiting ballot access to those who demonstrate public support and in maintaining reasonable election deadlines. Even on the merits, the proposed intervenors cannot demonstrate that intervention is warranted.

CONCLUSION

For the reasons set forth above, Executive Respondents respectfully request that the motion to intervene (Motion # 15) be denied in its entirety.

May 24, 2022

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224

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:46 PM

NYSCEF DOC. NO. 682

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

CERTIFICATION

Under Rule 202.8-b of the Uniform Rules of Supreme and County Courts, the undersigned certifies that the word count in this memorandum of law (excluding the caption, table of contents, table of authorities, signature block, and this certification), as established using the word count on the word-processing system used to prepare it, is 3,114 words.

May 26, 2022
Rochester, NY

/s/ Matthew D. Brown
Matthew D. Brown
Assistant Attorney General

225

**Executive Respondents' Memorandum of Law in Opposition to Motion
to Intervene by Mark Braiman, dated May 24, 2022
[pp. 225 - 240]**

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VOLANTE,

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

Index No. E2022-0116CV

McAllister, J.S.C.

Return Date:
May 26, 2022

**Executive Respondents' Memorandum of Law in Opposition to
Motion to Intervene by Mark Braiman**

(Motion # 16 via NYSCEF)

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Contents

PRELIMINARY STATEMENT	1
STANDARD OF REVIEW	4
ARGUMENT	4
A. This Motion is Barred by a Prior Judicial Determination.	4
B. The proposed intervenor cannot satisfy the elements for mandatory or discretionary intervention.....	6
C. The proposed intervenor has not demonstrated a sufficiently “severe burden” on his right to association or free speech to justify intervention.	8
CONCLUSION.....	13
CERTIFICATION	14

227

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

PRELIMINARY STATEMENT

Respondent Governor Kathy Hochul, Governor of the State of New York¹ (the "Executive Respondent"), respectfully submits this memorandum of law opposing the pending motion to intervene by Mark Braiman ("proposed intervenor"). See NYSCEF No. 583 ("Motion #16").

Proposed intervenor, who was previously denied intervention in motion #14, seeks a second bite of the apple in the form of the following extraordinary relief at a time after the June primary election (that includes Statewide races, races for all 150 seats in the State Assembly and numerous other election contests) is already underway:

- a) to apply the Ballot Access Order—which currently applies to only congressional offices and the State Senate (NYSCEF #524)—to independent statewide candidates and independent New York State Assembly candidates;
- b) reduce the signature requirements for independent nominating petitions by 50%; and
- c) allow signatures gathered between April 19 and April 27 by independent State Senate and congressional candidates be counted toward the total required number of signatures.

Proposed intervenor argues that because redistricting has condensed timeframes around ballot access, he will have difficulty using his preferred method of a slate ballot. This, he argues, infringes upon his First Amendment right to free association and free speech. To remedy this alleged infraction, instead of obtaining the requisite number of signatures required by the law and this Court's Order through traditional methods, he would again change the elections process to the detriment of voters, other candidates, and elections administrators. This includes candidates for statewide and assembly offices who are already in the midst of their election. He makes these arguments with no legal basis, and with a disregard for this Court and the Fourth Department's prior decisions on intervention in this

¹ The office of the Lieutenant Governor and President of the Senate is currently vacant.

228

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

case. In short, this motion to intervene should be denied.

To date, five other motions to intervene brought by various registered voters, candidates, and potential candidates (including independent candidates) were denied, four recently by this Court, and one in April by the Appellate Division, Fourth Department. *See* NYSCEF Nos. 441 & 520. One such motion this Court denied was brought by five candidates for Congress and State Senate, who sought to “intervene to protect their rights as candidates” to appear on primary party ballots and/or as independent candidates on the general election ballot. *See* NYSCEF Nos. 327 & 339 (Motion #12). Regarding independent nominating petitions, those proposed intervenors asserted that “[i]f said petition periods are truncated, the Court should reduce the number of signatures accordingly.” NYSCEF No. 331 ¶ 11. In its Decision and Order filed May 11, 2022, this Court, *inter alia*, denied intervention as untimely, and held that “the existing parties will be able to adequately represent the interests of these people going forward.” NYSCEF No. 520 at p. 4-5.

Further, like here, in the most recent motion to intervene denied by this Court (NYSCEF No. 541, “Motion #14”), the proposed intervenors—including the proposed intervenor here, Mark Braiman—sought an Order to extend the time for petitioning 4 weeks beyond the statutory May 31 deadline, waiving the NY Election Law requirement of 45,000 signatures to petition onto the ballot for non-recognized-party statewide candidates and reducing that requirement to 30,000 or 15,000, and to waive the 500-signature requirement for each of 13 congressional districts.

In denying that motion, this Court held:

A reduction in the Independent nominating signature requirement would be in contravention of Election Law §6-142(1). A similar reduction in signatures was requested in a case last year, *Libertarian Party of N.Y. v. New York Bd. of Education*, 539 F.Supp 3rd 310 (SDNY 2021). That court denied a similar motion to reduce the signature requirements. “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 the

229

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

New York's 13.55 million registered voters." *Libertarian Party of N.Y. v. New York Bd. of Education*; (supra. at 317).

The entire purpose of requiring a number of signatures is to show that a candidate has widespread support. Similarly, the requirement that a candidate be able to garner at least 500 signatures from at least ½ of the congressional districts is an indication of widespread support. The court is not inclined to decrease the signature requirement or to waive the 500 signatures per district requirement.

This court issued an advisory opinion on May 5, 2022 to warn potential candidates that were seeking to get on the November ballot via an Independent nominating petition that she/he should continue collecting signatures as the court was not inclined to change the signature period for those persons. Six weeks is six weeks.

(NYSCEF #668).

Like the five prior motions to intervene, the instant motion should be denied. That Mark Braiman has returned to seek similar remedies and for similar reasons as those already denied by this Court in Motion #14 require that this Court deny intervention on the basis of *res judicata* and collateral estoppel. Moreover, the proposed intervenor's concerns about timing and signature requirements for independent nominating petitions remain as untimely now as they were when the proposed intervenor sought relief in Motion #14. They were clearly foreseeable from commencement of this proceeding challenging the congressional districts and were already raised by the existing parties.

Furthermore, intervention is inappropriate because the proposed intervenor cannot demonstrate a sufficiently "severe burden" on his First Amendment rights to overcome the State's well-recognized, substantial interest in (a) regulating access to the general election ballot by independent candidates to avoid voter confusion and declutter the ballot by ensuring only those candidates with sufficient support appear on the ballot; and (b) upholding reasonable election deadlines to preserve orderly and efficient elections.

230

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

STANDARD OF REVIEW

Two provisions of New York State Civil Practice Law and Rules ("CPLR") govern intervention by third parties in a pending action or proceeding. First, CPLR § 1012(a)(2) permits intervention as of right: "[u]pon timely motion, any person shall be permitted to intervene in any action . . . when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Second, CPLR § 1013 allows intervention in the discretion of the court:

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

By their terms, "[i]ntervention pursuant to either CPLR 1012 or 1013 requires a timely motion." *Rutherford Chemicals, LLC v. Assessor of Town of Woodbury*, 115 A.D.3d 960, 961 (2d Dept 2014). The same generally applicable defenses, including lack of standing, apply to intervenor claims. *See generally Kobrick v. New York State Div. of Hous. & Cmty. Renewal*, 126 A.D.3d 538, 540 (1st Dept 2015) ("Supreme Court properly found that the proposed intervenor lacked standing to intervene in this proceeding.").

ARGUMENT

A. This Motion is Barred by a Prior Judicial Determination.

Proposed intervenor's motion arises from the same issues that were the subject of a previous motion to intervene brought by, and decided against, the proposed intervenor. Specifically, in Motion #14 (NYSCEF No. 541), this proposed intervenor sought an Order to extend the time for petitioning 4 weeks beyond the statutory May 31 deadline, waiving the NY Election Law requirement of 45,000 signatures to petition onto the ballot for non-recognized-party statewide candidates and reducing that

231

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

requirement to 30,000 or 15,000, and to waive the 500-signature requirement for each of 13 congressional districts.

"It is well settled, under the transactional-analysis approach adopted by the State in deciding *res judicata* issues, that 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy'" (*Beninati v. Nicotra*, 232 AD2d 242 [1st Dept 1997], citing *Schneider v. David*, 197 AD2d 363 [1st Dept 1993]; see *O'Brien v. City of Syracuse*, 54 NY2d 353 [1981]; *Smith v. Russell Sage College*, 54 NY2d 185 [1981]; *Prospect Owners Corp. v. Tudor Realty Services Corp.*, 260 AD2d 299 [1st Dept 1999]). Here, the claims brought by proposed intervenor were the subject of a motion previously brought by, and decided against, this proposed intervenor.

Even if the legal theories asserted in this motion were different than proposed intervenor's legal theories in his previous motion, proposed intervenor would be precluded by *res judicata* from bringing such new claims. Proposed intervenor had the opportunity in the earlier motion to assert such claims. Proposed intervenor may not bring a new motion to intervene each time he dreams of a new argument he failed to raise in his previous motion to intervene. At this point proposed intervenor already had enough bites at the apple. As noted by the Court of Appeals "in deciding *res judicata* issues, we have moved to a more pragmatic test, which sees a claim or cause of action as 'coterminous with the transaction regardless of the number of substantive theories or variant forms of relief *** available to the plaintiff'" (*Smith*, 54 NY2d at 192, 445 NYS.2d at 71 [citation omitted]). The Court noted that:

Even if there are variations in the facts alleged, or different relief is sought, the separately stated 'causes of action' may nevertheless be grounded on the same gravamen of the wrong upon which the action is brought'. This holds true even when 'several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts or would call for different measures of liability or different

232

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

kinds of relief.' For, what 'factual grouping' constitutes a 'transaction' or 'series of transactions' depends on how 'the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether *** their treatment as a unit conforms to the parties' expectations or to business understanding or usage.'

(*Smith*, 54 NY2d at 192-193 [citations omitted]).

In this instance, proposed intervenor previously brought a motion to intervene seeking similar relief that the Court denied. Proposed intervenor is therefore estopped from litigating these issues under *res judicata* [claim preclusion].

B. The proposed intervenor cannot satisfy the elements for mandatory or discretionary intervention.

This motion to intervene is untimely because it raises concerns readily ascertainable upon Petitioners' filing of the original petition three months ago. "Consideration of any motion to intervene begins with the question of whether the motion is timely." *In re HSBC Bank U.S.A.*, 135 A.D.3d 534, 534 (1st Dept 2016). "[I]ntervention . . . will not be allowed merely to permit the intervenor to accomplish now what it could have done as of right but . . . omitted to do earlier." *Darlington v. City of Ithaca, Bd. of Zoning Appeals*, 202 AD2d 831, 834 (3d Dept 1994), quoting Siegel, N.Y. Prac. §183, at 276 (2d ed.).

As relates to the instant motion, the relief sought in this action always included a remedial Congressional map. Since its commencement it was obvious that this proceeding could disrupt the 2022 electoral calendar, necessitate a modification of that calendar to accommodate any remedial maps this Court would order, and possibly truncate the period in which candidates, including independent candidates, could file petitions to obtain ballot access. However, the proposed intervenor makes no serious attempt to justify his late filing. Although the date by which remedial maps could be achieved was not immediately known, such specificity was not required to foresee that candidates' interests were implicated, as evidenced by the existing respondents' raising of concerns about

233

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

inadequate time and ongoing petitioning throughout these proceedings (see, e.g., NYSCEF Nos. 88 and 617). Therefore, any purported reliance upon this Court's May 11, 2022 order is unavailing, *see* NYSCEF No. 529 at p. 6. Even assuming the potential intervenor's prior three-month delay could be overlooked, this Court's May 5, 2022 Advisory Opinion set out the terms for independent candidates to appear on the ballot, yet this proposed intervenor dragged his feet for another eleven days before submitting his papers. *See* NYSCEF No. 520 at p. 5, citing *Matter of Fink v. Salerno*, 105 A.D.2d 489 (3d Dept 1984) (affirming denial of intervention due to expedited process for election matters where proceeding commenced October 3rd, Court set a return date of October 9th, and putative intervenor sought intervention on October 8th).

To the extent they relate to this ongoing proceeding, the potential intervenor's concerns were already adequately represented by the existing parties. Previously, Executive Respondents objected to moving Congressional and Senate races due to the timing, logistics, and impact on election administration. *See* NYSCEF 82 at p. 25-26. As the States' Chief Executive, Executive Respondent continues to have a strong interest in ensuring that the rights of all candidates to appear on the ballot are respected and believe that the schedule proposed by the State Board of Elections and adopted by this Court guarantees those rights. The proposed intervenor cannot explain how his interests sufficiently diverge from the concerns already expressed and balanced by this Court.

Insofar as the proposed intervenor complains about portions of the Election Law not already raised by the existing parties, he seeks to drag this Court far astray from the redistricting issues at the heart of this action. Even discretionary intervention is limited to intervenors who raise claims or defenses involving "common question of law or fact." *See* CPLR 1013. Because this Court's orders did not reduce or otherwise affect the petitioning period for independent nominating petitions, it should deny intervention.

234

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

C. The proposed intervenor has not demonstrated a sufficiently "severe burden" on his right to association or free speech to justify intervention.

The proposed intervenor premises his need to intervene upon the claim that:

Between April 19, 2022, when independent Congressional and State Senate candidates began petitioning to qualify for the ballot using the old district lines, and April 27, 2022, when the Court of Appeals affirmed (against the predictions of many) this Court's March 31, 2022 order voiding those old lines, Petitioner-Intervenor and many other such candidates spent countless hours collecting signatures and organizing volunteers and paid petitioners, in the expectation that their completed petitions could be filed six weeks later, on May 31, 2022. In addition, Petitioner Intervenor made, and other independent Congressional and State Senate candidates typically made, arrangements in their professional and personal lives to set aside those six weeks for the all-important petitioning drive, arrangements many of which could not be undone, and many of which cannot be made again.

In addition, Petitioner-Intervenor will be losing a big motivational factor for collecting signatures, and organizing others to collect signatures, because he will not be able to collect also for his favored Governor candidate, Libertarian Larry Sharpe. While he may circulate his petitions (which are combined with four other statewide Libertarian candidates, for Lieutenant Governor, Attorney General, Comptroller, and US Senator), together with his new petitions between May 21 and May 31 (the last day to file the statewide petitions), for the remaining weeks, until the last day to file the Congressional and State Senate petitions which is July 5, he will be petitioning only for himself, while his Libertarian statewide candidate friends (if they have managed to qualify for the ballot at all), in turn, will have less incentive to assist his efforts. Together with the recent and recurring difficulties caused by constantly-evolving new strains of COVID-19 and related restrictions and common fears, which reduce the availability of signers and the efficiency of petition witnesses, this may very well be the most difficult year in New York history for independent candidates for office.

(NYSCEF #559, ¶¶4-5). However, utilizing a "slate petition" is not a right that requires changing the dates for independent nominating petitions. Nothing prohibited these candidates from collecting petitions before the Order was issued.

"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

235

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

state control over the election process for state offices.” *SAM Party of New York v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021), quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). To ensure effective democratic electoral processes, “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Id.* Instead of strict scrutiny, therefore, voting regulations like those challenged by the proposed intervenors are analyzed under the *Anderson-Burdick* framework.

As the Second Circuit recently reiterated:

“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.” [*Burdick v. Takushi*, 504 U.S. 428, 434 (1992)]. 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).

SAM Party of New York, 987 F.3d at 274.

In applying this sliding scale test, the severity of the restrictions imposed determines the level of judicial review. “Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (internal quotations omitted); see also *Price v. New York State Bd. of Elections*, 540 F.3d 101, 109

236

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

(2d Cir. 2008) (State's reasonable and nondiscriminatory restrictions are generally sufficient to uphold the statute if they serve important state interests, and judicial review in such circumstances will be quite deferential). Notably, "[c]andidacy is not a fundamental right in our political system, and not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally suspect burdens on voters' rights to associate or to choose among candidates." *Fulani v. McAuliffe*, 2005 WL 2276881, at *3 (SDNY 2005), citing *Anderson*, 460 U.S. at 788, and *Clements v. Fashing*, 457 U.S. 957, 963 (1982).

The Election Law requirements for independent nominating petitions were previously upheld, and the proposed intervenor cannot demonstrate a sufficiently "severe burden" upon his First Amendment right to association or free speech to warrant intervention at the risk of extending these proceedings. The Southern District of New York recently found New York's requirement that "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)," to be "in line with other states' requirements," and in fact, *less strict* than seventeen other states when compared by population of eligible signatories. *SAM Party of New York v. Kosinski*, 2021 WL 6061301, at *8 (SDNY 2021).

Even during the height of the COVID-19 pandemic response, amidst strict social distancing and quarantine orders, courts found the timing and signature requirements to be "not severe, but reasonable and nondiscriminatory," and deferred to the State's strong interest, as articulated by the State Board of Elections, "in assuring that there is a modicum of public support for independent candidacy, and substantial regulation of elections if they are to be fair, honest, and orderly." See NYSCEF #629, Declaration of Heather L. McKay, Exhibit 1, ¶25-26 (denying TRO request by plaintiff-candidates Joshua Eisen and Gary Greenburg); see also *Eisen v. Cuomo*, 2020 WL 7978403,

237

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

at *2 (N.Y. Sup. Ct. 2020) ("The United States Supreme Court has recognized that a state has a legitimate interest in limiting the names printed on a ballot to candidates who have demonstrated some degree of support. *See Kuntz v. New York State Senate*, 113 F.3d 326, 327 (2d Cir. 1997); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Candidates who have won their party's primary have already demonstrated a substantial level of support, unlike independent candidates." *Kuntz*, 113 F.3d at 328.).

Proposed intervenor's entire argument is premised on his belief that he needs more time and/or needs the petitioning requirements reduced so that he can utilize a slate nominating process. However, proposed intervenor cites no precedent that makes utilizing slate petitions a right and have not commented on why collection of the required number of signatures is impossible or impracticable under the time constraints determined by the court. While proposed intervenor cites to court decisions dealing with the right of association, that right is not implicated by the ability to utilize slate petitions, the proposed intervenor's decision not to obtain the required number of signatures under the law using a different mechanism for petitioning, or the proposed intervenor's decision not to seek intervention until over three months after this action began.

Proposed intervenor utterly fails to demonstrate that either (a) the 45,000 signatures required for independent candidates to appear on the general ballot for statewide office; (b) the requirement to obtain sufficient signatures from half the congressional districts; or (c) the modified political calendar adopted by this Court at the request of the State Board of Elections will severely burden his right of association or speech. Other than citing court decisions generally about the right of association, the proposed intervenors offer no factual or legal analysis (let alone any compelling evidence) to support their conclusory claim that their interests are "severely burdened".

Particularly because his petitioning process remained undisturbed, the proposed intervenor

238

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

fails to demonstrate that either (a) the 45,000 signatures required for independent candidates to appear on the general ballot for statewide office; (b) the requirement to obtain sufficient signatures from half the congressional districts; or (c) the modified political calendar adopted by this Court at the request of the State Board of Elections will severely burden his right of association. Other than citing *Lerman v. N.Y.C. Bd. of Elections*, 232 F.3d 135 (2d Cir. 2000) for the proposition that the petitioning process constitutes “core political speech,” the proposed intervenor offers no analysis (let alone evidence) to support his conclusory claim that his interests are “severely burdened” in this case.

Proposed intervenor thus conflates the steps required under the *Anderson-Burdick* framework. Regardless of the nature of the speech, the first question under that framework is the extent to which that right is burdened, and “[t]he hallmark of a severe burden is exclusion or virtual exclusion from the ballot,” which is not demonstrated here. *Libertarian Party v. Lamont*, 977 F.3d 173 (2d Cir. 2020), quoting *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016). Proposed intervenor failed to show that absent his proposed changes, he will be excluded or virtually excluded from the ballot. In fact – the proposed intervenor could be among a number of candidates who presumably will obtain enough signatures for ballot access before the petitioning period concludes.

Furthermore, *Lerman v. Bd. Of Elections in City of New York*, 232 F.3d 135 (2d Cir. 2000), cited by proposed intervenor, involved a challenge to a substantive restriction on petitioning—i.e., that witnesses to the signing of designating petitions be residents of the political subdivision in which the office or position is to be voted for—whereas the proposed intervenor here objects to the overall signature and timing requirements, which are “reasonable, nondiscriminatory restrictions.” See *SAM Party of New York*, 987 F.3d at 274. “What 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.’” *Libertarian Party*, 977 F.3d at 177-78,

239

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

quoting *Stone v. Bd. of Election Comm'rs*, 750 F.3d 678, 682 (7th Cir. 2014).

Under the circumstances here and given the above precedent, Executive Respondents agree with and defer to the expert judgment of the Board of Elections (see NYSCEF #617) that the proposed intervenor failed to show a sufficient burden on his *First and Fourteenth Amendment rights* from application of the standard signature requirement and the modified political calendar adopted by this Court, so as to outweigh the State's substantial interest in limiting ballot access to those who demonstrate public support and in maintaining reasonable election deadlines. Even on the merits, the proposed intervenor cannot demonstrate that intervention is warranted.

CONCLUSION

For the reasons set forth above, Executive Respondents respectfully request that the motion to intervene (Motion # 16) be denied in its entirety.

May 24, 2022

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240**FILED: STEUBEN COUNTY CLERK 05/24/2022 08:48 PM**

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 683

RECEIVED NYSCEF: 05/24/2022

CERTIFICATION

Under Rule 202.8-b of the Uniform Rules of Supreme and County Courts, the undersigned certifies that the word count in this memorandum of law (excluding the caption, table of contents, table of authorities, signature block, and this certification), as established using the word count on the word-processing system used to prepare it, is 4,216 words.

May 26, 2022
Rochester, NY

/s/ Matthew D. Brown
Matthew D. Brown
Assistant Attorney General

241

**Executive Respondents' Memorandum of Law in Opposition to Motion
to Intervene by Tyrrell Ben-Avi, dated May 24, 2022
[pp. 241 - 250]**

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

NYSCEF DOC. NO. 684

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN**

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VOLANTE,

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

Index No. E2022-0116CV

McAllister, J.S.C.

Return Date:
May 26, 2022

**Executive Respondents' Memorandum of Law in Opposition to
Motion to Intervene by Tyrrell Ben-Avi**

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242

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 684

RECEIVED NYSCEF: 05/24/2022

Contents

PRELIMINARY STATEMENT	1
STANDARD OF REVIEW	2
ARGUMENT	3
A. The proposed intervenor cannot satisfy the elements for mandatory or discretionary intervention.....	3
B. The proposed intervenor has not demonstrated a sufficiently “severe burden” on his right to association or free speech to justify intervention.....	4
C. The Present Application is barred by doctrine of laches.....	6
CONCLUSION.....	7
CERTIFICATION.....	8

243

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 684

RECEIVED NYSCEF: 05/24/2022

PRELIMINARY STATEMENT

Respondent Governor Kathy Hochul, Governor of the State of New York¹ (the "Executive Respondent"), respectfully submits this memorandum of law opposing the pending motion to intervene by Tyrrell Ben-Avi ("proposed intervenor"). *See* NYSCEF No. 673.

Proposed intervenor seeks, *inter alia*, to move the primary election for the New York Assembly from June 28, 2022 to August 23, 2022—"thus aligning the primary election date for the United States Senate with the adjourned primary election dates for the State Senate and U.S. Congress"—at a time after the June primary election (that includes Statewide races, races for all 150 seats in the State Assembly and numerous other election contests) is already underway. Oddly, granting the relief requested and moving the Assembly primary date would not change the U.S. Senate primary date, which is scheduled for June 28.

Proposed intervenor gives no legal or factual basis for this request and it should therefore be denied.

To date, five other motions to intervene brought by various registered voters, candidates, and potential candidates (including independent candidates) were denied, four recently by this Court, and one in April by the Appellate Division, Fourth Department. *See* NYSCEF Nos. 441 & 520. One such motion this Court denied was brought by five candidates for Congress and State Senate, who sought to "intervene to protect their rights as candidates" to appear on primary party ballots and/or as independent candidates on the general election ballot. *See* NYSCEF Nos. 327 & 339 (Motion #12). Regarding independent nominating petitions, those proposed intervenors asserted that "[i]f said petition periods are truncated, the Court should reduce the number of signatures accordingly."

¹ The office of the Lieutenant Governor and President of the Senate is currently vacant.

244

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

NYSCEF DOC. NO. 684

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

NYSCEF No. 331 ¶ 11. In its Decision and Order filed May 11, 2022, this Court, *inter alia*, denied intervention as untimely, and held that “the existing parties will be able to adequately represent the interests of these people going forward.” NYSCEF No. 520 at p. 4-5.

Further, like here, in the most recent motion to intervene denied by this Court (NYSCEF No. 541, “Motion #14”), the proposed intervenors—who were also potential candidates for the Libertarian Party of New York—sought an Order to extend the time for petitioning 4 weeks beyond the statutory May 31 deadline, waiving the NY Election Law requirement of 45,000 signatures to petition onto the ballot for non-recognized-party statewide candidates and reducing that requirement to 30,000 or 15,000, and to waive the 500-signature requirement for each of 13 congressional districts.

Like the five prior motions to intervene, the instant motion should be denied.

Furthermore, intervention is inappropriate because the proposed intervenor failed to demonstrate a sufficiently “severe burden” on his First Amendment rights to overcome the State’s well-recognized, substantial interest in (a) regulating access to the general election ballot by independent candidates to avoid voter confusion and declutter the ballot by ensuring only those candidates with sufficient support appear on the ballot; and (b) upholding reasonable election deadlines to preserve orderly and efficient elections.

STANDARD OF REVIEW

Two provisions of New York State Civil Practice Law and Rules (“CPLR”) govern intervention by third parties in a pending action or proceeding. First, CPLR § 1012(a)(2) permits intervention as of right: “[u]pon timely motion, any person shall be permitted to intervene in any action . . . when the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” Second, CPLR § 1013 allows intervention in the discretion of the court:

245

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 684

RECEIVED NYSCEF: 05/24/2022

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

By their terms, "[i]ntervention pursuant to either CPLR 1012 or 1013 requires a timely motion." *Rutherford Chemicals, LLC v. Assessor of Town of Woodbury*, 115 A.D.3d 960, 961 (2d Dept 2014). The same generally applicable defenses, including lack of standing, apply to intervenor claims. *See generally Kobrick v. New York State Div. of Hous. & Cmty. Renewal*, 126 A.D.3d 538, 540 (1st Dept 2015) ("Supreme Court properly found that the proposed intervenor lacked standing to intervene in this proceeding.").

ARGUMENT

A. The proposed intervenor cannot satisfy the elements for mandatory or discretionary intervention.

This motion to intervene is untimely because it raises concerns readily ascertainable upon Petitioners' filing of the original petition three months ago. "Consideration of any motion to intervene begins with the question of whether the motion is timely." *In re HSBC Bank U.S.A.*, 135 A.D.3d 534, 534 (1st Dept 2016). "[I]ntervention . . . will not be allowed merely to permit the intervenor to accomplish now what it could have done as of right but . . . omitted to do earlier." *Darlington v. City of Ithaca, Bd. of Zoning Appeals*, 202 AD2d 831, 834 (3d Dept 1994), quoting Siegel, N.Y. Prac. §183, at 276 (2d ed.).

As relates to the instant motion, the relief sought in this action always included a remedial Congressional map. Since its commencement it was obvious that this proceeding could disrupt the 2022 electoral calendar and necessitate a modification of that calendar to accommodate any remedial maps this Court would order. However, the proposed intervenor makes no serious attempt to justify

246

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 684

RECEIVED NYSCEF: 05/24/2022

his late filing. Although the date by which remedial maps could be achieved was not immediately known, such specificity was not required to foresee that candidates' interests were implicated, as evidenced by the existing respondents' raising of concerns about inadequate time and ongoing petitioning throughout these proceedings (see, e.g., NYSCEF Nos. 88 and 617). Therefore, any purported reliance upon this Court's May 11, 2022 order is unavailing, *see* NYSCEF No. 529 at p. 6. Even assuming the potential intervenor's prior three-month delay could be overlooked, this Court's May 5, 2022 Advisory Opinion set out the terms for independent candidates to appear on the ballot, yet this proposed intervenor dragged his feet for another eighteen days before submitting his papers. *See* NYSCEF No. 520 at p. 5, citing *Matter of Fink v. Salerno*, 105 AD2d 489 (3d Dept 1984) (affirming denial of intervention due to expedited process for election matters where proceeding commenced October 3rd, Court set a return date of October 9th, and putative intervenor sought intervention on October 8th).

To the extent they relate to this ongoing proceeding, the potential intervenor's concerns were already adequately represented by the existing parties. Previously, Executive Respondents objected to moving Congressional and Senate races due to the timing, logistics, and impact on election administration. *See* NYSCEF 82 at p. 25-26. As the States' Chief Executive, Executive Respondent continues to have a strong interest in ensuring that the rights of all candidates to appear on the ballot are respected and believe that the schedule proposed by the State Board of Elections and adopted by this Court guarantees those rights. The proposed intervenor failed to explain how his interests sufficiently diverge from the concerns already expressed and balanced by this Court.

B. The proposed intervenor has not demonstrated a sufficiently "severe burden" on his right to association or free speech to justify intervention.

The proposed intervenor offers no facts to support his request to intervene or support the relief he seeks, and his motion should therefore be denied.

247

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 684

RECEIVED NYSCEF: 05/24/2022

“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.” *SAM Party of New York v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021), quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). To ensure effective democratic electoral processes, “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Id.* Instead of strict scrutiny, therefore, voting regulations like those challenged by the proposed intervenors are analyzed under the *Anderson-Burdick* framework.

As the Second Circuit recently reiterated:

“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.” [*Burdick v. Takushi*, 504 U.S. 428, 434 (1992)]. 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).

SAM Party of New York, 987 F.3d at 274.

In applying this sliding scale test, the severity of the restrictions imposed determines the level of judicial review. “Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s important regulatory interests will usually be enough to justify reasonable,

nondiscriminatory restrictions.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (internal quotations omitted); *see also Price v. New York State Bd. of Elections*, 540 F.3d 101, 109 (2d Cir. 2008) (State’s reasonable and nondiscriminatory restrictions are generally sufficient to uphold the statute if they serve important state interests, and judicial review in such circumstances will be quite deferential). Notably, “[c]andidacy is not a fundamental right in our political system, and not all restrictions imposed by the States on candidates’ eligibility for the ballot impose constitutionally suspect burdens on voters’ rights to associate or to choose among candidates.” *Fulani v. McAuliffe*, 2005 WL 2276881, at *3 (SDNY 2005), *citing Anderson*, 460 U.S. at 788, and *Clements v. Fashing*, 457 U.S. 957, 963 (1982).

Here, the proposed intervenor makes no argument, cites no precedent, and provides no reason why the Assembly primary should be adjourned, and the proposed intervenor cannot demonstrate that intervention is warranted.

C. The Present Application is barred by doctrine of laches.

Proposed intervenor’s request to cancel the June 28, 2022 primary for NYS Assembly is barred by the doctrine of laches. “Laches bars recovery where a plaintiff’s inaction has prejudiced the defendant and rendered it inequitable to permit recovery.” *Airco Alloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 AD2d 68, 82 (4th Dept 1980).

Laches is “an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party.” *Reif v. Nagy*, 175 AD3d 107, 130 (1st Dept 2019) (quoting *Saratoga County Chamber of Commerce v. Pataki*, 100 NY 2d 801, 816 (2003)). To show prejudice, a defendant must show reliance and change of position from the delay. *Id.* Here, the prejudice that would stem from proposed intervenor’s belated request is manifest. On May 4, 2022, the State Board

249

FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM

INDEX NO. E2022-0116CV

NYSCEF DOC. NO. 684

RECEIVED NYSCEF: 05/24/2022

of Elections certified the primary ballot for Assembly elections,² with local county boards of election throughout the State preparing for the election to go forward on June 28 (at significant effort and expense), with early voting and absentee balloting taking place before that date. As noted above, military ballots have already been sent out to military voters on or about May 13, 2022. If proposed intervenor's requested relief were allowed and the Assembly primary could not go forward in June, and insofar as numerous other races are tied to Assembly districts, it is not clear what primaries, if any, could go forward in June.

The proposed relief would cause yet more delay and add to the already formidable logistical challenges faced by the State and local boards of elections associated with having to accommodate entirely new Congressional and State Senate districts. This Court should decline to entertain this application.

CONCLUSION

For the reasons set forth above, Executive Respondents respectfully request that the motion to intervene be denied in its entirety.

May 24, 2022

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² See <https://www.elections.ny.gov/NYSBOE/Elections/2022/Primary/Jun282022PrimaryCertification.pdf>.

250**FILED: STEUBEN COUNTY CLERK 05/24/2022 08:58 PM**

NYSCEF DOC. NO. 684

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 05/24/2022

CERTIFICATION

Under Rule 202.8-b of the Uniform Rules of Supreme and County Courts, the undersigned certifies that the word count in this memorandum of law (excluding the caption, table of contents, table of authorities, signature block, and this certification), as established using the word count on the word-processing system used to prepare it, is ____ words.

May 26, 2022
Rochester, NY

/s/ Matthew D. Brown
Matthew D. Brown
Assistant Attorney General

251

Certification Pursuant to CPLR § 2105

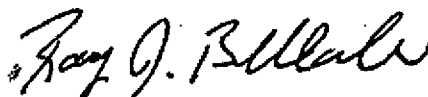
CERTIFICATION PURSUANT TO CPLR § 2105

I, Rory J. Bellantoni, an attorney with the Brain Injury Rights Group, LTD., Attorneys for Intervenor-Appellants, *The Parent Party of New York*, hereby certify pursuant to CPLR § 2105 that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the clerk of the Supreme Court, County of Steuben.

Dated: June 14, 2022

Brain Injury Rights Group

By:



Rory J. Bellantoni
Attorneys for Intervenor-Appellants
The Parent Party of New York