

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.

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.

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**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**

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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 Intervenors seek, 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 Intervenors, 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 Intervenors 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

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 Intervenors, 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,

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).

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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