

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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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. :

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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 Intervenors” 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

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.

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

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