
In the Supreme Court of the United States

Team Kennedy, American Values 2024, and Jeffrey Rose,
Applicants,

v.

Henry T. Berger, Peter S. Kosinski, Essma Bagnuola, Anthony J. Cassale,
Kristen Zebrowski Stavisky, Raymon J. Riley, III, and Letitia James,
Respondents.

**Application of Team Kennedy, American Values 2024
and Jeffrey Rose on Appeal from the United States Court
of Appeals for the Second Circuit
for an Emergency Injunction Pending Appeal
Restoring Robert F. Kennedy, Jr. to New York's 2024 Ballot**

To the Honorable Sonia Sotomayor,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Second Circuit

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PARTIES TO THE PROCEEDING

Applicants in this Court were the Plaintiffs/Appellants below. They are Jeffrey Rose (one of over 100,000 New York voters who signed a petition to have Robert F. Kennedy Jr. placed on that state's ballot), American Values 2024 (an independent political action committee, or super PAC, supportive of Mr. Kennedy's candidacy and of the rights of other independent and third-party presidential candidates to obtain access to the ballot), and Team Kennedy (Mr. Kennedy's campaign committee).

Respondents in this Court were the Defendants/Appellees below. They are the Commissioners and Executive Directors of the New York State Board of Elections—Henry T. Berger, Peter S. Kosinski, Essma Bagnuola, Anthony J. Cassale, Kristen Zebrowski Stavisky, and Raymond J. Riley, III—and Letitia James, the Attorney General of the State of New York. All were sued below solely in their official capacities.

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**APPLICATION FOR EMERGENCY
INJUNCTION PENDING APPEAL**

INTRODUCTION

Forty years ago, Ohio’s Secretary of State barred independent presidential candidate John Anderson from that state’s ballot because—although Anderson had collected the requisite number of signatures from Ohio voters—he missed a filing deadline. This Court would have none of it, holding that Ohio’s interests in its filing deadline did not outweigh the First and Fourteenth Amendment rights at stake. *Anderson v. Celebrezze*, 460 U.S. 780, 806 (1983).

In August, 2024, a New York court barred independent presidential candidate Robert F. Kennedy, Jr. from that state’s ballot because—although Kennedy collected more than the requisite number of signatures from New York voters and although the New York State Board of Elections (the “BOE”) had certified over 100,000 such signatures and voted to place Kennedy on the ballot—his nominating petition bore an allegedly invalid address. The state court did not find that anyone was misled by the address, nor identify any state interests compromised by its use. On September 10, New York’s highest court, the Court of Appeals, denied an appeal. On September 11, in accordance with the state court ruling, the BOE issued a certification of the New York general election ballot omitting Mr. Kennedy. On September 18, without opinion, the U.S. Court of Appeals for the Second Circuit denied Applicants’ motion for an injunction pending appeal.

Anderson v. Celebrezze indisputably controls this case. It is in all material respects indistinguishable. This Court has long recognized the constitutional “right

of voters to associate and *to have candidates of their choice placed on the ballot.*” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (emphasis added). Absent immediate, emergency relief, over 100,000 New York voters who signed the invalidated Kennedy petition will be irrevocably deprived of that right. Applicants therefore respectfully request, pending further review in the Second Circuit or in this Court, an immediate injunction ordering Respondents to reinstate Kennedy to the ballot.

JURISDICTION

This Court possesses jurisdiction under Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. § 1254, and it possesses authority to grant the Applicant’s sought relief pursuant to 28 U.S.C. § 1651(a) (All Writs Act), 28 U.S.C. § 2101(f), and S. Ct. Rules 22 and 23.

STATEMENT

The facts of this case are not complicated. In New York (as elsewhere), presidential nominees chosen by major parties automatically appear on the state’s ballot, but other candidates do not. Instead, independent and minor party candidates must collect voter signatures by petition in order to appear. For the 2024 election, New York required independent presidential candidates to collect 45,000 valid signatures between April 16 and May 28. (First Amended Complaint (“FAC”) ¶ 31, Appendix (“App.”) 161.) This lawsuit was originally filed in May, 2024 to challenge the 45,000-signature requirement and several other onerous ballot-access obstacles New York imposes on independent presidential candidates.

But Kennedy managed to overcome those obstacles. At a cost of over \$1,000,000, he gathered more than 120,000 New York voters' signatures. (FAC ¶ 75, App. 168.) On May 28, 2024, Team Kennedy submitted those signatures to the BOE. (FAC ¶ 141, App. 178.) BOE certified the validity of over 100,000 Kennedy petition signatures and, accordingly, voted to place Kennedy on the ballot. (NYBOE Determination, App. 118.)

But a number of individuals, apparently funded by the Democratic Party, sued in state court, challenging the nominating petition. The state court proceedings culminated in a decision by the Appellate Division, Third Department, on August 29, 2024, affirming the decision of the state trial court and ordering the BOE to strike Kennedy from the ballot. *See Cartwright v. Kennedy*, No. CV-24-1294, 2024 N.Y. App. Div. LEXIS 4529 (N.Y. App. Div. 3rd Dep't Aug. 29, 2024).

The state trial court and the Appellate Division based this decision on only one ground: that the nominating petition bore an invalid residence address for Mr. Kennedy. *See id.* at *9. Under N.Y. Election L. § 6-140(1)(a), a petition must show the candidate's "place of residence." Under N.Y. Election L. § 1-104(22), "residence" is defined as the candidate's "fixed, permanent and principal home," to which the individual "always intends to return," no matter where he currently lives. (Taken together, these provisions will hereafter be referred to as the "Residence Requirement.")

The Kennedy petition indicated the address of a house in Katonah, New York, where Mr. Kennedy is registered to vote, has let a room from a childhood

friend, and has stayed overnight on one occasion. (FAC ¶ 67, App. 167.) (Kennedy had been advised by counsel to use this address on his New York petition and on all other state petitions and applications where a residence was required. (See Kennedy Dec. ¶ 31, App. 137.) The Appellate Division concluded that the Katonah address was not Kennedy’s “fixed” or “permanent” home and that Kennedy has “never resided” there. See *Cartwright*, 2024 N.Y. App. Div. LEXIS 4529, at *9. The Appellate Division did not find that Mr. Kennedy had prevaricated concerning his address or that any signatory of the Kennedy petition was misled by the Katonah address; nor did the Appellate Division identify any state interests that were allegedly compromised by its use. Rather, the court simply held that “[i]nasmuch as the evidence shows that Kennedy has never resided at the Katonah address,” the petition is “properly invalidated.” Similarly, the state trial court, which also found the Katonah address invalid, did not find that anyone was misled by that address and did not identify any specific state interests compromised by its use. Rather, the state trial court simply rested its decision on an alleged New York policy of “strict compliance” with the state’s petition regulations. *Cartwright*, 2024 N.Y. Misc. LEXIS 3768, at *35-36.

When the state courts ordered Kennedy off the ballot, Applicants immediately filed a First Amended Complaint in this action challenging that exclusion. The original Plaintiff, Team Kennedy, was now joined by two new Plaintiffs: American Values 2024 (“AV24”), an independent political action committee (or super PAC), and Jeffrey Rose, a New York voter who was one of the over 100,000 signatories of the

invalidated Kennedy petition. Plaintiffs simultaneously moved for a preliminary injunction, but the District Court denied that motion late on the night of September 10. (App. 2.)

Also on September 10, New York’s highest court, the Court of Appeals, denied an appeal in the state court proceedings. *Matter of Cartwright v. Kennedy*, 2024 N.Y. Slip Op. 73915, 2024 WL 4127460 (N.Y. Sept. 10, 2024). In the federal case, Applicants immediately appealed to the Second Circuit and moved in that court for an injunction pending appeal. On September 11, in accordance with the state court ruling, the BOE issued a certification of the New York general election ballot omitting Mr. Kennedy. (Dkt. No. 29.1 at 9.) On September 18, without opinion, the Second Circuit denied Applicants’ motion for an injunction pending appeal. (App. 1.)

ARGUMENT

I. Standard of Review for Stays and Injunctions Pending Appeal

“Courts considering a stay must weigh the applicant’s likelihood of success on the merits, potential for irreparable injury, and the public interest.” *Smith v. Hamm*, 144 S. Ct. 414, 415 (2024) (Sotomayor, J., dissenting from denial of stay) (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). This Court has authority to issue stays not only of judicial orders but of administrative actions as well (such as the BOE’s ballot certification here). *See, e.g.*, Order Granting Stay, *West Virginia v. EPA*, No. 15A773 (U.S. Feb. 9, 2016) (granting emergency stay pending petitions for review of EPA emission guidelines).

An application for an injunction pending appeal is usually said to require a “significantly higher justification.” *Respect Me. PAC v. McKee*, 562 U.S. 996, 996 (2010). Traditionally, an applicant for a preliminary injunction “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

Here, Applicants more than meet all these standards, because as shown below, emergency relief is indisputably mandated by *Anderson v. Celebrezze*, 460 U.S. 780 (1983), in order to avoid immediate irreparable violation of the constitutional rights of over 100,000 New York voters.

II. As Applied, the Residence Requirement Violates the First and Fourteenth Amendments.

Over a series of cases, this Court has established two tiers of heightened review (now frequently called the “*Anderson-Burdick* framework”) for state ballot-access restrictions. Under both standards of review, the Residence Requirement is unconstitutional as applied.

A. *Anderson-Burdick* framework.

As stated above, in *Anderson v. Celebrezze*, the Supreme Court found unconstitutional a state’s refusal to place on the ballot an independent presidential candidate who had collected the requisite number of signatures but missed a filing deadline. Said the Court:

Constitutional challenges to specific provisions of a State’s election laws ... cannot be resolved by any “litmus paper test” Instead, a court ... must first consider the character and magnitude of the asserted injury to the rights

protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule ... determine the legitimacy and strength of each of those interests ... [and] consider the extent to which those interests make it necessary to burden the plaintiff's rights.

460 U.S. at 789 (citations omitted).

In subsequent cases, the Court has held that the much more demanding “strict scrutiny” test applies to state election regulations that place “severe” burdens on a candidate. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *Burdick v. Takushi*, 504 U.S. 428, 440 (1992). Accordingly, as the Second Circuit has held, under the *Anderson-Burdick* framework, state ballot access regulations are now subject either to: (1) intermediate scrutiny under *Anderson's* balancing test, or (2) strict scrutiny under *Burdick*, but never to “pure rational basis review”:

[C]ourts apply [in cases challenging the constitutionality of state ballot access regulations] what has come to be known as the *Anderson-Burdick* framework. “Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” First, if the restrictions on those rights are “severe,” then strict scrutiny applies. “But when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” [But this] latter, lesser scrutiny is not ‘pure rational basis review.’ Rather, “the court must actually ‘weigh’ the burdens imposed on the plaintiff against ‘the precise interests put forward by the State,’ and the court must take ‘into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.”

SAM Party of New York v. Kosinski, 987 F.3d 267, 274 (2d Cir. 2021) (citations omitted).

Because even the lesser *Anderson* balancing test is not rational-basis review, *Anderson* does not permit courts to invent or hypothesize possible state interests that the regulation in question might serve. Rather, as this Court put it in *Anderson* and as the circuit courts have held, the *Anderson* balancing tests requires courts to “identify” and “weigh” the “***precise interests***” ***actually “put forward by the State.”*** *Anderson*, 460 U.S. at 789 (emphasis added); *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 110-12 (2d Cir. 2008) (rejecting consideration of interests state might have but did not put forward, instead weighing extent to which challenged regulation actually served specific, asserted state interests, and on that basis ruling unconstitutional state regulation even though, as applied, the burden imposed was “not large”).

B. *The Residence Requirement fails even the more deferential Anderson test because this case is indistinguishable from Anderson and, as applied here, the Residence Requirement furthers no legitimate state interests whatsoever.*

1. This case is indistinguishable from *Anderson*

Critically, neither the state courts nor the New York Attorney General’s opposition papers make any attempt to distinguish *Anderson*. They do not assert that the federal, constitutional interests at stake in this case are somehow weaker than those in *Anderson* or that the state interests are somehow stronger. They didn’t make these arguments because they couldn’t.

The federal, constitutional interests in this case are identical to those in *Anderson*. Of special relevance here, the *Anderson* Court emphasized the First Amendment rights of “***voters whose political preferences lie outside the existing***

political parties” and the First Amendment importance of ensuring that presidential “campaigns are *not monopolized by the existing political parties.*” *Anderson*, 460 U.S. at 794. The latter concern is directly and particularly applicable here, because if the state court rulings in this case stand, the only presidential candidates on New York’s 2024 ballot will be former President Donald Trump and Vice President Kamala Harris (and as of today New York is the only state in the country where that is so).

Moreover, the state interests in this case are actually weaker than those implicated in *Anderson*. Filing deadlines undoubtedly serve legitimate state interests. Elections could not be run without them, and candidate Anderson had missed the relevant deadline not by a hair, but by two whole months. Here, by contrast, as will be shown immediately below, the Residence Requirement as applied to this case serves no legitimate state interests at all.

2. As applied, the Residence Requirement serves no legitimate state interests.

As the *Anderson* Court stressed, in the context of the Presidency, the states’ interests in regulating elections are at their lowest ebb:

[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus in a Presidential election a State’s enforcement of more stringent ballot access requirements, including filing deadlines, has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State’s boundaries.

490 U.S. at 794-95. Here, the Residence Requirement serves none of the state interests ascribed to it.

New York’s highest court has held that the Residence Requirement—which applies to all elections for all offices, state or federal—is intended to serve three purposes: (1) “to facilitate the processing of [a candidate’s] petition”; (2) “checking his qualification to run”; and (3) “perhaps most important, to assure that the signers of his petition are aware of the identity of their candidate.” *Ferris v. Sadowski*, 45 N.Y.2d 815, 817 (1978). As applied here, the Residence Requirement furthers none of those interests. The address on Kennedy’s petition was and is entirely immaterial—both to voters and to New York.

No one claims that the first state interest—processing the petition—has any relevance here. The second interest—checking the candidate’s qualification to run—is equally irrelevant, because it is not applicable to the Presidency.

Like other states, New York can and does impose in-state residency requirements on candidates for state and local office. To run for Governor, an individual must be a resident of New York; to run for town selectman, an individual must be a resident of that town. Even candidates for Congress are subject to in-state residency requirements.¹ Thus for nearly all offices, state and federal, the Residence Requirement allows the state to check whether candidates satisfy whatever in-state residency rules apply to them.

¹ See U.S. CONST. art. I, § 2, cl. 2; *id.* § 3, cl. 3.

But none of this applies to the Presidency. An individual from any state may run for President in every state. No state has the constitutional right to limit presidential candidates to in-state residents, and New York does not purport to do so. Thus, as applied to the Presidency, the Residence Requirement does not serve the interest it serves for virtually all other offices: it is not related to a qualification for office.²

As to the third state interest—“assur[ing] that the signers of his petition are aware of the identity of their candidate”—the state courts did not find (and Defendants have never contended) that a single signer of the Kennedy petition was misled or confused about Kennedy’s identity by the address on his petition. Given how well-known Kennedy is, any purported concern that a voter might have been confused about his identity (as the result of his address) is fanciful.

The District Court fell into serious constitutional error on this score when it held that the Residence Requirement passed muster because an invalid New York

² Contrary to the District Court’s suggestion, New York cannot claim that the Residence Requirement serves to a purported state interest in enforcing a Twelfth Amendment prohibition against the President and Vice President being residents of the same state. Listing a presidential candidate’s address on a petition to obtain signatures in *April and May of 2024* cannot establish where the candidate will reside in *December*, which is all that matters for Twelfth Amendment purposes. *Cf. Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000) (holding unconstitutional state requirement that congressional candidate be a state resident at time of filing nomination papers because Constitution requires only that “when elected, [the Representative] be an Inhabitant of that State in which he shall be chosen”) (emphasis in original). In 2000, Vice Presidential candidate Richard Cheney moved from Texas to Wyoming *in late July of that year*, and his July move was held sufficient to avoid any Twelfth Amendment conflict with his Presidential candidate running mate, Texas resident George Bush. *See Jones v. Bush*, 122 F. Supp. 2d 713, 721 (N.D. Tex. 2000) (relevant date for Twelfth Amendment is in December, when Electors vote). Thus requiring Kennedy (or any presidential candidate) to declare his place of residence as of April or May, 2024, cannot be defended as serving a purported state interest in enforcing the Twelfth Amendment.

address could mislead some voters who prefer “hometown” candidates into voting for a presidential candidate who actually lives out of state:

Voters might be entirely misled and manipulated into voting for a presidential candidate because he claimed to be a New York resident, although he actually resided in Oklahoma and never lived at the address he listed on his nominating petition. Perhaps the candidate had no intent of posing as a hometown candidate to attract voters. But it might certainly be the case that some voters will vote for a hometown candidate, without considering any other factors.

(Dkt. No. 74 at 29, App. 30.) This analysis was clearly erroneous for three reasons.

First, the District Court here hypothesized a brand new state interest, unmentioned by either the state courts or the Defendants. Second, the District Court’s hypothesis is unsupported. There is no evidence in this case that a single one of the over 100,000 signatories of the Kennedy petition was misled in the fashion the District Court described. In essence, the District Court here applied mere-rationality review, under which a state regulation may be upheld on the basis of any conceivable state interest, even if no evidence supports it. But the *Anderson* balancing test, while deferential, is not rational basis review. *See, e.g., SAM Party*, 987 F.3d at 274; *Obama for Am. v. Husted*, 697 F.3d 423, 431 (6th Cir. 2012) (distinguishing *Anderson* scrutiny from rational basis review).

Finally, and most fundamentally, the District Court’s hypothesized state interest is constitutionally illegitimate. To be sure, a voter can vote for whomever he chooses on any basis he chooses. But in the context of federal elections, a state cannot impose ballot-disclosure requirements ***for the purpose of giving voters so inclined a basis for refusing to vote for that candidate.*** *See Cook v. Gralike*, 531 U.S. 510, 523 (2001) (striking down state law requiring that ballot disclose if candidate did not

support term limits, because law did not regulate time, place, or manner of elections, and states have no authority to mandate disclosure of information on ballot “to favor or disfavor a class of candidates”). Contrary to the District Court’s hypothesis, in the context of a presidential election, a state cannot enact or apply regulations to favor “hometown” presidential candidates.

In the state trial court’s ruling, no claim is made that the Residence Requirement as applied in this case served any particular state interests. Instead, the trial court simply asserted that New York has a policy of “strict compliance” with its statutory petition requirements. *Cartwright v. Kennedy*, 2024 N.Y. Misc. LEXIS 3768, at *35-36. This claim is clearly deficient for two reasons. First, it flies in the face of *Anderson*, which held that a state’s interest in strictly enforcing a statutory petition deadline was not a constitutionally sufficient ground for excluding from the ballot an independent presidential candidate with significant voter support.

Second, equally important, New York ***does not have a policy of “strict compliance” with the Residence Requirement***. New York cases have frequently forgiven erroneous candidate addresses and have expressly held that a wrong address on a ballot-access petition does not invalidate the petition absent “an intent to mislead or confuse signatories ***as to the candidate’s identity***.” *E.g.*, *Maloney v. Ulster County Board of Elections*, 21 A.D.3d 692, 693, 800 N.Y.S.2d 249 (3d Dep’t 2005) (emphasis added); *Pagones v. Irizarry*, 87 A.D.3d 648, 649, 928 N.Y.S.2d 467 (2d Dep’t 2011) (same); *Shahzad v Montesano*, No. 9368/12, 2012 N.Y. Misc. LEXIS 3865, at *4 (N.Y. Sup. Ct. Nassau County Aug. 2, 2012) (same); *see also Ferris v.*

Sadowski, 45 N.Y.2d at 817 (“perhaps most important” purpose of Residence Requirement is “to assure that the signers of his petition are aware of the *identity* of their candidate”) (emphasis added).

Indeed, the Third Department—the very same court that issued the challenged ruling here—has in past cases stated this rule unequivocally:

Where a candidate’s address is erroneously stated on the designating petition, but there is no showing of an intent by the candidate to mislead or confuse signatories *as to his or her identity*, nor a showing that the error would or did tend to mislead or confuse anyone, the designating petition should not be invalidated.

Maloney, 21 A.D.3d at 693 (emphasis added). In other words, New York’s own case law refutes the notion that New York has any interest—much less a significant or weighty interest—in strict compliance with the Residence Requirement unless there was an intent to mislead signatories as to the candidate’s identity or evidence that signatories were confused on that score. And no one has contended that any such intent, or any such confusion, was present here.

In their opposition papers in the Second Circuit, Defendants expressly admit that they have no evidence and no argument that the Residence Requirement as applied to Mr. Kennedy actually served to further any legitimate state interests:

[T]he State’s interests in election integrity, fraud prevention, and equal application of the law are all served by its requirement that candidates accurately disclose their residence on campaign filings.... *Whether these interests were furthered by specifically excluding Kennedy from the ballot is beside the point.*

Dkt. 29-1 at 25 (emphasis added). Once again, this stunning admission flies in the face of *Anderson*—or rather proves that the exclusion of Mr. Kennedy from the ballot

violates *Anderson*—because *Anderson* expressly requires that courts weigh “the extent to which [the asserted state] interests ***make it necessary to burden the plaintiff’s rights.***” *Anderson*, 460 U.S. at 789 (emphasis added). Under *Anderson*, it is decidedly not “beside the point” that excluding Mr. Kennedy from the ballot did not in fact further any state interests. On the contrary, under *Anderson*, that ***is*** the point. Defendants have here conceded that excluding Mr. Kennedy from the ballot was not “necessary” to further any of the state interests they assert, and for this reason alone their conduct must be stayed and/or enjoined.

Thus as applied here, the Residence Requirement is immaterial to any legitimate state interests and fails even *Anderson* intermediate scrutiny.

C. *The Residence Requirement is subject to and cannot survive strict scrutiny.*

Even if the Residence Requirement as applied here served some significant state interests (which it does not), it would still be unconstitutional because it is subject to, and cannot survive, strict scrutiny.

A state ballot-access regulation imposing a “severe” burden is subject to strict scrutiny. *SAM Party of New York*, 987 F.3d at 274. Excluding the only independent presidential candidate from the ballot is unquestionably a “heav[y] burden.” *Anderson*, 460 U.S. at 787. And the Residence Requirement in particular is severely burdensome.

First, disclosure of a controversial public figure’s home address can put that individual and his family in danger.³ It can result in round-the-clock demonstrations

³ See, e.g., Washington Post, “*They were threatening me and my family*”: Tucker Carlson’s home

outside his house, attacks on his home,⁴ and harassment of his family, including his children. This is a severe burden to impose on a presidential candidate on pain of exclusion from the ballot.

Second, New York’s definition of residence, for petitioning purposes, conflicts with that of other states. In Maine, for example, independent presidential candidates must declare their “municipality of residence,” but this is defined by Maine as the place “where the Presidential candidate is registered to vote.”⁵ In Kennedy’s case, that residence is Katonah, New York. (Kennedy Dec. ¶ 12, App. 134.) If, by contrast, New York’s definition of residence required Kennedy to list an address in California, then Kennedy would have had to list conflicting places of residence on his Maine and New York ballot-access petitions, which could subject him to costly litigation and potential exclusion in one or both jurisdictions.

Third, New York’s Residence Requirement is severe because it completely excludes from the ballot any candidate with no “fixed,” “permanent” home to which he “always intends to return.” With respect to all such candidates, the Residence Requirement effects total “exclusion or virtual exclusion from the ballot,” which is the

targeted by protesters (Nov. 8, 2018), <https://www.washingtonpost.com/nation/2018/11/08/they-were-threatening-me-my-family-tucker-carlsons-home-targeted-by-protesters> (describing threatening events, including “pounding on ... front door” and chanting of “we know where you sleep at night” by protesters outside Tucker Carlson’s home after his home address, which he had tried to keep private, was “doxed” online).

⁴ See, e.g., NBC, *Suspicious Packages Sent to Sen. Kamala Harris, Tom Steyer Tied to Mail Bomb Suspect: FBI* (Oct. 26, 2018), <https://www.nbcsandiego.com/news/national-international/suspicious-package-sent-to-kamala-harris-in-sacramento/2043083>.

⁵ See Ballot Access for Non-party Presidential Candidates in Maine, MAINE DIVISION OF ELECTIONS at 5 (Dec. 2023), <https://www.maine.gov/sos/cec/elec/candidate/FINAL%20-%20Candidate's%20Guide%20-%20Non-Party%20Presidential%20Candidates.pdf>.

“hallmark of a severe burden.” *Libertarian Party of Conn. v. Lamont*, 977 F.3d 173, 177 (2d Cir. 2020).

The District Court mistakenly brushed this problem aside by pointing to New York’s rule that a candidate with “two residences” may “choos[e] one for election purposes.” (Dkt. No. 74 at 25.) This misses the point. Yes, for a candidate with “two residences” both of which satisfy New York’s definition (such as a city home and a country home to both of which he always intends to return), either home will satisfy the Residence Requirement. But a candidate ***with no residence satisfying New York’s definition***—for example, a military serviceman with no permanent address to which he always intends to return—will be completely excluded.

Kennedy’s situation is illustrative. According to the state courts, Kennedy’s Katonah address is not his “permanent, principal home.” But Kennedy has stated under oath that he intends to return to New York after his wife’s Hollywood career is over. (*See, e.g.*, Kennedy Aff. ¶ 27, App. 143.) Thus Kennedy’s Los Angeles home would seemingly also fail to satisfy New York’s Residence Requirement because it is not a place to which, “wherever temporarily located,” he “always intends to return.” N.Y. Election L. § 1-104 (22). Thus, there is a real possibility that Kennedy ***has no home satisfying New York’s Residence Requirement***. At a minimum, the Residence Requirement forces a candidate in Kennedy’s position to gamble on what a state court will later say about his true domicile—and if he guesses wrong, it will be too late to submit a corrected petition.

Finally, the Residence Requirement triggers strict scrutiny because it is not applied even-handedly—either to independent candidates in general or to Mr. Kennedy in particular. *See Election Integrity Project Cal., Inc. v. Weber*, No. 23-55726, 2024 U.S. App. LEXIS 20618 at *22 (9th Cir. Aug. 15, 2024) (for publication) (“regulations impacting the right to vote” are “severe” if they are not “generally applicable, even-handed, [and] politically neutral”) (citations omitted). Although major party candidates are also required by New York law to disclose their place of residence, they can submit a corrected nomination certificate in case of error. (*See, e.g.*, Dkt. No. 11.2, page 125 of 254 (amended nominating certificate correcting erroneous address).) In other words, established party nominees have an “opportunity to correct,” whereas independent candidates do not. *Cf., e.g., Farrell v. Board of Elections*, No. 85 Civ. 6099 (JES), 1985 U.S. Dist. LEXIS 16669, at *27-28 (S.D.N.Y. Aug. 20, 1985) (issuing preliminary injunction ordering candidate to be placed on ballot despite violation of petition cover-sheet requirement, where state could not justify rule that “a cover sheet omission invalidates every signature in the accompanying volume, ***without affording the candidate the opportunity to correct the omission***”). Thus, the Residence Requirement requires strict scrutiny because it “falls unequally” on independent presidential candidates. *See Anderson*, 460 U.S. at 793 (“A burden that falls unequally on new or small political parties or on independent candidates ... discriminates against those candidates and—of particular importance—against those voters whose political preferences lie outside the existing political parties.”).

Moreover, New York’s application of the Residence Requirement against Kennedy is not “even-handed.” As stated above, New York courts have repeatedly and expressly held that a wrong address on a ballot-access petition does not invalidate the petition absent “an intent to mislead or confuse signatories *as to the candidate’s identity*.” *E.g., Maloney v. Ulster County Board of Elections*, 21 A.D.3d 692, 693, 800 N.Y.S.2d 249 (3d Dep’t 2005) (emphasis added); *Pagones v. Irizarry*, 87 A.D.3d 648, 649, 928 N.Y.S.2d 467 (2d Dep’t 2011) (same); *Shahzad v Montesano*, No. 9368/12, 2012 N.Y. Misc. LEXIS 3865, at *4 (N.Y. Sup. Ct. Nassau County Aug. 2, 2012) (same); *see also Ferris v. Sadowski*, 45 N.Y.2d at 817 (“perhaps most important” purpose of Residence Requirement is “to assure that the signers of his petition are aware of the *identity* of their candidate”) (emphasis added). But the Third Department departed from this rule, excluding Kennedy without the slightest evidence of any such intent. Thus, the Residence Requirement has not been applied even-handedly and for that reason too is subject to strict scrutiny.

III. The Residence Requirement Violates the Presidential Qualifications Clause.

The Presidential Qualifications Clause sets forth the exclusive requirements for eligibility for the Office of the President:

No Person except a natural born Citizen... shall be eligible to the Office of President, neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

U.S. CONST., art. II, § 1, cl. 5. The Framers intended the Qualifications Clause to “fix as exclusive the qualifications in the Constitution,” *U.S. Term Limits, Inc. v.*

Thornton, 514 U.S. 779, 806 (1995), “thereby ‘divest[ing]’ States of any power to add qualifications.” *Id.* at 801. States do not “possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.” *Id.* at 827. This prohibition fully applies to state laws restricting access to the ballot. *See, e.g., U.S. Term Limits*, 514 U.S. at 783.

The Residence Requirement violates this prohibition by imposing an additional qualification on an independent presidential candidate seeking ballot access in New York: that they must have a fixed permanent home to which they always intend to return. New York has no authority to bar persons without a “fixed” home from running for President. Under the Qualifications Clause, an individual who has no permanent home—for example, a member of the military who has been deployed to various locations for many years without ever establishing a permanent home anywhere—is as entitled to run for President as anyone else who satisfies the Clause’s three requirements. For that matter, so is a homeless person.

IV. Neither Res Judicata Nor Collateral Estoppel Bars This Action.

As the District Court properly concluded, neither res judicata nor collateral estoppel applies to bar this action. Those preclusion doctrines cannot apply to Plaintiffs unless they were parties to the state court proceedings, which none of them was. While Plaintiff Team Kennedy might arguably be deemed in privity with Mr. Kennedy (who was a party in state court), Plaintiffs AV24 and Rose cannot remotely be considered in privity with Kennedy.

As the Second Circuit has observed, “control” is “the crux of the finding of privity in a case such as this.” *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 96 (2d Cir. 2005). In other words, AV24 and Rose are not in privity with Kennedy unless Kennedy controls them or controls this litigation. *See id.* at 95 (“plaintiffs in a federal suit that follows a state suit are in privity with the state plaintiffs where ‘their interests are the same **and [the federal plaintiffs] are controlled by the same party or parties’ as the state plaintiffs**”) (emphasis added). Sufficient control exists if a voter or other third parties are mere “puppets” of the candidate, *id.* at 96, or if the candidate’s “involvement in and control of every aspect of both the state and federal actions presents a connection of much greater magnitude than identity of interest alone.” *Id.* (citation omitted).

Respondents, who bear the burden of proving privity, have made no showing whatsoever of control here. *See Sacerdote v. Cammack Larhette Advisors, LLC*, 939 F.3d 498, 508 n.52 (2d Cir. 2019) (“the burden of proving privity and preclusion is on the party asserting that affirmative defense”). Nor could they have done so. AV24 is required by federal law to remain independent of Kennedy and his campaign, and is forbidden to coordinate expenditures with him or his campaign. (*See Reply Declaration of Deirdre Goldfarb at ¶ 5, App. 121*). And AV24 has supported ballot access not only for Kennedy, but for other candidates and parties in competition with Kennedy. *See id.; Hoblock*, 422 F.3d at 96 (privity exists where third parties “advance only those interests that they share with the candidates”).

As for Movant/Appellant Rose, he is not represented by the lawyers representing Kennedy in state court or Team Kennedy here. *Cf. Ferris v. Cuevas*, 118 F.3d 122, 128 (2d Cir. 1997) (finding privity in part because same counsel represented both state-court and federal-court parties). Moreover, Rose has moved to amend the complaint to sue not only individually, but on behalf of all similarly situated New York voters who signed a petition seeking to place **any** independent presidential candidate on New York’s ballot, including candidates other than Kennedy. (Proposed Second Amended Complaint, Dkt. No. 72, App. 39.) Rose’s representative status for petitioners for other candidates further establishes that Rose is not in privity with Kennedy. *See Hoblock*, 422 F.3d at 96 (no privity where “plaintiff voters choose ... to amend their complaint ... to advance the rights of all similarly situated voters”).

V. All Harm Factors Strongly Favor Applicants.

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Agudath Israel v. Cuomo*, 983 F.3d 620, 636 (2d Cir. 2020) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This is especially clear where, as here, shortly before a presidential election, a state has unconstitutionally excluded an independent presidential candidate from the ballot. No remedy at law can repair the injury caused thereby to voters.

When the government is the defendant, the public-interest and balance-of-equities factors merge because in the balance of equities, the government’s interest is the public interest. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). And as to these merged elements, the government has no legitimate interest in the enforcement of a

likely unconstitutional law. *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003). “[B]y establishing a likelihood that [the challenged law] violates the U.S. Constitution, [p]laintiffs have also established that both the public interest and the balance of the equities favor a preliminary injunction.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).

Defendants argued below and are certain to argue here that Kennedy’s recent suspension of his campaign means that excluding him from the ballot will cause him no irreparable harm. That claim fails for two reasons. First, a suspended campaign is not a terminated campaign; in 1992, presidential candidate Ross Perot suspended his campaign in July, continued to be put on state ballots throughout the summer, returned to the race in October, and won almost 20% of the vote in November.⁶ Second, even more fundamentally, Defendants’ arguments about Kennedy’s suspended campaign fail to recognize whose rights are most critically at stake in this case: the 108,417 BOE-verified New York citizen-voters⁷ who signed the invalidated Kennedy petition.

Those voters have a constitutional right to have Kennedy placed on the ballot—and to vote for him, whether he is campaigning for their vote or not. Defendants informed the Second Circuit that some ballots are already being distributed to overseas military servicemen. Even if so, there remain millions of other ballots on which the unconstitutional exclusion of Kennedy should not be permitted. As

⁶ See CNN, Reform Party: Political Timeline 1992, <https://www.cnn.com/ALLPOLITICS/1996/conventions/long.beach/perot/political.timeline.shtml>.

⁷ See the NYBOE determination attached at App. 118.

Respondents themselves acknowledge, the current BOE ballot certification expressly states that certain ballot entries remain subject to pending litigation (Dkt. 29.1 at 9 n.4), indicating that the BOE is already aware that the existing certification may have to be amended.

Whatever inconvenience the Respondents may have in adding Kennedy to the ballot seven weeks before the election, it seems inconceivable that those difficulties or expenses could outweigh the constitutional rights of 108,417 New York voters. New York courts have ordered candidates placed on the ballot later than this. *See, e.g., Wilson v. Bowman*, 121 A.D.3d 1402 (3rd Dept. 2014) (ordering ballot change on October 24); *Innamorato v. Friscia*, No. 80042/07, 2007 N.Y. Misc. LEXIS 457 (N.Y. Sup. Ct. Feb. 5, 2007) (ordering ballot change seven days before special election). As the Texas Supreme Court said on September 18, 2020, “We recognize that changes to the ballot at this late point in the process will require extra time and resources to be expended by our local election officials,” *In re Green Party of Texas*, 630 S.W.3d 36, 40 (Tex. 2020), but a “candidate’s access to the ballot lies at the very heart of a constitutional republic,” *id.* at 37, and “an added expense is not a sufficient justification to deny these candidates that access.” *Id.* at 40.

The right to vote means little if there is no right to vote for the candidate of your choice and if a hundred thousand independent-minded voters cannot secure a place on the ballot for the candidate of their choice. Defendants argued below that New York allows write-in votes for independent candidates, but this Court has expressly rejected that argument. *See Anderson*, 460 U.S. at 799 n.26 (“It is true, of

course, that Ohio permits ‘write-in’ votes for independents. [But] this opportunity is not an adequate substitute for having the candidate’s name appear on the printed ballot.”). The core and dispositive issue in this case is just this: the rights of 108,417 voters clearly and overwhelmingly outweigh the state’s enforcement of a non-material part of a ballot access petition. Protecting those rights justifies the emergency and extraordinary relief requested herein.

CONCLUSION

For the foregoing reasons, Applicants respectfully seek, pending further review in the Second Circuit or in this Court, an immediate injunction ordering Respondents to reinstate Kennedy to the ballot.

Respectfully submitted,

September 20, 2024

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CERTIFICATE OF SERVICE

A copy of this application was served by email and mail to the counsel listed below in accordance with Supreme Court Rules 22.2 and 29.3:

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APPENDIX

APPENDIX

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United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of September, two thousand twenty-four.

Present:

Gerard E. Lynch,
Beth Robinson,
Sarah A. L. Merriam,
Circuit Judges.

Team Kennedy, American Values 2024, Jeffrey Rose,

Plaintiffs-Appellants,

v.

24-2385

Henry T. Berger, in his official capacity as the Co-Chair of the New York State Board of Elections, Peter S. Kosinski, in his official capacity as the Co-Chair of the New York State Board of Elections, Essma Bagnuola, in her official capacity as a Commissioner of the New York State Board of Elections, Anthony J. Cassale, in his official capacity as a Commissioner of the New York State Board of Elections, Kristen Zebrowski Stavisky, in her official capacity as Co-Executive Director of the New York State Board of Elections, Letitia James, in her official capacity as the Attorney General of the state of New York, Raymond J. Riley III, in his official capacity as Co-Executive Director of the New York State Board of Elections,

Defendants-Appellees.

Appellants move for an emergency injunction pending appeal. Having weighed the applicable factors, we conclude that an injunction pending appeal is not warranted. *See Agudath Isr. of Am. v. Cuomo*, 980 F.3d 222, 225-26 (2d Cir. 2020). Accordingly, upon due consideration, it is hereby ORDERED that the motion is DENIED.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

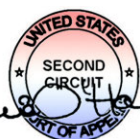
Catherine O'Hagan Wolfe



FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe



CERTIFIED COPY ISSUED ON 09/18/2024

SOUTHERN DISTRICT OF NEW YORK

**TEAM KENNEDY, AMERICAN VALUES
2024, and JEFFREY ROSE**

Plaintiffs,

-against-

**HENRY T. BERGER, in his official capacity
as Co-Chair of the New York State Board of
Elections; PETER S. KOSINSKI, in his
official capacity as Co-Chair of the New York
State Board of Elections; ESSMA
BAGNUOLA, in her official capacity as a
Commissioner of the New York State Board of
Elections; ANTHONY J. CASSALE, in his
official capacity as a Commissioner of the New
York State Board of Elections; KRISTEN
ZEBROWSKI STAVISKY, in her official
capacity as Co-Executive Director of the New
York State Board of Elections; RAYMOND J.
RILEY, III, in his official Capacity as Co-
Executive Director of the New York State
Board of Elections; and LETITIA JAMES, in
her official capacity as the Attorney General
of the state of New York,**

Defendants.

1:24-cv-3897 (ALC)

OPINION & ORDER

ANDREW L. CARTER, JR., District Judge:

"It is to be expected that [] voter[s] hope[] to find on the ballot a candidate who comes near to reflecting [their] policy preferences on contemporary issues. The right to vote is heavily burdened if that vote may be cast only for major-party candidates at a time when other parties or other candidates are clamoring for a place on the ballot." *Anderson v. Celebrezze*, 460 U.S. 780, 787-788 (1983) (internal citations omitted); "[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and

honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (internal citations omitted).

One week after the Supreme Court of the State of New York ordered Robert F. Kennedy Jr., a candidate of the We The People Independent Body for Public Office of President of the United States (“We The People”) nomination petition to be invalidated, Team Kennedy, America Values 2024, and Jeffery Rose brought this emergency request for preliminary injunction, approximately twenty days before New York will begin printing and mailing out ballots, asking this Court to enjoin the New York State Board of Elections’ (“NYSBOE”) enforcement of the State Court’s decision and order the NYSBOE to keep Kennedy on the ballot. For the reasons set forth below, this Court denies this extraordinary relief. Plaintiffs have not demonstrated a likelihood of success on a constitutional injury.

BACKGROUND

The following facts are drawn from the Original Complaint (ECF No. 1), First Amended Complaint (“FAC”), Plaintiffs’ memorandum in support of a temporary restraining order and/or preliminary injunction (ECF No. 34), Defendants’ memorandum in opposition of Plaintiffs’ motion for a preliminary injunction (ECF No. 46), Plaintiffs’ reply memorandum in further support of a preliminary injunction (ECF No. 54), Defendants’ memorandum in opposition to proposed Plaintiff-Intervenors motion to intervene (ECF No. 51), the State Court trial testimony (ECF No. 47_Ex.1), and the documents relied upon therein.

I. Statutory Scheme

Under New York law, for an independent presidential candidate and their electors to secure nomination and access to the November General Election ballot, they must file an independent

nominating petition with the NYSBOE. N.Y. Elec. Law §§ 6-138, 6-140, 6-142(1), 6-144. The independent nominating petition must include, among other requisites, the signatures of at least forty-five thousand New York voters and the candidate’s “[p]lace of residence.” N.Y. Elec. Law §§ 6-140(1), 6-142(1). A candidate’s “residence” is where they “maintain[] a fixed, permanent and principal home and to which [they], wherever temporarily located, always intend[] to return.” N.Y. Elec. Law § 1-104(22). A candidate’s “residence” is where he “maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return.” N.Y. Elec. Law § 1-104(22). Eligible voters under N.Y. Elec. Law §§ 16-101(1) and 16-102 may bring a proceeding in the Supreme Court of New York to contest an independent presidential candidate nominating petition. N.Y. Elec. Law §§ 16-100(1), 16-101(1), 16-102(1).

II. Factual Background

Kennedy resided in New York for the majority of his life. *Cartwright v. Kennedy*, No. CV-24-1294, 2024 WL 3977541, at *2 (N.Y. App. Div. Aug. 29, 2024); ECF No. 47_Ex.1, at 18. However, in November 2012, he sold his Bedford, NY property. ECF No. 47_Ex.1, at 11. Then in 2014, Kennedy married Cheryl Hines, who resides in California, and testified that “one of [them] had to move.” *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *2.; ECF No. 47_Ex.1, at 10. That same year, Kennedy moved his younger than-college-age children, an employee of forty years (and their family), pet emu, turtles, and three dogs to California with him. ECF No. 47_Ex.1, at 10. Kennedy left behind 20 falcons and hawks in New York. ECF No. 47_Ex.1, at 10. In 2015, Kennedy testified to living in his sister’s residence for six months or less in New York, before it was sold on November 17, 2015. ECF No. 47_Ex.1, at 12. Kennedy continued to use his sister’s address to register to vote in the 2016 primary and general elections. ECF No. 47_Ex.1, at 12.

After that, Kennedy stayed at his friend, David Michaelis’s home in Bedford, NY,¹ until January 2017. ECF No. 47_Ex.1, at 7. Two or three weeks per month, Kennedy would arrive on Sunday nights to work at Pace University and Riverkeeper, both located in New York, then travel back to California on Tuesday. ECF No. 47_Ex.1, at 7, 12. In 2017, Kennedy resigned from his positions at Pace University and Riverkeeper. ECF No. 47_Ex.1, at 12. In a resignation letter dated March 10, 2017, to Riverkeeper Kennedy stated, “[a]s you know, I now live on the west coast and the weekly commute has been hard on my family to say nothing of my carbon footprint.” ECF No. 47_Ex.1, at 12.

In 2021, Kennedy purchased a home with his wife in California. ECF No. 47_Ex.1, at 11. Kennedy and Hines owned real property in California and Massachusetts but not in New York. ECF No. 47_Ex.1, at 11. On Kennedy’s Federal Election Commission paperwork, he listed his address as 2975 Mandeville Canyon Road. ECF No. 47_Ex.1, at 10. Kennedy also works as counsel for Howard & Street in California. ECF No. 47_Ex.1, at 11.

On April 19, 2023, Kennedy declared his intention to run for President of the United States with America Values 2024, “a political action committee,” spending “millions of dollars supporting and advocating [his] candidacy.” *Cartwright v. Kennedy*, No. CV-24-1294, 2024 WL 3977541, at *3; ECF No. 34, at 4. In November 2023, Kennedy’s lawyer, Paul Rossi, advised him that his “current domicile” “under New York Law and under every other law” is at a specific address in Katonah, New York. ECF No. 47_Ex.1, at 21.

¹ Plaintiffs claim that listing a candidate’s residence is an unnecessary burden, dangerous in light of safety concerns for political candidates. The Court takes seriously safety concerns of all litigants. Plaintiffs never sought to redact Kennedy’s address on the nominating petition, and Plaintiffs cite to specific addresses throughout their filings in this case, without seeking redaction/sealing. Balancing the public’s First Amendment right of access with the privacy interests of Kennedy, and others mentioned in this case, the Court will not mention specific addresses in this opinion. If Plaintiffs seeks to re-file redacted versions of the pleadings in this case, they should notify the Court.

On May 28, 2024, Team Kennedy, Kennedy’s campaign organization, submitted an independent nomination petition for Kennedy to the NYSBOE. ECF No. 34, at 2-3. The petition listed Kennedy’s place of residence as the address in Katonah, New York, and contained 146,467 signatures. ECF No. 51, at 7; ECF No. 47-Ex.1, at 13. Rose, a New York resident, was one of those signatories. ECF No. 34, at 4. The petition also included Nicole Shanahan, a California resident, as the candidate for vice president. *Cartwright*, No, CV-24-1294, 2024 WL 3977541, at *1; ECF No. 34, at 11.

Kennedy claimed, from 2023, to have let a room in the Katonah property, owned by his childhood friend’s wife, Barbara Moss. ECF No. 34, at 4; ECF No. 47_Ex.1, at 16-17. However, no lease agreement was executed, and Moss received her first payment from Kennedy after a New York Post article was published about Kennedy on May 20, 2024. ECF No. 47_Ex.1, at 14, 17. Moss testified that Kennedy spent just one night at her residence, and that was in June 2024. ECF No. 47_Ex.1, at 16. Kennedy also testified that he did not have a lot of “physical attachment” or “a physical presence” at the Katonah property. ECF No. 47_Ex.1, at 6-7. However, Kennedy testified he intended to return and paid income taxes in New York. ECF No. 54, at 7; ECF No. 47_Ex.1, at 13-14.

On May 31, 2024, and June 10, 2024, Voter-Objectors filed petitions in two separate state actions to invalidate Kennedy’s nominating petition based on deficiencies in the petition’s residency and signature requirements. ECF No. 46, at 6. The petition was filed against Kennedy and the Commissioners of the NYSBOE: Henry T. Berger, Peter S. Kosinski, Essma Bagnuola, Anthony J. Cassale, Kristen Zebrowski Stavisky, and Raymond J. Riley III. ECF No. 46, at 6. On July 16, 2024, the Commissioners of the NYSBOE found Kennedy’s petition had sufficient signatures and was valid “subject to judicial action in any court proceedings.” ECF No. 46 at 6.

In August 2024, Kennedy suspended his presidential campaign and endorsed another candidate. ECF No. 46 at 2, 15.

III. Procedural History

A. Proceedings in Federal Court

On May 21, 2024, Team Kennedy commenced this action challenging New York Election Law provisions governing the time and manner for the requisite collection of signatures for an independent candidate and their electors to secure nomination and access to the November General Election ballot, under the First and Fourteenth Amendments. ECF No. 1. On August 22, 2024, Team Kennedy filed an Amended Complaint, adding two parties (American Values 2024 and Rose) and two new claims under the First and Fourteenth Amendments. FAC; ECF No. 46, at 9. Plaintiffs claimed that N.Y. Elec. Law §§ 1-104(22), 6-140(1), which required the disclosure of an independent presidential candidate's place of residence on a nominating petition, was unconstitutional. *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3; FAC; ECF No. 46, at 9-10; ECF No. 34, at 9-12. On August 22, 2024, Plaintiffs also filed an emergency motion for an order to show cause for a temporary restraining order and a preliminary injunction seeking to restrain and enjoin the State Court's August 13, 2024, ruling and NYSBOE from removing Kennedy's name from the ballot, as an independent party candidate for the office of the President of the United States. ECF Nos. 33, 34.

On September 4, 2024, the Court conducted a hearing on Plaintiffs' application for a preliminary injunction. Representatives for Team Kennedy, American Values 2024, Rose, Berger, Kosinski, Bagnuola, Cassale, Stavisky, Rilley, James, Cartwright, Nelson, and Rhone appeared. Plaintiffs filed a Motion for Leave to file a Second Amended Complaint on September 9, 2024. ECF Nos. 70-71.

B. Proceedings in State Court

On May 31, 2024, two New York voters filed a petition under N.Y. Elec. Law § 16-102, against Kennedy and the Commissioners of the NYSBOE in New York Supreme Court, Nassau County, seeking to invalidate Kennedy’s nominating petition. *Smith v. Kennedy*, 83 Misc. 3d 1239(A), 212 N.Y.S.3d 921, at *1 (N.Y. Sup. Ct. 2024). The Petitioner-Objectors claimed Kennedy’s nominating petition was “invalid and lacks the requisite number of signatures sufficient to be placed on the ballot.” *Id.*; see N.Y. Elec. Law §§ 6-138, 6-140, 6-142(1).

On June 10, 2024, four New York voters filed a petition under N.Y. Elec. Law § 16-102, against Kennedy and the Commissioners of the NYSBOE in New York Supreme Court, Dutchess County, seeking to invalidate Kennedy’s nominating petition. *Cartwright v. Kennedy*, No. 906349-24, 2024 WL 3880344, at *2 (N.Y. Sup. Ct. July 23, 2024). The Petitioner-Objectors claimed Kennedy’s nomination petition should be invalidated, “on a myriad of grounds, including allegations that a number of subscribing witness statements and individual signatures suffer from fatal defects, that fraudulent methods were used during the signature collection process, and that respondent Kennedy falsely represented on the nominating petition that he is a resident of New York State when in truth he is a resident of California.” *Id.* On August 13, 2024, the State Court granted the petition in its entirety and ordered the invalidation of the nomination petition filed to designate Kennedy as the presidential candidate, Shanahan as the vice-presidential candidate, and the electors for We The People. *Cartwright v. Kennedy*, No. 906349-24, 2024 WL 3894605, at *15-16 (N.Y. Sup. Ct. Aug. 13, 2024), *aff’d*, No. CV-24-1294, 2024 WL 3977541. The court found that Kennedy’s address listed on the nomination petition was not his “bona fide and legitimate residence, but merely a ‘sham’ address” therefore violating New York Election Law. *Id.*; see N.Y. Elec. Law §§ 1-104(22), 6-138, 6-140.

Kennedy appealed the decision to the Appellate Division, Third Department, claiming the New York Election law violated the First, Twelfth, and Fourteenth Amendments. *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3. On August 29, 2024, the Third Department affirmed the state trial court's August 13, 2024 judgment. *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3-4. On September 10, 2024, the Court of Appeals of New York dismissed Plaintiffs' pending appeal of the Third Department's decision. 2024 N.Y. Slip Op. 73915, *In the Matter of Caroline Cartwright, et al., Respondents, v. Robert F. Kennedy Jr., et al., Appellants, et al., Respondents.*, No. 2024-632, 2024 WL 4127460, at *1 (N.Y. Sept. 10, 2024)

STANDARD OF REVIEW

"[T]o obtain a preliminary injunction against governmental action taken pursuant to a statute, the movant has to demonstrate (1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, and (3) public interest weighing in favor of granting the injunction. The movant also must show that the balance of equities tips in his or her favor." *Yang v. Kosinski*, 960 F.3d 119, 127 (2d Cir. 2020) (internal quotation marks, footnote, and alteration omitted). A district court may enter a *prohibitory* preliminary injunction staying "government action taken in the public interest pursuant to a statutory or regulatory scheme" only when the moving party has demonstrated that (1) absent injunctive relief, he will suffer "irreparable injury," and (2) there is "a likelihood that he will succeed on the merits of his claim." *Mastrovincenzo v. City of New York*, 435 F.3d 78, 89 (2d Cir. 2006) (internal citations omitted).

The Second Circuit has held that in the temporary restraining order or preliminary injunction context, the status quo is "the last actual, peaceable uncontested status which preceded the pending controversy." *Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014) (quotation

marks and internal citations omitted). The Second Circuit has also explained that the status quo "is really a 'status quo ante,'" which is intended to preclude "[parties] from seeking shelter under a current 'status quo' precipitated by their wrong-doing." *North American Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d at 32, 37 n.5 (2d Cir. 2018)

The Parties dispute whether Plaintiffs seek a prohibitory or mandatory injunction. Plaintiffs assert that the last peaceable uncontested status was when the Board of Elections voted and decided that Kennedy's petitions were valid. Preliminary Injunction Hearing Transcript ("Hearing Tr.") at 6:18-7:4. At that point he was on the ballot. *Id.* The controversy is that the State Court ruling knocked him off the ballot, and therefore this a prohibitory injunction not a mandatory one. *Id.* Defendants argue that Plaintiffs seek a mandatory injunction because the Board of Elections had never determined Kennedy was going on the ballot, and always recognized that this residence question was for the State Court to decide. *Id.* at 12:10-13:11.

Here, the last actual, peaceable, uncontested status between the Parties was on July 29, 2024 when Defendant Board Commissioners determined that Kennedy's petition was valid "subject to judicial action in any court proceeding." Def. Opp., ECF No. 46 at 6. As such, Plaintiffs seek a prohibitory injunction to enjoin enforcement of the State Court's decision to invalidate Kennedy's nominating petition.²

Plaintiffs are not subject to the heightened standard for mandatory injunctions, and therefore only need to show a "greater than fifty percent probability of success." *Citigroup Glob. Markets, Inc.*, 598 F.3d at 34-35 (2d Cir. 2010).

² Given the Court's finding that Plaintiffs are unlikely to succeed on the merits of their requested prohibitory injunction, Plaintiffs fail to meet the heightened standard of "clear and substantial" likelihood of success for mandatory injunctions.

DISCUSSION

Before turning to the merits, the Court will address Defendants' non-merit-based objections to the preliminary injunction in turn: abstention, mootness, collateral estoppel, and res judicata.

I. This Court's Exercise of Subject Matter Jurisdiction is Proper

Because the existence of subject matter jurisdiction is a threshold question, the Court must resolve jurisdictional issues before delving into the merits of a dispute. *See McCrory v. Adm'r of the Fed. Emergency Mgmt. Agency of the United States Dep't of Homeland Sec.*, 22 F. Supp. 3d 279, 286-87 (S.D.N.Y. 2014). The First Amended Complaint indicates that this Court has jurisdiction under the U.S. Constitution, 28 U.S.C. § 1331, and 42 U.S.C. § 1983. *See* FAC ¶ 25. This Court has subject matter jurisdiction and will not abstain from exercising that jurisdiction.³

In deciding whether to abstain under *Colorado River*, a district court must first determine whether the federal and state court cases are parallel. Federal and state proceedings are parallel for purposes of abstention when the two proceedings are "essentially the same" -- when there is an identity of parties, and the issues and relief sought are the same. *Id.* If the actions are deemed parallel, courts are then to consider six factors to determine whether abstention is appropriate. These factors are: (1) the assumption of jurisdiction by either court over any res or property; (2) the inconvenience of the federal forum; (3) the avoidance of piecemeal litigation; (4) the order in which jurisdiction was obtained; (5) whether state or federal law supplies the rule of decision; and (6) whether the state court proceeding will adequately protect the rights of the party seeking

³ In their Opposition Brief, Defendants argued that this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine. During Oral Argument, Defendants conceded that this doctrine does not apply and does not deprive this Court of subject matter jurisdiction. Hearing Tr. at 13: 20-25. This Court dismisses Defendants' *Rooker-Feldman* argument because the state-court case had not ended by the time Plaintiffs filed this action. *See Hunter v. McMahon*, 75 F.4th 62, 70 (2d Cir. 2023) ("If a . . . state-court appeal remains pending . . . the state-court proceedings have not ended and *Rooker-Feldman* does not apply.").

to invoke federal jurisdiction. *Nat'l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 473 (S.D.N.Y. 2020) (internal citations and quotations omitted).

In this case, although the issues are the same, the parties are not identical to those of the State Court proceedings. *Compare Cartwright v. Kennedy*, No. 906349-24, 2024 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. Albany Cnty. Aug. 13, 2024) with FAC ¶¶ 12-24. Even if the parties were identical, in applying the six-factor test, *Colorado River* would not apply. *See U.S. Bank Nat'l Assoc. v. E. Fordham De LLC*, 385 F. Supp. 3d 256, 258 (S.D.N.Y. 2019), *aff'd* 804 F. App'x 106 (2d Cir. 2020) (“*Colorado River* abstention is reserved for exceptional circumstances.”).

Because the first two factors are irrelevant and do not apply to this case, they are neutral. Neutrality weighs against abstention. *Gentes v. Osten*, No. 21-2022-CV, 2022 WL 16984686, at *3. (2d Cir. Nov. 17, 2022).

Regarding the third factor, “[t]here is no threat of piecemeal litigation” if “[t]he resolution of the federal constitutional questions will settle the federal issues, regardless of the outcome of the state litigation”). *Alliance of Am. Insurers*, 854 F.2d at 603 (full cite).

The fourth factor disfavors abstention because this proceeding, *Team Kennedy et al. v. Berger et al.*, (1:24-cv-03897-ALC) (filed May 20, 2024) predated the state case. *Cartwright et al. v. Kennedy et al.*, 906349-24 (filed June 10, 2024). *De Cisneros v. Younger*, 871 F.2d 305, 308 (2d. Cir. 1989) (“The fourth factor looks at the chronological order in which the actions were filed.”).

Under the fifth factor, since federal law supplies the rule of decision, abstention is disfavored. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26 (1983) (“the presence of federal-law issues must always be a major consideration weighing against surrender [of federal jurisdiction].”).

The sixth factor favors abstention. We consider whether the procedures of New York's state courts "are adequate to protect [Kennedy's] federal rights." *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 103 (2d Cir. 2012) (internal citation omitted). Specifically, we are to determine whether "the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Id.* We do not doubt that the New York courts provide a fair alternative forum that is capable of resolving the constitutional issues Kennedy alleges.

Balancing the factors militates against abstention. Moreover, federal courts have an obligation to exercise jurisdiction in all but the most exceptional circumstances. "[W]here a federal court has subject matter jurisdiction, it has a 'virtually unflagging obligation to exercise that jurisdiction,' even if an action concerning the same matter is pending in state court." *Mochary v. Bergstein*, 42 F.4th 80, 84 (2d Cir. 2022) (internal citation omitted)). In recognition of that principle, this Circuit has insisted on a "heavy presumption" against "[a]bstention from the exercise of federal jurisdiction." *LeChase Constr. Servs., LLC v. Argonaut Ins. Co.*, 63 F.4th 160, 173 (2d Cir. 2023) (internal citations omitted). "In abstention cases, the district court's discretion must be exercised within the narrow and specific limits prescribed by the particular abstention doctrine involved," such that "there is little or no discretion to abstain in a case which does not meet traditional abstention requirements." *Niagara Mohawk Power*, 673 F.3d at 99 (citation omitted)

The Court will not abstain, and therefore this Court's exercise of subject matter jurisdiction is proper.

II. This Case is Not Moot

Defendants claim that since Kennedy suspended his campaign and has stated he has no path to victory the case is moot. This argument is unavailing. A suspended campaign is different from a terminated campaign, and in any event, there is no requirement that a candidate must be likely to win, have a real possibility of winning, or even want to win a presidential election in order to be on the ballot for a particular state.⁴ As Team Kennedy has stated, there are important goals for Kennedy and his party in future elections in New York if Kennedy garners five percent of the national vote. Under New York law, his party will qualify as a party automatically eligible for placement on the ballot at a future election if he receives a significant percentage of the New York vote. *See* Election Law §§ 1-104(3), 6-128.

III. Res Judicata and Collateral Estoppel Do Not Bar This Action

A. Claim Preclusion (Res Judicata)⁵

For a party to succeed on the affirmative defense of res judicata—also known as claim preclusion— it “must show that (1) the previous action involved an adjudication on the merits; (2) the previous action involved plaintiffs or those in privity with them; and (3) the claims asserted in the subsequent action were, or could have been raised in the prior action.” *Mendez v. Pretium Mortg. Credit Partners I, Loan Acquisition, LP*, No. 21-CV-826(KAM)(JRC), 2023 W; 8283148, at *13 (E.D.N.Y. Nov. 30, 2023).

The parties do not dispute the third element. At a minimum the federal constitutionality of New York’s residence requirement could have been raised in the prior action.

⁴ Whether suspending a campaign or only appearing on ballots for some states is a prudent political strategy is irrelevant to the legal issues in this case. The prudence of such a strategy will be debated by an array of political pundits, a flock of history and political science professors, and a chattering of voices on social media.

⁵ To determine if res judicata applies to a New York state court judgment, federal courts apply New York res judicata law. *See New York v. Mountain Tobacco Co.*, 942 F.3d 536, 543 (2d Cir. 2019).

1. Adjudication on the Merits

The issue of federal constitutionality of the residence requirement was decided on the merits. As discussed in the section on issue preclusion, the State courts decided the issue. *Cartwright*, No. 906349-24, 2024 WL 3894605, at *15; *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3. A ruling by the Appellate division counts as a decision on the merits. *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3-4.

2. Privity

“[P]laintiffs in a federal suit that follows a state suit are in privity with the state plaintiffs where ‘their interests are the same and [the federal plaintiffs] are controlled by the same party or parties’ as the state plaintiffs.” *Hoblock v. Albany Cnty. Nd. of Elections*, 422 F.3d 77, 95 (2d Cir. 2005) (brackets in original) (quoting *Ferris v. Cuevas*, 118 F.3d 122, 128 (2d Cir. 1997)).

For privity, the federal plaintiffs must have the same interests and be controlled by the same party or parties as the state plaintiffs. *Id.*

i. Same Interests

Plaintiffs do not dispute that Kennedy has identical interests with his campaign. But there are three plaintiffs here: Team Kennedy, American Values 2024, and Jeffrey Rose.⁶ While Team Kennedy shares identical interests with the state Defendant, Robert Kennedy Jr., the other federal plaintiffs may not share all of the same interests with the state plaintiffs.

⁶ The Court takes notice that Plaintiffs have sought leave to file a second amended complaint to include class action allegations pursuant to Fed. R. C. O. 23(b)(2) on behalf of classes of voters who are similarly situated to Mr. Rose, including: (1) all New York voters who in 2024 signed a petition seeking to place any independent or non-recognized-party presidential candidate on the ballot; (2) all New York voters who are not registered in political parties whose nominees for President will be on the ballot in 2024; and/or (3) all New York voters “whose political preferences lie outside the existing political parties.” Pl. Memo. Mot. Leave to Amend, ECF No. 71 at 2.

American Values 2024 has a different motivation for having Kennedy on the ballot—this Political Action Committee wants independent candidates on state ballots. This is not limited to Kennedy; American Values 2024 supports even opponents of Kennedy on the ballot. Mr. Rose wants Kennedy on the ballot in order to vote for Kennedy in this election; he may not be necessarily concerned about Kennedy’s party being placed on future ballots, or Kennedy’s eligibility for certain federal benefits. Because Mr. Rose represents a class of putative voters, all members of this class do not have identical motivations for having Kennedy placed on the ballot. In addition, voters' interests carry greater weight than the interests of Kennedy—the voter has a constitutional right to vote for a candidate of their choice, but a candidate has no constitutional right to be on a ballot.

However, motivations need not be identical for there to be an identity of interest. All of these plaintiffs share one identical interest: having Kennedy placed on the ballot. The Court finds that this shared desired outcome is sufficient to satisfy the same interest requirement.

ii. Control

Defendants are correct that “there can be no dispute that Kennedy and his principal campaign are one in the same, because Kennedy is certainly in control of his own campaign.” Def. Opp., ECF No. 46 at 14. Plaintiffs do not meaningfully challenge this argument. But American Values 2024 is not controlled by Team Kennedy nor Robert Kennedy Jr. Both American Values 2024 and Mr. Rose have a different attorney than the attorneys representing Team Kennedy. Perhaps more importantly, Mr. Rose represents a class of putative

voters. Kennedy certainly does not control them.⁷ Accordingly American Values 2024 and the class of putative voters, represented by Mr. Rose, are not in privity with Kennedy.

Because Defendants bear the burden to establish *res judicata*, and they have failed to establish that Kennedy controls American Values 2024 and Mr. Rose (on behalf of himself and the putative class), the defense does not apply to them.⁸ *See, e.g., Hoblock*, 422 F.3d at 91 (“It remains possible, however, that the plaintiff voters and candidates are in privity if the candidates in fact are controlling the voters’ federal suit, not to advance the interests of all voters who submitted challenged absentee ballots, but rather to further the interests of the candidates and a subset of voters whose interests *do* coincide exactly with those of the candidates. If the plaintiff voters are in reality the candidates’ pawns, then by definition the plaintiff voters’ interests are identical to the candidates’ (and different from the interests of all similarly situated voters) and were adequately represented in the candidates’ state-court lawsuit.

B. Collateral Estoppel (Issue Preclusion)

Under New York law,⁹ issue preclusion will apply only if “(1) the issue in question was actually and necessarily decided in a prior proceeding, and (2) the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate the issue in the first proceeding.” *Hoblock*, 422 F.3d at 94 (2d Cir. 2005) (internal citation omitted). Under New York law, the doctrine of collateral estoppel, a narrower species of *res judicata*, precludes a party from

⁷ In the First Amended Complaint, Jeffrey Rose is listed as a plaintiff in his individual capacity. Rose’s counsel has indicated that he wishes to amend the complaint, stating that Rose represents a putative class of independent voters. For purposes of this opinion, the Court will assume that the Second Amended Complaint will be accepted.

⁸ Because Team Kennedy is in privity with Kennedy, and the other requirements of *res judicata* have been met, it is unlikely that Team Kennedy would succeed on the merits.

⁹ Under the Full Faith and Credit Act, 28 U.S.C. § 1738, a federal court must apply New York issue preclusion (collateral estoppel) law to New York state-court judgments. *Hoblock*, 422 F.3d at 93.

relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. *Ripley v. Storer*, 309 N.Y. 506, 517 (1956); see also Restatement (Second) of Judgments § 2 (1982); 46 Am. Jur. 2d Judgments § 415; 9 Carmody-Wait 2d, NY Prac, Judgments, § 63:205.

“The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action.” *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 456 (1985) (internal citation omitted).

1. Whether the Issue Was Actually Decided

The Supreme Court in Albany decided that the residence requirement complied with the U.S. Constitution. *Cartwright v. Kennedy*, No. 906349-24, 2024 WL 3894605, at *15-16 (N.Y. Sup. Ct. Aug. 13, 2024), *aff'd*, No. CV-24-1294, 2024 WL 3977541. The Third Department also found that Kennedy’s federal constitutional challenges were without merit. *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3-4.

Plaintiffs in the State Court matter did not bring claims under the federal Constitution. The claims dealt solely with the application of New York Election law as it applied to Kennedy under New York law. Kennedy raised the federal constitutional issue in his answer, requesting the State Supreme Court to address it. He raised the issue in the Third Department. He appealed the Third Department’s decision to the Court of Appeals. *See Cartwright*, No. 906349-24, 2024 WL 3894605, at *15; *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3; *Cartwright*, No. 2024-

632, 2024 N.Y. Slip Op. 73915. Both State courts came to a determination on the constitutional issues. Kennedy got answers. He didn't like them. He cannot now claim that the issue was not actually decided by the State courts and that it is not precluded in this action.¹⁰ He made it necessary for those decisions to be rendered, through the same lawyer representing Team Kennedy here and in the Appellate Division.

2. Whether the Issue Was Necessarily Decided¹¹

Since collateral estoppel requires that an issue be necessarily decided in the prior proceeding, "a finding which is but an alternative ground for the prior court's decision" will not ordinarily be given preclusive effect. *Malloy v. Trombley*, 50 N.Y.2d 46, 49 (1980); see *Pollicino v. Roemer & Featherstonhaugh P.C.*, 716 N.Y.S.2d 416 (3d Dep't 2000). Moreover, language that is not necessary to resolve an issue, constitutes dicta and should not be accorded preclusive effect. See *Stokes v. Stokes*, 172 N.Y. 327, 341 (1902).

The State Court's ruling on the constitutional issue was neither dicta nor an alternative ground for arriving at the ultimate decision or outcome of the case. This was not simply part of the court's thought process or comments regarding the policy considerations further justifying the ruling. To the extent Plaintiffs claim that it was not necessary for the state courts to rule at all

¹⁰ Arguing that the constitutional issue was not actually decided below, Plaintiffs cite to an out of context statement Judge Ryba made during trial when discussing the proper scope of witness testimony when Kennedy attempted to establish his claim of unconstitutionality though his attorney Rossi's testimony although he was not disclosed or shown to be qualified as an expert in either Constitutional or New York State Law. *Cartwright v. Kennedy*, 2024 N.Y. Misc. LEXIS 3768, *51 (N.Y. Sup. Ct. Albany County Aug. 13, 2024). She noted, "We're not going to start a constitutional trial on the last day of testimony." (ECF No. 56-1, 205:5-10). Her statement does not detract from the State Supreme Court's findings on the constitutional issues.

¹¹ Given the paucity of case law on this issue, this analysis is a context-specific inquiry closely wedded to the facts at hand. For the purposes of analyzing this specific case, this Court distinguishes between rulings and outcomes.

on the second issue—whether the residence requirement complies with the federal constitution—this argument fails.¹² *Cartwright*, No. 906349-24, 2024 WL 3894605, at *14-15.

As relevant here, the State Court ruled on two issues: (1) Kennedy’s listed residence did not comply with New York’s residence requirement under New York Election law; (2) New York’s residence requirement complies with the federal constitution. Plaintiffs do not challenge, in this litigation, the State Court’s first ruling, nor do they claim that the first ruling was unnecessary.¹³ *See Cartwright*, No. 906349-24, 2024 WL 3894605, at *14-15; *Cartwright*, No. CV-24-1294, 2024 WL 3977541, at *3

The State Court decided that the residence requirement did not violate the constitution. That ruling, standing alone, would not keep Kennedy off the ballot. The ruling regarding constitutionality was tethered to the State Court’s decision regarding compliance with the residence requirement, not an alternative basis that would result in excluding Kennedy from the ballot. *See Stegemann v. Rensselaer Cty. Sheriff’s Office*, 2021 U.S. App. LEXIS 34783, *11-12 (2d Cir. 2021) (holding that an issue was necessary to the resolution of a motion because it was

¹² Plaintiffs do not explicitly raise the argument that the constitutional issues were not necessarily decided at the State Court, but that Judge Ryba erred by not addressing the constitutional issues, which the Court understands to be an argument that the constitutional issues were not actually decided. They assert that the state trial court “expressly blocked the constitutional rights that Plaintiffs seek to vindicate here from being litigated in the state court.” Pl. Reply at 4.

¹³ Even though a judge’s rulings on discrete legal issues contribute to the ultimate outcome of a case, the concepts of ruling on discrete legal issues and the ultimate outcome are distinct. There were two possible outcomes: Kennedy is placed on the ballot or Kennedy is not on the ballot. There are two possible rulings regarding the discrete legal issue concerning constitutionality of the residence requirement: it violates the Constitution or it does not. If the state courts had chosen the other possible alternative regarding constitutionality—stating that the residence requirement violated the Constitution—the outcome would be different. Kennedy would appear on the ballot. Due to the Supremacy Clause, the state courts could not state that although the residence requirement violates the constitution, Kennedy should not be placed on the ballot because his residence isn’t valid under New York law. Therefore, it was necessary for the Court to decide the issue since the ruling on that discrete issue could change the ultimate outcome of the case. The state courts could not simply ignore the constitutional issue raised by Kennedy.

at the heart of the alleged constitutional injury) (citing to *Kret by Kret v. Brookdale Hosp. Med. Ctr.*, 93 A.D.2d 449, 458-59, 462 N.Y.S.2d 896 (N.Y. App. Div. 2d Dep't 1983)).

3. Whether Plaintiffs Had a Full and Fair Opportunity to Litigate

Kennedy had a full and fair opportunity to adjudicate the claim. The trial court stated that this was not a constitutional trial, meaning there was no need for witness testimony on the constitutional issue. Plaintiffs claim that “little record was allowed to be made on the constitutional issues, and the Appellate Division addressed the constitutional issues only in a single conclusory paragraph devoid of reasoning, facts, or analysis.” Pl. Reply at 7-8, ECF No. 54.

Plaintiffs claim that this deprived them of a full and fair opportunity to litigate the issue. Plaintiffs are wrong. Plaintiffs rely on *West v. Ruff*, 961 F.2d 1064, 1065-66 (2d Cir. 1992) for this proposition. In *West*, the Court found the lack of a fair opportunity to litigate “because (1) the appointment of counsel in the federal matter pursuant to Hodge reflected a finding that West's claim had colorable substance and could not be adequately presented pro se; (2) West had at best a single day's notice of his state trial; (3) his appointed counsel in a factually identical federal case was never notified of the parallel state litigation; (4) the Court of Claims judge had no notice of the potential availability of appointed counsel; and (5) West has shown prejudice in the availability of an eyewitness in circumstances in which he seems to have had neither discovery nor sufficient notice to obtain the presence of the witness.” *Id.*

In this case Kennedy and Team Kennedy were not pro se and were represented by the same attorney in the state and federal proceedings. Plaintiffs point to no case law indicating that testimony from witnesses must be held before a court can determine constitutional

issues. Although in a passing statement, made in the midst of an expedited bench trial, the Supreme Court judge indicated that the federal constitutional issue was not before them, the judge ultimately ruled on the issue.

It matters not that the state judges declined to write a tome, instead choosing to decide the issue with brevity. Plaintiffs have not carried their burden to show that they lacked a full and fair opportunity to litigate the issues.

Because Defendants have failed to establish that the American Values 2024 and the voters, represented by Mr. Jeffrey Rose, were in privity in both the State action and the instant action, collateral estoppel does not apply. Team Kennedy is in privity with Kennedy. Since the other requirements for collateral estoppel have been met, the defense makes it unlikely that Team Kennedy would succeed on the merits.

IV. Plaintiffs Have Failed to Prove Likelihood of Success on the Merits

A. Standard for Constitutional Challenges to State Election Laws – *Anderson-Burdick* Framework

This Circuit has held that when considering whether a state election law imposes an unconstitutional burden on voting rights, instead of strict scrutiny, courts apply what has come to be known as the *Anderson-Burdick framework* derived from *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992). *Sam Party of N.Y. v. Kosinski*, 987 F.3d 267, 271 (2d Cir. 2021). Under this standard, the rigorousness of the court's inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. *Id.* (citing *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)) (internal quotation marks removed). 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.* This latter, lesser scrutiny is not pure rational basis review. *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 108 (2d Cir. 2008). Rather, "the court must actually 'weigh' the burdens imposed on the plaintiff against 'the precise interests put forward by the State,' and the court must take 'into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Id.* at 108-09 (quoting *Burdick*, 504 U.S. at 434). Review under this balancing test is "quite deferential," and no "elaborate, empirical verification" is required. *Id.* at 109 (quoting *Timmons*, 520 U.S. at 364).

1. **Whether Strict Scrutiny Applies**

Plaintiffs argue that the residence requirement is both severe and discriminatory as applied,¹⁴ and thus subject to strict scrutiny because this case is closely analogous to *Anderson*. Moreover, Plaintiffs allege that the constitutional interests in this case are identical to that of *Anderson* and the state interests here are weaker. As described in depth below, this assertion is misguided. This Circuit has made clear that certain election law requirements that function as presumptively higher hurdles to the ballot for independent parties pass constitutional muster.

In *Sam Party of N.Y. v. Kosinski*, the Second Circuit affirmed a Southern District of New York Court's denial of preliminary relief where the plaintiff political organization was unlikely to succeed on the merits of its First and Fourteenth Amendment claims. *Sam Party of N.Y.*, 987 F.3d at 274. When applying the *Anderson-Burdick* framework, the Court found that New York's presidential-election party-qualification requirement did not impose a severe burden on minor

¹⁴ Plaintiffs have confirmed that they assert an as-applied challenge to the residence requirement. They do not argue that the statute is constitutionally impermissible on its face such that no application of the statute would be constitutional but and as-applied to Kennedy operates unconstitutionally as to him because of his particular circumstances. *See* Hearing Tr. 71: 13-19.

parties, even though the amendment significantly changed the method New York had employed for 85 years to confer party status on a political organization. *Id.* at 275. The amendment raised the threshold from 50,000 votes to the greater of 130,000 votes or two percent of the total vote, and instead of requalifying every four years, political organizations now had to requalify by meeting the higher threshold in the gubernatorial *and* presidential elections. *Id.* at 272.

Ultimately, the Circuit held that the State set forth a coherent account of why the requirement would help guard against disorder and waste. *Id.* at 278.

In *Sam Party*, the constitutional interests at issue were identical to the ones asserted in this case, the state's interests were similarly situated, and the requirement at issue was far weightier than requiring candidates to accurately disclose his or her place of residence. Because the burden against constitutional rights is minimal and nondiscriminatory, strict scrutiny does not apply.

a. Severity of Burden

Plaintiffs claim that the residence requirement is a severe burden that falls unequally on independent candidates. Courts have identified three types of severe burdens on the right of individuals to associate as a political party: (1) regulations meddling in a political party's internal affairs; (2) regulations restricting the core associational activities of the party or its members; and (3) regulations that make it virtually impossible for minor parties to qualify for the ballot. *Sam Party of N.Y.*, 987 F.3d at 275 (collecting cases). When considering the impact of the ballot access process, the "hallmark of a severe burden is exclusion or virtual exclusion from the ballot." *Libertarian Party of Conn. v. Lamont*, 977 F.3d 173, 177 (2d Cir. 2020). To gauge whether minor parties have been so burdened, we look at the "combined effect of [New York's] ballot-access restrictions." *Libertarian Party of Ky.*, 835 F.3d at 575 (internal quotation marks omitted).

It is certainly true that at present Kennedy is completely excluded from the ballot. But this is not dispositive. In *Libertarian Party v. Lamont*, the Second Circuit held that Connecticut's petitioning laws which prevented Libertarian Party candidates from appearing on the ballot did not impose a severe burden on their First and Fourteenth Amendment rights. *Libertarian Party of Conn.*, 977 F.3d at 177. The Court found that a reasonably diligent candidate could be expected to satisfy the signature requirements and gain a place on the ballot. *Id.* at 179. Here, a reasonably diligent candidate can meet the residence requirement under New York law and gain a place on the ballot.¹⁵ As set forth by the State Court, the applicable standard of residency under New York law provides:

According to Election Law § 1-104 (22) and New York State case law, a residence is that place where a person maintains a fixed, permanent, and principal home and to which he or she, wherever temporarily located, always intends to return. As used in the Election Law, the term 'residence' is synonymous with 'domicile'. Case law has also established that an individual having two residences may choose one to which she or he has legitimate, significant and continuing attachments as her or his residence for purposes of the Election Law. The crucial factor in determining whether a particular residence complies with the requirements of the Election Law is that the individual must manifest an intent to reside there, coupled with physical presence, without any aura of sham.

Cartwright v. Kennedy, 2024 N.Y. Misc. LEXIS 3768, *5 (N.Y. Sup. Ct. Albany County Aug. 13, 2024)

Residency is generally a factual question, dependent on the particular circumstances presented. *Matter of Glickman v Laffin*, 27 NY3d 810, 815, 37 N.Y.S.3d 792, 59 N.E.3d 527 (2016) [citation omitted]). Notwithstanding Plaintiffs' assertion that candidates like Kennedy, who have more than one home are forced by the residence requirement to guess at and gamble on which of his residences a New York court will later determine to satisfy the state's

¹⁵ The Court need not determine whether the disclosure of an address on a nominating petition, standing alone, is a severe burden. However, the Court does recognize the legitimate safety concerns that candidates express when required to publicly list the addresses of their residence.

domiciliary “permanent home” definition, New York case law is clear. The “Election Law does not preclude a person from having two residences and choosing one for election purposes provided he or she has legitimate, significant and continuing attachments to that residence” *Matter of Cartwright v. Kennedy*, 2024 N.Y. App. Div. LEXIS 4529, *5 (3d Dep’t Aug. 29, 2024) (internal citations omitted).

Plaintiffs’ argument that the “strict compliance” standard contradicts *Anderson* is similarly unavailing. Election Law § 6-140 (1) requires that each page of an independent nominating petition set forth the address of the candidate's "place of residence" (Election Law § 6-140 [1]). The Court of Appeals has repeatedly emphasized that although substantial compliance with Election Law requirements is acceptable as to details of form, "there must be strict compliance with statutory commands as to matters of prescribed content." *Matter of Hutson v. Bass*, 54 NY2d 772, 774, 426 N.E.2d 749, 443 N.Y.S.2d 57 (1981); *see Matter of Stoppenbach v. Sweeney*, 98 NY2d 431, 433, 778 N.E.2d 1040, 749 N.Y.S.2d 210 (2002). The requirement that each page of a nominating petition set forth the candidate's "place of residence" is a matter of prescribed content, rather than form, and therefore strict compliance with the requirement is necessary (*see Matter of Stoppenbach v Sweeney*, 98 NY2d at 433 (2002); *Matter of Hutson v Bass*, 54 NY2d at 774 (1981); *Matter of Sheehan v Scaringe*, 154 AD2d 832, 546 N.Y.S.2d 698 (1989), *appeal denied* 74 N.Y.2d 615, 549 N.E.2d 151, 549 N.Y.S.2d 960 (1989)).

Unlike the filing deadline at issue in *Anderson*, residency is a matter of prescribed content, and as New York courts have expressed, mandating strict compliance with the Election Law in this regard is designed to guarantee the integrity of the election process by facilitating the discovery of fraud and reducing the likelihood of unequal enforcement of the law (*see, Seawright v Bd. of Elections in City of New York*, 35 NY3d 227, 233, 127 N.Y.S.3d 45, 150 N.E.3d 848

(2020); *Matter of Gross v Albany County Bd. of Elections*, 3 NY3d 251, 258, 819 N.E.2d 197, 785 N.Y.S.2d 729 (2004)). The strict compliance standard is a safeguard against constitutional violations, and it is neutrally applied regardless of a candidate's history, background, party affiliation, protected class, or any other criterion irrelevant to a determination of whether its requirements have been met. *Matter of Staber v Fidler*, 65 NY2d 529, 534, 482 N.E.2d 1204, 493 N.Y.S.2d 288 (1985).

There is no dispute that Kennedy listed an address on every page of the nominating petition, and that he intended to list the address on each page of the nominating petition. Hearing Tr. at 76:7-24. There is also no evidence to suggest that Kennedy made some sort of error or mistake in listing the address, as was the case in *Matter of Ferris v Sadowski* (45 NY2d 815, 381 N.E.2d 339, 409 N.Y.S.2d 133 (978)) and *Matter of Maloney v Ulster County Bd. of Elections* (21 AD3d 692, 800 N.Y.S.2d 249 (3d Dept 2005), *lv denied* 5 NY3d 706, 801 N.Y.S.2d 800, 835 N.E.2d 660 (2005)). *Ferris* and *Maloney* involved situations in which candidates inadvertently listed previous addresses of genuine bona fide residences within the meaning of the Election Law, unlike Kennedy who intentionally, deliberately, and on the advice of counsel, listed an address at that does not qualify as a residence under New York law. *Matter of Cartwright v. Kennedy*, 2024 N.Y. App. Div. LEXIS 4529, *9. Relevant here is whether a reasonably diligent candidate could be expected to satisfy the residence requirement. *Libertarian Party v. Lamont*, 977 F.3d 173, 179 (2d. Cir. 2020). At issue in the State court proceeding was not whether Kennedy maintained a residence that would satisfy the residence requirements under the Election Law, but whether the address Kennedy listed on the nominating petition was in fact his actual residence. *Matter of Cartwright v. Kennedy*, 2024 N.Y. App. Div. LEXIS 4529, *9.

And in any event, New York state courts have routinely invalidated nominating petitions where candidates did not actually reside at the addresses listed on the designating petition as their residences. *See e.g., Eisenberg v Strasser*, 768 N.Y.S.2d 773, 1 Misc. 3d 299, 2003 N.Y. Misc. LEXIS 1144 (N.Y. Sup. Ct.), *aff'd*, 307 A.D.2d 1053, 763 N.Y.S.2d 782, 2003 N.Y. App. Div. LEXIS 9049 (N.Y. App. Div. 2d Dep't 2003) (finding address candidate listed on designating petition was false and for a business from which he retired); *Lemishow v. Black*, 104 A.D.2d 460, 478 N.Y.S.2d 971, 1984 N.Y. App. Div. LEXIS 19907 (N.Y. App. Div. 2d Dep't), *aff'd*, 63 N.Y.2d 684, 479 N.Y.S.2d 972, 468 N.E.2d 1109, 1984 N.Y. LEXIS 4538 (N.Y. 1984) (candidate resided in different assembly district and had never slept, eaten, or kept any clothes at the address appearing on the petition but used the address to receive mail for one to two weeks prior to the hearing and changed his place of party enrollment to that address); *Brigandi v. Barasch*, 144 A.D.2d 177, 535 N.Y.S.2d 117, 1988 N.Y. App. Div. LEXIS 15078 (N.Y. App. Div. 3d Dep't 1988) (designating petition for Congressional candidate invalidated where record supported that candidate never actually resided at address listed). Moreover, State Courts have cautioned against the creation and use of sham addresses solely for the purpose of circumventing residence requirements under the Election Law. *People v. O'Hara*, 96 N.Y.2d 378, 385 (2001), citing *Matter of Hosley v Curry*, 207 AD2d 116, 118, *rev'd on other grounds* 85 NY2d 447; *see also, Matter of Lemishow v Black*, 104 AD2d 460, *aff'd* 63 NY2d 684, 685).

Listing correct information about a candidate's actual residence is far from a severe burden that would be constitutionally impermissible. That twenty-two States across the country require presidential candidates to publish either a domicile or residential address on ballot access petitions suggests that such disclosures are minimal requirements that assist States in regulating and ordering fair elections. *See* Pl. Memo. at n.10-12.

Because Plaintiffs have failed to demonstrate that the residence requirement imposed a severe burden on their rights, strict scrutiny does not apply under the *Anderson-Burdick* framework.¹⁶

b. Whether the Burden is Discriminatory

Plaintiffs' argument that the residence requirement discriminates against independent candidates as opposed to established party candidates and should thus be subject to strict scrutiny is without merit.¹⁷ Independent candidates and established party nominees must both disclose the same identifying information, including their name and residence. *Compare* N.Y. Elec. Law § 6-140(1)(a) *with* N.Y. Elec. Law § 6-156 ("Party nominations; certification"). Because the requirement is neutral and applies to all candidates regardless of their party size or affiliation, the burden is nondiscriminatory and not subject to strict scrutiny.

c. Weighing the State's Interests

The balancing test at the second stage of the *Anderson-Burdick* framework is "quite deferential." *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 109 (2d Cir. 2008). "[A] State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997) (cleaned up). Otherwise, we would "hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes." *Sam Party of N.Y.*, 987 F.3d at 276 (citing *Clingman*, 544 U.S. at 593).

¹⁶ Assuming, *arguendo*, that strict scrutiny applies, the residence requirement is narrowly tailored to further the compelling governmental interests elucidated below.

¹⁷ Plaintiffs have conceded that, contrary to statements made in the FAC and Plaintiffs' opening brief, Section 6-156 does require President nominees of national political parties—and not merely the nominees of their New York state affiliates who are recognized "parties" pursuant to New York Election Law—to file Certificates of Nomination that include their "residence" address. *See* Plaintiff's Letter dated Sept. 9, 2024 (ECF No. 69).

The purpose of inclusion of the residence address of the candidate (Election Law, § 6-132, subd 1) is not only to facilitate the processing of his petition by the Board of Elections and to ease the task of one checking his qualification to run, but perhaps most important to assure that the signers of his petition are aware of the identity of their candidate. *Ferris v. Sadowski*, 45 N.Y.2d 815, 817, 381 NE2d 339, 409 NYS2d 133 [1978]). Ultimately, a “too-liberal construction of the Election Law has the potential for inviting mischief on the part of candidates, or their supporters or aides, or worse still, manipulations of the entire election process.” *Cartwright v. Kennedy*, No. 906349-24, 2024 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. Albany Cnty. Aug. 13, 2024) (cleaned up). Moreover, “[t]he United States Constitution cannot be construed to protect candidates from making false statements on their petitions for public office.” *Id.* at 33.

In the instant case, this Court need not determine whether Kennedy intended to mislead or confuse anyone when he listed the New York address as his residence though he had never resided there within the meaning of the Election Law. But the State’s legitimate concern in requiring candidates to accurately disclose their residency to avoid voter confusion is neither fanciful nor flimsy. Voters might be entirely misled and manipulated into voting for a presidential candidate because he claimed to be a New York resident, although he actually resided in Oklahoma and never lived at the address he listed on his nominating petition. Perhaps the candidate had no intent of posing as a hometown candidate to attract voters. But it might certainly be the case that some voters will vote for a hometown candidate, without considering any other factors. Consider the fact that there are presently three Representatives in U.S. Congress with the last name Smith. One clear way to identify them is by their residency (Representative Smith from New Jersey, Representative Smith from Washington, and

Representative Smith from Missouri). Residency is certainly a significant requirement to ensure that voters correctly identify their intended candidates. New York’s residence requirement withstands the lesser exacting inquiry under *Anderson-Burdick* because it furthers the States’ legitimate interests in providing voters with accurate information about the identities of candidates.

At its most extreme, requiring accurate residency disclosures protects voters from the type of criminal fraud and manipulation at issue in *United States v. Smilowitz*. There, developer defendants fraudulently registered voters, falsified registration forms, and falsely listed an address in which their chosen candidate did not reside in so that the developers could control local government decisions and further their real estate development project. *United States v. Smilowitz*, 974 F.3d 155, 156 (2d Cir. 2020). The residence requirement is neither a Sisyphean hurdle nor an antiquated artifact. Rather, as Judge Ryba suggested in the State Action, the provision furthers legitimate state interests:

Using a friend's address for political and voting purposes, while barely stepping foot on the premises, does not equate to residency under the Election Law. To hold otherwise would establish a dangerous precedent and open the door to the fraud and political mischief that the Election Law residency rules were designed to prevent.

Cartwright v. Kennedy, 2024 N.Y. Misc. LEXIS 3768, *47 (N.Y. Sup. Ct. Albany County, Aug. 13, 2024).

On balance, requiring strict compliance with the residence requirement is an important mechanism the State uses to regulate and administer fair and orderly elections. New York Election Law’s interpretation of residence affects voters and candidates alike. *See Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir., 2002) (noting that “[d]omicile as a rule may have its philosophical defects . . . but it has enormous practical advantages over the alternatives” providing “workable standards” for election regulatory officials). And, while residency determinations might have greater import in determining in-state residency qualifications for local and state elections such

as town selectman races, gubernatorial races, or U.S. Congressional races, New York does have an important interest that Presidential candidates qualify and comport with Twelfth Amendment requirements that Presidential “Electors . . . shall vote . . . for a President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves.” U.S. CONST. amend. XII.¹⁸ Plaintiffs have not sufficiently demonstrated that they are likely to succeed on their claim that the residence requirement violates the Presidential Qualifications Clause. Plaintiffs argue that the residence requirement violates the limits set forth in U.S. CONST., art. II, §1, cl. 5, because it imposes two additional qualifications on independent candidates seeking ballot access in New York. However, the residence requirement applies equally to independent and established candidates. Whether any of the twenty-one States, in addition to New York, who have similar residence requirements violate the Qualifications clause has yet to be decided by the Supreme Court.

And, as described above, New York’s residence requirement as it is defined is more forgiving than inhabitancy under the Twelfth Amendment. *Compare* N.Y. Elec. Law § 1-104(22) (“A candidate’s “residence” is where he “maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return.”) *with Jones v. Bush*, 122 F. Supp. 2d 713, 719-20 (N.D. Tex. 2000) citing *State of Texas v. State of Florida*, 306 U.S. 398, 424, 83 L. Ed. 817, 59 S. Ct. 563 (1939) (“[A] person is an “inhabitant” of a state, within the meaning of the Twelfth Amendment, if he (1) has a physical presence within that state and (2) intends that it be his place of habitation. The test for ascertaining inhabitance is thus a dual inquiry concerning physical presence in fact and intent to remain in or to return to the state after

¹⁸ See *Jones v. Bush*, 122 F. Supp. 2d 713 (N.D. Tex. 2000). Notably, the Court’s analysis rested upon determining whether Vice President nominee Cheney qualified as an inhabitant of Wyoming within the meaning of the Twelfth Amendment.

an absence.”). New York State allows for multiple states of residence while an individual may only have one state of inhabitancy under the Twelfth Amendment.

Under the "quite deferential" review at the second step of the *Anderson-Burdick* inquiry, *Price*, 540 F.3d at 109, the State’s purported regulatory interests in guarding against voter confusion justify the *de minimis* burden of requiring candidates to comply with the residence requirement.

Plaintiffs have failed to show they are likely to succeed on the merits of their U.S. constitutional claims. *See Matter of Cartwright v. Kennedy*, 2024 N.Y. App. Div. LEXIS 4529, *9 (3d Dep’t Aug. 29, 2024) (“[W]e find that none of the constitutional challenges raised by the respondent candidates has merit.”).

V. Plaintiffs Have Not Sufficiently Proved Irreparable Harm

In the First Amendment context, plaintiffs must demonstrate a likelihood of success on the merits in order to show irreparable harm. *Libertarian Party of N.Y. v. N.Y. Bd. of Elections*, 539 F. Supp. 3d 310, 329-30 (S.D.N.Y. 2021). Because Plaintiffs have not demonstrated a likelihood of success on the merits, the Court finds that they have not established irreparable harm.¹⁹

¹⁹ Defendants claim that there is no irreparable harm because Kennedy has stopped trying to win the 2024 Presidential election, he cannot win, and his voters can write his name in if they so choose to on the ballot. These arguments fail.

There is no question that "voting is of the most fundamental significance under our constitutional structure." *Burdick*, 504 U.S. at 433. (internal citation omitted). Citizens have a right to vote for the candidate of their choice.

Defendants claim that if the injunction is denied, Kennedy will not suffer irreparable harm because he cannot win the election and his supporters can write his name in. For the same reasons discussed in the section on mootness, these arguments fail. Whether a candidate can win an election is irrelevant to a citizens’ constitutional right to vote for that candidate. As described above, there are important goals for Kennedy and his party in future elections in New York if Kennedy garners five percent of the national vote. Under New York law, Kennedy’s party will qualify as a party automatically eligible for placement on the ballot at a future election if he receives a significant percentage of the New York vote. *See Election Law* §§ 1-104(3), 6-128.

A write-in vote is not an adequate substitute for having a candidate’s name appear on the ballot. *Anderson v. Celebrezze*, 460 U.S. 780 n. 26 (1983). “The realities of the electoral process, however, strongly suggest that 'access'

VI. The Public Interest and Balancing of the Equities Do Not Support Preliminary Relief

When balancing the equities, Plaintiff has failed to prove that this extraordinary relief is warranted. In a suit against the government, balancing of the equities merges into our consideration of the public interest. *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58-59 (2d Cir. 2020). As explained above, the presidential-election requirement serves important regulatory interests. Certainly, "securing First Amendment rights is in the public interest," *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013), but "that is of no help to a plaintiff [like Kennedy] who is not likely to succeed on its First Amendment claim." *Sam Party of N.Y.*, 987 F.3d at 278. Even if Plaintiffs could establish a likelihood of prevailing on the merits, the public interests of the State outweigh those of the Plaintiffs.

While a significant number of voters certainly want to see Kennedy's name on the ballot for the upcoming Presidential election, "the interest of these voters does not outweigh the broader public interest in administrable elections." *Id.* There is no question that "[no] right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." But, as the Supreme Court has advised, "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system. *Burdick*, 504 U.S. 428, 441 (1992) (internal citations omitted).

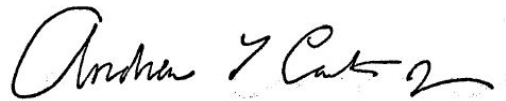
via write-in votes falls far short of access in terms of having the name of the candidate on the ballot. . . . [A candidate] relegated to the write-in provision, would be forced to rest his chances solely upon those voters who would remember his name and take the affirmative step of writing it on the ballot." *Lubin v. Panish*, 415 U.S. 709, n. 5 (1974).

CONCLUSION

For the reasons set forth above, Plaintiff's emergency request for a preliminary injunction is hereby **DENIED**.

SO ORDERED.

Dated: September 10, 2024
New York, New York



ANDREW L. CARTER, JR.
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
TEAM KENNEDY, AMERICAN VALUES 2024,
AND JEFFREY ROSE,

Case No. 24-cv-3897-ALC

Plaintiffs,

-against-

HENRY T. BERGER, in his official capacity as the Co-Chair of the New York State Board of Elections; PETER S. KOSINSKI, in his official capacity as the Co-Chair of the New York State Board of Elections; ESSMA BAGNUOLA, in her official capacity as a Commissioner of the New York State Board of Elections; ANTHONY J. CASSALE, in his official capacity as a Commissioner of the New York State Board of Elections; KRISTEN ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the New York State Board of Elections; RAYMOND J. RILEY, III, in his official Capacity as Co-Executive Director of the New York State Board of Elections; and, LETITIA JAMES, in her official capacity as the Attorney General of the state of New York,

Defendants.

----- X

**DECLARATION OF
DANIEL CHIRLIN IN
SUPPORT OF
PLAINTIFFS' MOTION
FOR LEAVE TO AMEND
PLAINTIFFS' FIRST
AMENDED COMPLAINT**


DANIEL CHIRLIN ESQ., pursuant to 28 U.S.C. § 1746, declares under penalty of perjury, that the following is true and correct:

1. I am an attorney at the law firm Walden Macht Haran & Williams LLP, which represents Plaintiff Team Kennedy. As such, I am familiar with the facts and circumstances of this case.

2. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs' Proposed Second Amended Complaint.

3. Attached hereto as Exhibit 2 is a redline of the Proposed Second Amended Complaint against Plaintiffs' First Amended Complaint.

Executed on this 9th day of September 2024:



Daniel Chirlin

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
TEAM KENNEDY, AMERICAN VALUES 2024,
AND JEFFREY ROSE, individually and on behalf of all
others similarly situated,

Case No. 24-cv-3897-ALC

Plaintiffs,

-against-

HENRY T. BERGER, in his official
capacity as the Co-Chair of the New York
State Board of Elections; PETER S.
KOSINSKI, in his official capacity as the
Co-Chair of the New York State Board of
Elections; ESSMA BAGNUOLA, in her
official capacity as a Commissioner of the
New York State Board of Elections;
ANTHONY J. CASSALE, in his official
capacity as a Commissioner of the New
York State Board of Elections; KRISTEN
ZEBROWSKI STAVISKY, in her official
capacity as Co-Executive Director of the
New York State Board of Elections;
RAYMOND J. RILEY, III, in his official
Capacity as Co-Executive Director of the
New York State Board of Elections; and,
LETITIA JAMES, in her official capacity
as the Attorney General of the state of
New York,

**[PROPOSED] SECOND
AMENDED [CLASS ACTION]
COMPLAINT**

Defendants.

----- X

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and Class plaintiffs*

INTRODUCTION

1. Forty years ago, Ohio’s Secretary of State barred independent presidential candidate John Anderson from that state’s ballot because—although Anderson had collected the requisite number of signatures from Ohio voters—he missed a filing deadline. But in *Anderson v. Celebrezze*, the U.S. Supreme Court held that Anderson’s exclusion from the ballot was unconstitutional.¹ Ohio’s interests in strictly enforcing its filing deadline did not outweigh the First and Fourteenth Amendment rights at stake²—in particular, the “right of voters to associate and *to have candidates of their choice placed on the ballot.*”³

2. On August 13, 2024, a state judge in Albany, New York ordered the Board of Elections to remove independent presidential candidate Robert F. Kennedy, Jr. from that state’s ballot because—although Mr. Kennedy had collected more than the requisite number of signatures from New York voters—the nominating petition bore an incorrect address. *Cartwright v. Kennedy*, No. 906349-24, 2024 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. Albany Cnty. Aug. 13, 2024). The state court did not find that anyone was misled by the address, nor did the court identify any state interests that were compromised by its use. Rather, the state court simply ruled that New York’s policy of “strict compliance” with the state’s petition regulations required Mr. Kennedy’s name to be struck from the ballot. *Id.* at *35-36.

3. *Anderson v. Celebrezze* controls this case. Under *Anderson*, the state court’s ruling is plainly unconstitutional, violating the right of voters to have a candidate of their choice placed on the ballot. Because New York will finalize its ballot in a matter of weeks, Plaintiffs seek, and *Anderson* mandates, immediate injunctive relief.

¹ See 460 U.S. 780 (1983).

² *Id.* at 806.

³ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (emphasis added).

4. This Second Amended Complaint involves two interrelated issues: (1) whether New York can bar an independent presidential candidate—who has millions of supporters all over the country, and who has submitted over 100,000 otherwise valid signatures on their nominating petition—on the basis of an incorrect address; and (2) whether New York can constitutionally impose a gauntlet of onerous, unnecessary ballot access petition requirements, the result of which is to make it virtually impossible for an independent presidential candidate to obtain access to the ballot.

5. Together, these two issues implicate profound threats to the democratic process, the freedom of speech, and the right to vote in New York.

6. *First*, New York’s requirement, as applied by the Albany Supreme Court, that an independent candidate for U.S. President must include his or her residence on the nominating petition—a burden *not* required of major-party candidates—unconstitutionally interferes with First Amendment rights of free speech and association, and also unconstitutionally expands the qualifications required of an individual in order to run for President.

7. No legitimate state interests are served by this residence requirement: the Presidential election is the only *national* election and there is no state interest that a candidate reside in any particular state.

8. For a Presidential election, apart from satisfying the Constitution’s Qualification Clause requirement of living in the U.S. for 14 years, residence *does not matter*.

9. *Second*, several of New York’s ballot access requirements for independent presidential candidates unconstitutionally impose significant burdens on those candidates, including by: (1) invalidating petitions signed by circulators who signed a petition for another candidate; (2) requiring independent candidates to vet and name their electors in a short timeframe

four-to-five months before the major-party candidates must do so; (3) invalidating signatories who list their village rather than their city or town; (4) banning a campaign from compensating circulators on the basis of valid signatures obtained; and, above all, (5) requiring an exorbitant, unjustifiable number of signatures (45,000) to be collected in a period of six weeks.

10. These ballot access requirements serve to disadvantage independent presidential candidates so severely that no non-major-party presidential candidate was able to run this gauntlet in 2024 with the exception of Mr. Kennedy, who was then removed from the ballot under the strict residence requirement imposed by the state court decision challenged here.

11. For the reasons set forth below, Plaintiffs ask this Court to immediately enjoin the New York State Board of Elections (“NYSBOE”) from removing Mr. Kennedy’s name from the New York ballot and to declare unconstitutional the residence requirement and the other ballot access requirements described below.

PARTIES

12. Plaintiff TEAM KENNEDY is the campaign organization dedicated to the election of Robert F. Kennedy, Jr. as the next President of the United States and of Nicole Shanahan as the next Vice President of the United States.

13. Team Kennedy has spent more than \$12 million dollars to secure Mr. Kennedy’s and Ms. Shanahan’s appearance on ballots all over the country, including over \$1.1 million in New York alone.

14. Team Kennedy is a registered campaign committee with the Federal Elections Commission. Team Kennedy filed FEC Form 1, Statement of Organization on April 5, 2023. Team Kennedy’s FEC Committee I.D. Number is C00836916. The address for Team Kennedy is: 124 Washington Street, STE 101, Foxborough, MA 02035.

15. Plaintiff AMERICAN VALUES 2024 (“AV24”) is a super PAC committed to educating and mobilizing voters to elect candidates who will restore and protect the soul of democracy in the United States. Currently, AV24 supports Mr. Kennedy’s presidential campaign. AV24 has spent millions of dollars advocating for Mr. Kennedy and promoting his candidacy.

16. Plaintiff JEFFREY ROSE is a New York citizen, Albany resident, and registered New York voter who supports Mr. Kennedy’s candidacy; seeks to have Mr. Kennedy placed on New York’s 2024 general election ballot; and signed Kennedy’s petition that has been invalidated by the state court ruling at issue here.

17. Defendant HENRY T. BERGER is Co-Chair of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Berger is a resident of the state of New York.

18. Defendant PETER S. KOSINSKI is Co-Chair of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Kosinski is a resident of the state of New York.

19. Defendant ESSMA BAGNUOLA is a Commissioner of the New York State Board of Elections. She is sued in her official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Bagnuola is a resident of the state of New York.

20. Defendant ANTHONY J. CASSALE is a Commissioner of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Cassale is a resident of the state of New York.

21. Defendant KRISTEN ZEBROWSKI STAVISKY is Co-Executive Director of the New York State Board of Elections. She is sued in her official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Stavisky is a resident of the state of New York.

22. Defendant RAYMOND J. RILEY, III is Co-Executive Director of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Riley is a resident of the state of New York.

23. Defendant LETITIA JAMES is the Attorney General of the state of New York. Defendant James is the chief legal and law enforcement officer of the state of New York.

24. Collectively, Defendants Berger, Kosinski, Bagnuola, Cassale, Stavisky, and Riley (the “NYSBOE Defendants”) and Defendant James are the chief New York officials charged with enforcing the residence requirement, administering New York Election Law, overseeing production of the state’s general election ballot, and executing the state court judgment challenged in this action.

JURISDICTION AND VENUE

25. This Court has jurisdiction under the U.S. Constitution, 28 U.S.C. § 1331, and 42 U.S.C. § 1983.

26. Venue is proper because all Defendants reside in this state and at least one Defendant resides in this District; thousands of Kennedy petitions were collected in this District; the events in question substantially took place here; and/or several of the Defendants are subject to personal jurisdiction here. 28 U.S.C. § 1391(b)(1)-(3).

FACTS

Residence Requirement

27. Robert F. Kennedy, Jr. is an announced independent candidate for the office of President of the United States for the 2024 general election.

28. Mr. Kennedy is the leading independent presidential candidate, receiving between 5% and 20% support in national polls taken at various times during the campaign.

29. On August 13, 2024, a New York state court judge in Albany ordered that Robert F. Kennedy, Jr. be removed from that state's ballot as a candidate for President in the coming election. *See Cartwright v. Kennedy*, No. 906349-24, 2024 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. Albany Cnty. Aug. 13, 2024)

30. The court so ruled notwithstanding the fact that Mr. Kennedy had submitted to New York election officials a nominating petition signed by over 100,000 New Yorkers seeking to have him appear on the ballot—more than twice the number that New York requires.

31. The court so ruled notwithstanding the fact that this petition complied with the onerous, costly, and, in some cases, arcane requirements imposed by New York on ballot-access petitions, including the requirement for independent candidates that 45,000 valid signatures be collected between April 16 and May 28—a period of only 6 weeks.

32. The court so ruled notwithstanding the fact that the New York Board of Elections had certified the validity of these more than 100,000 petition signatures and voted to place Mr. Kennedy on the ballot.

33. Notwithstanding all this, the state court rejected the petition, holding it invalid on one basis and one basis alone: according to the court, it listed the wrong address for Mr. Kennedy.

34. Under New York Election Law, each sheet of a ballot-access petition must show the candidate's "place of residence." The Kennedy petition listed the address of a house in New York where Mr. Kennedy pays rent and keeps personal belongings. The state court found that this address did not satisfy New York's definition of "residence," which is an individual's "fixed, permanent and principal home" to which he "intends to return."

35. The state court did not find that any voters or petition-signers were misled by the supposedly incorrect address. Nor did the state court identify any state interests that were compromised by the supposedly incorrect address. Rather, the court simply held that New York has a rule of "strict compliance" with petition requirements and that under the "strict compliance" rule, the petition was invalid and Mr. Kennedy's name had to be struck from the ballot.

36. Whether or not this ruling was correct under New York law, it was and is in plain violation of the U.S. Constitution.

37. For avoidance of doubt: under the Constitution, presidential candidates are not like gubernatorial candidates, as to whom in-state residency can be required for ballot eligibility. An individual from any state can run for President in every state. A state has no constitutional right to—and New York does not purport to—require that an individual be an in-state resident in order to appear on the ballot as a candidate for President.

38. By contrast, the “right of voters to associate and *to have candidates of their choice placed on the ballot*” is well established.⁴

39. Forty years ago, the Supreme Court enforced that right in a case that controls the outcome here.

40. In *Anderson v. Celebrezze*, 460 U.S. 780 (1983), Ohio’s Secretary of State had declared independent presidential candidate John Anderson ineligible to appear on the state ballot because, although Anderson collected the requisite number of signatures from Ohio voters, he missed the filing deadline. The Secretary of State’s decision was unquestionably correct under Ohio law: Anderson’s campaign had submitted the signatures on May 16, 1980, whereas Ohio’s deadline was March 20. Nevertheless, Anderson challenged the Secretary of State’s decision in federal District Court and won. The District Court issued an injunction ordering that Anderson’s name appear on the ballot. The Sixth Circuit reversed, but the United States Supreme Court reversed again, agreeing with the district court.

Said the Court:

Constitutional challenges to specific provisions of a State’s election laws ... cannot be resolved by any “litmus paper test” that will separate valid from invalid restrictions. Instead, a court ... must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.

Anderson, 460 U.S. at 789 (internal citations omitted).

41. Under this test, the Court found unconstitutional Ohio’s attempt to exclude Anderson from the ballot, despite Anderson’s having missed the filing deadline.

⁴ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (emphasis added).

42. Of critical relevance to this case, the *Anderson* Court emphasized the First Amendment importance of “*figures outside the two major parties*” and the First Amendment rights of “independent-minded voters”—“*voters whose political preferences lie outside the existing political parties.*” *Id.* at 793-94.

43. Typically, such voters can exercise their right “to have candidates of their choice placed on the ballot” only through a ballot-access petitioning process, which (as here) is often subject to cumbersome and complex state regulation.

44. The *Anderson* Court found that the Constitution not only protects but favors such petitioning by “independent-minded voters,” because the First Amendment does not countenance two-party monopolization of the electoral process, and the ability of independent candidates to run for the presidency serves the First Amendment’s “primary values”:

Historically, political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have, in time, made their way into the political mainstream. In short, the primary values protected by the First Amendment—‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open’—are served when election campaigns are not monopolized by the existing political parties.

45. For these reasons, the *Anderson* Court concluded that while state filing deadlines of course serve important and legitimate interests, the First Amendment rights at stake were paramount, and the state interests supporting Ohio’s choice to set its deadline nine months before the election could not justify completely blocking Anderson from the ballot.

46. *Anderson* controls this case. The constitutional rights injured are identical, and New York’s interests are weaker than Ohio’s.

47. In fact, New York has no legitimate interest in applying its residency rule to a presidential candidate.

48. New York’s requirement that a ballot-access petition list the candidate’s “place of residence” defined as the candidate’s “fixed,” “permanent home” (the “Residence Requirement” is set forth in a statute that applies to all elections, high and low, whether for town dogcatcher or President of the United States.

49. With respect to all state elective offices, states can lawfully impose residency requirements on candidates. Typically, in New York, a candidate for office in a given political unit is required to reside in that political unit. The governor must be a state resident; a town selectman must be a resident of that town.

50. Even for United States Senators and Representatives, states can make in-state residency a condition of ballot eligibility, because the Constitution itself requires that candidates for the Senate and House shall be an “inhabitant” of the state they seek to represent.

51. Thus, for nearly all elective offices, states undoubtedly have a substantial, legitimate interest in ensuring that the candidate has a home in the state and in ascertaining the location of that home. New York’s Residence Requirement serves that interest.

52. But none of this applies to the Presidency.

53. States cannot impose any kind of in-state residency requirement on a candidate for President. They cannot require that he live in-state, they cannot require that he be registered to vote in-state, and they cannot require that he have a home in-state.

54. Thus, when it comes to the Presidency, New York’s Residence Requirement does not serve the interest it serves with respect to virtually all other electoral offices.

55. Instead, as applied to the Presidency, that requirement serves no legitimate state interests at all.

56. If the state has an interest in obtaining from the candidate an address for service of process, it could achieve that interest without asking the candidate to publicly disclose his home address.

57. If the state has any other interests served by the Residence Requirement, the state court did not identify them.

58. Under *Anderson*, a state's interest in "strict compliance" with its petitioning rules cannot outweigh First Amendment rights; if it could, Ohio's insistence on strict compliance with its filing deadline would then have been constitutional.

59. In fact, as applied to the Presidency, the Residence Requirement is simply an arbitrary artifact of New York's one-size-fits-all statutory scheme regulating all ballot-access petitioning, in which a residency requirement that makes sense for town selectmen and all other state officers happens to apply as well to the Presidency.

60. Accordingly, under *Anderson*, the state court's decision to strike Mr. Kennedy from the ballot is unconstitutional and must be enjoined.

61. The Board of Elections thereafter certified the validity of over 100,000 of those petition signatures and voted for Mr. Kennedy to be placed on the ballot.

62. Suit was brought by objectors in New York Supreme Court challenging the petition.

63. On August 13, 2024, the state court issued its decision and judgment, ordering the NYSBOE to remove Mr. Kennedy from the ballot on the ground that his petition listed an incorrect address for him.

64. Mr. Kennedy has homes in California, New York, and Massachusetts.

65. His home in New York is a house in Katonah where he pays rent and keeps personal belongings.

66. Mr. Kennedy is registered to vote in New York, pays income taxes in New York, has his drivers' license from New York, holds professional and recreational licenses in New York, and has testified under oath that he intends to return to New York. These facts and others made it reasonable for Mr. Kennedy and Team Kennedy to believe that Mr. Kennedy's state of residence is New York, and Team Kennedy was advised by counsel that the Katonah address satisfied New York's definition of residence.

67. For those and other reasons, the Kennedy petitions listed Mr. Kennedy's New York address as his place of residence. Because in some states (such as Maine) the candidate's residence must be the state where he is registered to vote, and because of concern that use of different places of residence on Kennedy petitions in different states could trigger costly and uncertain challenges, Team Kennedy, on the advice of counsel, used the same address on Kennedy petitions wherever states required the candidate to list a residence.

68. Nicole Shanahan is a California resident, and her residence has not been disputed.

69. On August 13, the state court ruled that Mr. Kennedy's New York home is not his residence as New York Election Law defines it.

70. By then, New York's window for petition-collection had long since closed, and the (supposed) error in the petitions could not be corrected.

71. On September 11, 2024, the NYSBOE will issue its final certification of the 2024 general election ballot. To avoid irreparable harm, Defendants must be ordered before that date to restore Mr. Kennedy's name to the ballot.

Ballot Access

72. In order to secure ballot access, Team Kennedy has, on behalf of Mr. Kennedy and Ms. Shanahan: (1) accepted the nomination of several state political parties with preexisting ballot

access;⁵ (2) paid filing fees to secure direct ballot access;⁶ (3) assisted local supporters who formed new political parties in order to secure ballot access in certain states;⁷ and (4) circulated ballot access petitions for voters to record their support for the Kennedy/Shanahan ticket and timely filed them with 40 states and the District of Columbia to secure ballot access for the general election.⁸

73. As part of the petition circulation component of the 50-state ballot access drive, Team Kennedy collected over 1,000,000 signatures from voters at a total estimated cost of \$12,000,000.00. In New York alone, Plaintiff Team Kennedy spent over \$1,100,000 to collect and file ballot-access petitions for Mr. Kennedy to secure general election ballot access.

74. In the vast majority of states, Plaintiff Team Kennedy's volunteer and professional petition circulators collected a multiple number of signatures in excess of the minimum number of signatures required and timely filed to secure ballot access within a state.

75. Team Kennedy has worked assiduously to secure ballot access on New York's general election ballot for Mr. Kennedy and Nicole Shanahan for the office of President and Vice President of the United States.

⁵ Team Kennedy has accepted the nomination of the Kennedy/Shanahan ticket as the presidential and vice-presidential nominees for the American Independent Party in California; the Natural Law Party in Michigan; the Delaware Independent Party in Delaware; the Alliance Party in South Carolina; and the Reform Party in Florida.

⁶ Team Kennedy paid ballot access filing fees in Oklahoma and Louisiana to secure ballot access for the 2024 general election.

⁷ Local supporters in Hawaii, Oregon and North Carolina formed new political parties and then nominated or have expressed their intent on nominating the Kennedy/Shanahan ticket as their nominees for President and Vice President of the United States for the 2024 general election.

⁸ Team Kennedy organized, circulated and either timely filed or intends to timely file ballot access petitions containing a number of signatures sufficient to demonstrate that the Kennedy/Shanahan national ticket enjoys sufficient local support to secure ballot access for the 2024 general election in: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, the District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

76. Under New York law, Team Kennedy was required to circulate nominating petitions to collect the signatures, printed names, street address, city or town (or county if the voter resides in New York City) of registered New York voters and the date the voter signs the nominating petition to place Robert F. Kennedy, Jr. and Nicole Shanahan on the 2024 New York general election ballot for the offices of President and Vice President of the United States.

77. The names of Robert F. Kennedy, Jr. and Nicole Shanahan are required to be printed on the nominating petition used to collect signatures to secure ballot access in the state of New York.

78. In addition to the names of Robert F. Kennedy, Jr. and Nicole Shanahan, Team Kennedy is also required to name and print on the nominating petition the names of 28 presidential electors pledged to cast their votes for Robert F. Kennedy, Jr. and Nicole Shanahan for the office of President and Vice President of the United States in the 2024 electoral college.

79. Presidential candidates for the major political parties are not required to publicly name their slates of presidential electors until after their national nominating conventions held in July and August of a presidential election year.

80. Providing independent presidential candidates less time to select their slate of presidential electors is an unequal application of the law.

81. Independent presidential candidates have less time than presidential candidates for the major political parties to discover any fact which would disqualify an elector from serving in New York's electoral college.

82. If it is discovered that a presidential elector is not qualified to serve as a presidential elector after their name has been printed on a nominating petition, the disqualification threatens to

invalidate the entire nominating petition and deny ballot access to an independent presidential candidate in New York.

83. Candidates seeking the nomination of a major political party are not required to name their slate of presidential electors in New York until after receiving their party's nomination and access to New York's general election ballot.

84. The first date Plaintiff Team Kennedy was permitted to circulate nominating petitions was Tuesday, April 16, 2024.

85. Plaintiff Team Kennedy was required to file with the NYSBOE a nominating petition containing a minimum of 45,000 valid signatures from registered voters of the state of New York no later than May 28, 2024.

86. Voters are required to personally sign the nominating petition.

87. Either the voter or the person circulating the nominating petition or some other person may record the printed name, street address and city or town (or county for voters registered in New York City) of the registered voter and the date the voter signed the petition.

88. Other than the voter's signature and the date, Plaintiff Team Kennedy is permitted, prior to filing, to correct the street address and city or town (or county if the voter is registered in New York city) for each signer of the petition.

89. Failure to record the exact name and street address and city or town (or county for voters registered in New York city) as recorded on the voter's registration record threatens to invalidate a signature if the signature is subject to a private challenge after the nominating petition is filed.

90. The New York voter file does not exclusively require voters to be identified by their city or town of residence.

91. Significant portions of the New York voter file designate voters by the village of their residence.

92. The New York voter file does not conform to the rules governing the designation of voters by only their city or town on the nominating petition.

93. The failure of the New York voter file to comply with the city or town designation of registered voters makes it impossible for Plaintiff Team Kennedy to validate many nominating petition signatures prior to filing with the NYSBOE Defendants. Plaintiff Team Kennedy hired the most accurate and reliable petition verification firm to report to Plaintiff with a 5% margin of certainty the number of valid signatures collected in each state, including New York.

94. Because Plaintiff Team Kennedy cannot validate the required city or town designation of voters, it must collect many thousands of additional petition signatures to compensate for the inability to correct a voter's recorded village with the required city or town designation.

95. Furthermore, even if Plaintiff Team Kennedy can correct a recorded village with the corresponding city or town, the discrepancy between the nominating petition and the New York voter files threatens to trigger a large number of unnecessary and invalid specific challenges to Plaintiff Team Kennedy's nominating petition signatures.

96. Due to the fact the New York voter file does not limit its data to city or town designations for registered voters, the NYSBOE Defendants lack any legitimate state interest to continue to enforce the challenged restriction of Section 6-130 of the New York Election Law.

97. Plaintiff Team Kennedy used volunteer and professional petition circulators in New York to collect the required number of 45,000 valid petition signatures to secure access for Robert F. Kennedy, Jr. and Nicole Shanahan for New York's 2024 general election ballot.

98. The U.S. Supreme Court has established that the First and Fourteenth Amendments to the U.S. Constitution guarantees Plaintiff Team Kennedy the right to use and compensate professional petition circulators to assist in the collection of the required number of valid petition signatures to secure ballot access for New York's 2024 general election.

99. Defendants are charged with enforcing a limit on the established right to compensate professional petition circulators through a ban on compensating professional petition circulators based on the number of valid petition signatures collected—the Valid Per-Signature Compensation Ban.

100. As a direct and proximate result of New York's ban on valid per-signature compensation, Plaintiff Team Kennedy is forced to compensate professional petition circulators up to \$90.00 per hour for the collection of nominating petition signatures.

101. Plaintiff Team Kennedy is required to pay professional petition circulators no matter how few signatures a circulator collects.

102. If a petition circulator reports to Plaintiff Team Kennedy that he/she worked 8 hours, at \$90.00 per hour and only collected 1 signature, Plaintiff Team Kennedy is legally required to pay that petition circulator \$720.00 for a single signature.

103. While Plaintiff Team Kennedy may terminate the services of a petition circulator who collects only 1 signature during an 8-hour shift, it is still legally required to pay that circulator \$720.00 for that single signature.

104. Under a valid per-signature compensation model, that single signature, if valid, would only cost Plaintiff Team Kennedy about \$12.00 to \$15.00.

105. New York's Valid Per-Signature Compensation Ban forces Plaintiff Team Kennedy to provide compensation for circulators who engage in fraud.

106. New York's ban on valid per-signature compensation imposes the only compensation model which requires Plaintiff Team Kennedy to compensate petition circulators who engage in fraud.

107. Because Plaintiff Team Kennedy is required to compensate petition circulators for fraud, New York's ban on valid per-signature compensation encourages fraud.

108. New York's Valid Per-Signature Compensation Ban permits Plaintiff Team Kennedy's political adversaries to infiltrate its petition drive, engage in fraud and then force it to compensate intentional petition fraud and sabotage with full compensation, all of which has the knock-on benefit for Plaintiff Team Kennedy's political enemies of reducing its campaign war-chest.

109. Meridian Strategies and Dark Horse Strategies are petition firms aligned with the Democratic National Committee and prominent Democrats within the state of New York.

110. Plaintiff was not aware of the political agenda of Meridian Strategies and Dark Horse Strategies before they were hired to circulate Plaintiff's nominating petitions in New York.

111. New York Times reporters discovered and reported on Meridian Strategies and Dark Horse Strategies petition circulators engaging in actual fraud in the circulation of Plaintiff Team Kennedy's nominating petitions.

112. The New York Times reported witnessing Meridian Strategies and Dark Horse Strategies petition circulators: (1) folding over the top of Plaintiff Team Kennedy's nominating petition to obscure the name of Robert F. Kennedy, Jr.; and then (2) telling voters that signing the petition was to support the progressive movement.

113. Plaintiff Team Kennedy has discovered nominating petitions with obvious folds at the top of the nominating petition by Meridian Strategies and Dark Horse Strategies petition circulators which contain over 8,000 petition signatures.

114. Plaintiff Team Kennedy was forced to provide full compensation to Meridian Strategies and Dark Horse Strategies for the 8,000 fraudulent “fold-over” nominating petition signatures.

115. Plaintiff Team Kennedy excluded all 8,000 fraudulent nominating petition signatures from the filing to be made with NYSBOE Defendants on May 28, 2024.

116. The total number of nominating petition signatures collected by Meridian Strategies and Dark Horse Strategies was over 30,000.

117. As a sole result of New York’s Valid Per-Signature Compensation Ban, Plaintiff Team Kennedy is forced to provide full compensation to Meridian Strategies and Dark Horse Strategies petition circulators for the time they spent engaged in fraudulent conduct.

118. The total cost to Plaintiff Team Kennedy for the fraudulent signatures collected by Meridian Strategies and Dark Horse Strategies petition circulators was approximately \$313,000.00.

119. Under New York Election Law, Section 6-140(1)(b), any signature collected after a petition circulator signs a designating or nominating petition for a candidate for the same office is invalid.

120. As a result of Section 6-140(1)(b), Plaintiff Team Kennedy’s political opponents were permitted to hire Plaintiff Team Kennedy’s petition circulators and tell them to sign the nominating petition for the Green Party’s presidential candidate, thereby invalidating all of the nominating petition signatures subsequently collected by that petition circulator. Plaintiff Team

Kennedy is still required to provide full compensation to any such petition circulator, despite the invalid signatures caused by the political manipulation scheme devised by its political opponents.

121. Based on information and belief, the Republican Party and/or the campaign for Donald Trump hired Plaintiff Team Kennedy's petition circulators and instructed them to sign the nominating petition for the Green Party's presidential candidate as a condition precedent to receiving compensation.

122. As a result, any petition signature subsequently collected by Plaintiff Team Kennedy's petition circulators after they accepted payment and signed the nominating petition for the Green Party's presidential candidate would be invalid.

123. The state of New York has no legitimate interest in the invalidation of otherwise valid nominating petition signatures collected by a petition circulator/witness who signs a nominating petition for another nominating petition for the same office.

124. At most, the proper remedy for a petition circulator/witness signing a nominating petition for another candidate for the same office is to merely invalidate the signature of the petition circulator—not the signatures of innocent voters who properly signed Plaintiff Team Kennedy's nominating petition and did nothing in violation of New York law.

125. Any registered voter may file general objections to a nominating petition within three days after the last day to file nominating petitions.

126. After filing general objections, specific objections to signatures, or to any other alleged defect of the nominating petition, must be filed within six days after the filing of the general objection.

127. Section 6-154 of the New York Election Law invites and establishes a process allowing private-party challenges to the validity of petition signatures.

128. The private challenge process requires Plaintiff Team Kennedy to pay for the validation of its own petition signatures.

129. Upon a challenge to Plaintiff Team Kennedy nominating petitions, Plaintiff Team Kennedy is required to spend funds for: (1) fees, costs, travel and accommodation for legal counsel; (2) travel and accommodation of witnesses, including any and all of Plaintiff Team Kennedy's petition circulators who will be subpoenaed with the hope by its political adversaries that a large number of such petition circulators will fail to comply thereby invalidating all petition signatures collected by any such petition circulator; (3) compensable time for handwriting experts and other witnesses; (4) hearing preparation; (5) staff; (6) process servers' fees and expenses; (7) photocopies; (8) meals; (9) legal research; and (10) conference call expenses.

130. The imposition of costs on a candidate to secure ballot access, specifically, the cost of validating ballot access petition signatures has been held unconstitutional as a severe burden to rights guaranteed under the First and Fourteenth Amendments to the U.S. Constitution.

131. In *Constitution Party of Pennsylvania v. Aichele*, the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit held Pennsylvania's less burdensome petition requirements followed by the costs of a private petition challenge process was unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution and forced the Commonwealth of Pennsylvania to choose between the statutory formula which, in 2012, required independent presidential candidates to collect 20,601 valid petition signatures or the private challenge process used by the Commonwealth to validate petition signatures.

132. Prior to 2019, New York required independent presidential candidates to collect only 15,000 nominating petition signatures to secure ballot access.

133. NYSBOE Defendants must be required to accept either the reduced 15,000 valid nominating petition signatures for independent presidential candidate ballot access or forego the private challenge system to validate nominating petition signatures in favor of in-house validation by the NYSBOE staff.

134. The combination of the increased 45,000 valid signatures now required for ballot access for independent presidential candidates and the private challenge process to validate petition signatures imposes a far more severe burden on core political speech protected under the First and Fourteenth Amendments to the U.S. Constitution than the facts confronted by the district court and Third Circuit in *Constitution Party of Pennsylvania v. Aichele*.

135. Complying with all the above-described conditions and requirements in the condensed timeframe between April 16 and May 28, 2024—the six-week period for signature collection and petition filing permitted by New York—Plaintiff Team Kennedy collected over 100,000 petition signatures seeking to place Mr. Kennedy on the ballot.

136. Plaintiff Team Kennedy paid expenses of over \$1,000,000 to do so.

137. Nationwide, at an expense of over \$12,000,000, Plaintiff Team Kennedy has collected more than 1,000,000 signatures for Mr. Kennedy to secure ballot access across the country.

138. On May 21, anticipating various petition challenges, this action was originally filed by Plaintiff Team Kennedy, asserting that the various, onerous New York petition regulations described above are unconstitutional.

139. Nevertheless, on May 28, 2024, Team Kennedy properly submitted over 100,000 Kennedy petition signatures to the NYSBOE.

140. Plaintiffs have no adequate remedy at law.

CLASS ACTION ALLEGATIONS

141. Plaintiffs re-allege and incorporate by reference all the allegations contained above.

142. Pursuant to Federal Rule of Civil Procedure 23(b)(2), Plaintiff Rose asserts claims on behalf of the following Classes of similarly situated voters:

- a. All New York voters who in 2024 signed a petition seeking to place any independent or non-recognized-party presidential candidate on the ballot;
- b. All New York voters who are not registered in political parties whose nominees for President will be on the ballot in 2024; *and/or*
- c. All New York voters “whose political preferences lie outside the existing political parties,” *Anderson v. Celebrezze*, 60 U.S. 780. 794 (1983).

143. Plaintiffs reserve the right to amend the above Class definitions if discovery and/or further investigation reveal that the Classes should be expanded, divided into subclasses, or modified in any other way.

144. This Rule 23(b)(2) injunctive class action is properly maintainable because it satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and the injunctive remedy requirement of Rule 23(b)(2).

145. Although, with respect to each Class defined above, the precise number of class members is unknown, the proposed Class numbers at least over one hundred thousand and is therefore so numerous that joinder of all members would be impracticable.

146. With respect to each Class defined above, the claims of every Member of the proposed Class are united by common, dispositive issues of law: whether New York’s above-described ballot-access restrictions, including the Residence Requirement, are constitutional.

147. Named Plaintiff Rose is a Member of each putative Class defined above, and his claims are typical of the Class: (A) because, like other Class Members, he signed a petition seeking

to place on the ballot a presidential candidate who, due to New York's ballot-access restrictions, was denied access to the ballot; (B) because he is not registered in a political party whose presidential nominee will be on the ballot in 2024 and his preferred presidential candidate will not be on the ballot; (C) because his political preferences lie outside the existing political parties; and (D) because all Class Members' claims arise from the same course of conduct by the Defendants.

148. Rose and Plaintiff AV24 will fairly and adequately represent and protect the interests of each of the Classes defined above, because they are dedicated to vindicating the constitutional rights of all independent-minded voters to place on the ballot presidential candidates of their choice, regardless of who such candidates may be.

149. Plaintiffs have retained counsel competent and experienced in both constitutional law and class action litigation.

150. Certification of the Class is appropriate pursuant to Fed. R. C. P. 23(b)(2) because Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief are appropriate respecting the class as a whole. The Class Members' interests in this case are indivisible and cohesive in that an injunction will redress the violation of every Class Member's First Amendment rights, apply to all Members identically, and vindicate the rights of all independent-minded voters to have candidates of their choice be placed on the ballot under reasonable, constitutional rules even-handedly applied.

151. No precise ascertainability requirement applies to this Rule 23(b)(2) injunctive class action, see, e.g., *Lowell v. Lyft, Inc.*, No. 17-CV-06251 (PMH), 2023 U.S. Dist. LEXIS 50722, at *31 (S.D.N.Y. Mar. 24, 2023), but in any event Classes (A) and (B) above satisfy any implied requirement of ascertainability that may apply because they are defined by objective criteria and membership therein can be ascertained by documentary evidence in the public record.

COUNT I – Freedom of Speech and Right to Vote

(42 U.S.C. § 1983: First & Fourteenth Amendments to the U.S. Constitution)

152. Plaintiffs reassert each preceding allegation as if set forth fully herein.

153. The Residence Requirement that an independent presidential candidate list on his ballot-access petitions his “fixed” “permanent” “home” address is severely burdensome and discriminatory and therefore subject to strict scrutiny under the First and Fourteenth Amendments.

154. The Residence Requirement is severely burdensome because it: (A) imposes risk and danger on the candidate by publicizing his home address; (B) forces a candidate with more than one home to guess at and gamble on which of those homes, if any, will later be determined by a New York court to be the candidate’s “place of residence” under New York law, at which time it will be too late under New York law to correct the error and collect new petitions; (C) conflicts with the requirements of other states’ petitioning laws; and (D) excludes candidates who have no fixed home address.

155. It is discriminatory because it applies to independent candidates but not to candidates nominated by recognized parties, who are not required to petition for ballot access and are not required to declare or even submit to New York officials their home address.

156. The Residence Requirement cannot survive strict scrutiny because the state interests it allegedly serves are not compelling and it is not narrowly tailored to achieve them.

157. A majority of the States—twenty-eight—do not require presidential candidates to publish either a domicile or residential address on ballot access petitions. Of those, twenty-four states do not require any address to be recorded on their presidential ballot access petitions.⁹ Two

⁹ Those states are Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Iowa, Kentucky, Massachusetts, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Virginia, and Washington.

states—New Hampshire and Maine—require presidential candidates to publish the address on their ballot access petition at which they are registered to vote. And two states—Louisiana and Oklahoma—do not require presidential candidates to circulate any petitions to qualify for the general election ballot.

158. If it is not subject to strict scrutiny, the Residence Requirement is still subject to and cannot satisfy *Anderson* scrutiny, because it serves no legitimate state interests whatsoever.

159. Accordingly, the Residence Requirement violates Plaintiffs', Mr. Kennedy's and voters' rights under the First and Fourteenth Amendments.

COUNT II – Qualifications Clause

(42 U.S.C. § 1983: Violation of the Presidential Qualifications Clause)

160. Plaintiffs reassert each preceding allegation as if set forth fully herein.

161. The Presidential Qualifications Clause establishes three—and only three—qualifications for eligibility to serve as President of the United States: (1) an age requirement; (2) native-born citizenship; and (3) 14 years of U.S. residency.

162. States have no power to add to those qualifications.

163. As applied to presidential candidates, the Residence Requirement operates to impose two additional qualifications on eligibility to serve as President.

164. First, the Residence Requirement bars individuals who have no permanent home address that meets that requirement from running for President.

165. Second, it bars individuals who have a home address but choose not to disclose it from running for President.

166. On both grounds, the Residence Requirement violates the Presidential Qualifications Clause.

COUNT III – Per Signature Compensation Ban

(42 U.S.C. § 1983: First and Fourteenth Amendments to the U.S. Constitution)

167. Plaintiffs reassert all previous allegations as if fully set forth herein.

168. The other above-described burdensome, arbitrary, and unjustified requirements imposed by New York on ballot access petitioning also violate, individually and collectively, the First and Fourteenth Amendments.

169. New York's Valid Per-Signature Compensation Ban requires an independent candidate to provide full compensation for the time petition circulators engage in petition fraud.

170. The criminal sanctions imposed under Section 17-122(4) of the New York Election Law dramatically and severely increase the costs of collecting nominating petition signatures.

171. The criminal sanctions imposed under Section 17-122(4) of the New York Election Law required Plaintiff Team Kennedy to provide full compensation to petition circulators aligned with political opponents who engaged in petition fraud rendering their nominating petition signatures of no value.

172. The Valid Per-Signature Compensation Ban fails to advance any legitimate state interest because it requires compensation to be paid to petition circulators who engage in petition fraud.

173. The Valid Per-Signature Compensation Ban reduces the scope of the constitutional right to compensate professional petition circulators, in the most efficient manner possible, under the First and Fourteenth Amendments to the U.S. Constitution.

COUNT IV – Circulator Restriction and Early Elector Selection

(42 U.S.C. § 1983: First and Fourteenth Amendments to the U.S. Constitution)

174. Plaintiffs reassert all previous allegations as if fully set forth herein.

175. The other above-described burdensome, arbitrary, and unjustified requirements imposed by New York on ballot access petitioning also violate, individually and collectively, the First and Fourteenth Amendments.

176. New York's requirement that independent presidential candidates seeking access to the ballot must collect 45,000 valid petition signatures and file them with NYSBOE Defendants within a short six-week window is unnecessarily burdensome and designed not just to keep frivolous candidates off the general election ballot, but to keep any independent presidential candidate off New York's general election ballot.

177. In addition to the cost of securing 45,000 valid signatures, Plaintiff Team Kennedy is also required to bear the substantial costs of defending its nominating petition signatures through a private challenge system which has, in tandem with a high signature collection requirement, been held unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution in Pennsylvania by federal courts.

178. Collecting enough signatures to survive a challenge by private voters under New York's excessively restrictive ballot access rules cost Plaintiff Team Kennedy over \$1.1 million.

179. The cost of defending and validating nominating petition signatures was even more—over \$2.9 million dollars.

180. In tandem, Sections 6-142 and 6-154 operate to impose a severe burden on rights guaranteed to Plaintiffs and the voters of New York under the First and Fourteenth Amendments to the U.S. Constitution for which Plaintiffs respectfully request the relief detailed in this action.

181. Section 6-140(1)(b) invalidates any signature collected by a petition circulator/witness if that petition circulator/witness signs a nominating petition for another candidate for the same office.

182. No state interest is advanced by invalidating otherwise valid signatures by voters who have done nothing wrong and want to record their support for ballot access for the candidate of their choice.

183. New York lacks any interest in disenfranchising New York voters to sign a ballot access petition, which is core political speech afforded the highest level of protection under the First and Fourteenth Amendments to the U.S. Constitution, based on the conduct of some third-party who merely offered them a clipboard with a petition to sign.

184. The only operative signatures on a nominating petition to secure ballot access are the signatures of the registered voters signing a nominating petition to support ballot access for a candidate.

185. To the extent New York has any interest in preventing a petition circulator/witness from signing a nominating petition for another candidate of the same office, the penalty should be limited to the invalidation of the petition circulator/witness's signature from the nominating petition for another candidate—not the invalidation of hundreds of otherwise valid and constitutionally protected signatures of innocent registered voters.

186. Section 6-140(1)(b) invites political opponents to hire Plaintiff Team Kennedy's petition circulators and instruct them to sign a nominating petition for another candidate of the same office and thereby sabotage the ballot access efforts of a political opponent.

187. Accordingly, Section 6-140(1)(b) is a severe burden on core political speech protected under the First and Fourteenth Amendments.

188. In addition, NYSBOE Defendants require Plaintiff Team Kennedy and independent presidential candidates to name their slate of presidential electors in April/May of a presidential election year when they only require presidential nominees for the major political parties to name

their slate of presidential electors after the conclusion of the national nominating convention on or about August of a presidential election year.

189. The shorter time period to interview, vet, select and name presidential electors on an independent presidential candidate's nominating petition imposes an additional fail point to invalidate a ballot access petition upon a late discovery that a named presidential elector does not meet the requirements to hold the position of presidential elector—a threat not imposed against the presidential candidates of the major political parties.

190. Accordingly, NYSBOE Defendants' requirement for independent presidential candidates to name their presidential electors on their nominating petitions as a condition precedent to secure ballot access violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution for which Plaintiffs respectfully request the relief detailed in this action.

COUNT V –City/Town Petition Requirement

(42 U.S.C. § 1983: First and Fourteenth Amendments to the U.S. Constitution)

191. Plaintiffs reassert all previous allegations as if fully set forth herein.

192. The other above-described burdensome, arbitrary, and unjustified requirements imposed by New York on ballot access petitioning also violate, individually and collectively, the First and Fourteenth Amendments.

193. New York's requirement that independent presidential candidates seeking access to the ballot must collect 45,000 valid petition signatures and file them with NYSBOE Defendants within a short six-week window is unnecessarily burdensome and designed not just to keep frivolous candidates off the general election ballot, but to keep any independent presidential candidate off New York's general election ballot.

194. NYSBOE Defendants lack any interest in invalidating a petition signature which can be identified as that of a registered voter of New York just because the voter records their village rather than their city or town.

195. The New York voter file contains numerous registrations whose address is indicated by the village where the voter resides rather than their city or town.

196. Because the New York voter file does not conform with NYSBOE Defendants' ballot access rule that voters must record their city or town (or county in the City of New York), it is impossible for independent candidates to validate in advance such voters' signatures, causing independent candidates to have to collect many more thousands of additional signatures on nominating petitions than otherwise required.

197. Further, the failure of the New York voter file to record only the city or town of registered voters makes it impossible for an independent candidate to correct a voter's recordation of a village to the correct city or town as required by NYSBOE Defendants.

198. The fact that the New York voter file includes village designations rather than exclusively city and town designations, demonstrates that Section 6-130 fails to advance any legitimate state interest sufficient to save the requirement from constitutional scrutiny.

199. The inability of an independent candidate to either validate and/or correct signature lines because the New York voter file does not conform to ballot access rules, is a severe burden on rights guaranteed to Plaintiffs under the First and Fourteenth Amendments to the U.S. Constitution for which Plaintiffs respectfully request the relief detailed in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter immediate emergency injunctive and permanent relief ordering that Mr. Kennedy's name be kept on the New York general election ballot;
2. Declare that the Residence Requirement under Section 6-140 of the New York Election Law is unconstitutional as applied to Mr. Kennedy;
3. Declare that Section 6-140(1)(b) of the New York Election Law is unenforceable to the extent it invalidates any petition signature on a nominating petition made after the date the signature of that sheet's petition circulator/witness was made on a nominating or designating petition for a different candidate for the same office as on Plaintiff Team Kennedy's nominating petition.
4. Declare that New York must validate the signatures on nominating petitions when the signer's village, and not their city or town, is indicated on the signature line.
5. Declare that New York may not henceforth enforce the requirement that independent presidential candidates collect 45,000 valid signatures on nominating petitions to secure ballot access, but may enforce the previous requirement to collect 15,000 valid signatures.
6. Enter permanent injunctive relief enjoining NYSBOE Defendants from enforcing Section 6-140(1)(b) of the New York Election Law to the extent it invalidates any petition signature made on a nominating petition after the date of the signature of that sheet's petition circulator/witness on a nominating or designating petition for a different candidate for the same office as Plaintiff Team Kennedy's nominating petition.
7. Enter permanent injunctive relief enjoining NYSBOE Defendants from enforcing Section 6-130 of the New York Election Law prohibiting otherwise identifiable registered voters of New York from recording their village instead of their city or town.

8. Permanently enjoin NYSBOE Defendants from enforcing the requirement for independent presidential candidates to name their slate of presidential electors before presidential candidates of the major political parties do during a presidential election year.

9. Permanently enjoin Defendant James from enforcing criminal sanctions for violation of the Valid Per-Signature Compensation Ban imposed under Section 17-122(4) of the New York Election Law.

10. Award such other and further relief as the Court deems proper and just.

11. Award Plaintiffs reasonable attorney fees and costs associated with the prosecution of this action pursuant to 42 U.S.C. § 1988.

Dated: August 22, 2024

Respectfully submitted,

/s/ Gary Donoyan

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Law Office of Gary L. Donoyan
565 Plandome Road #209
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gdonoyan@verizon.net

Counsel for Team Kennedy

/s/ Jim Walden

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/s/ Paul Rossi

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Counsel for Team Kennedy

/s/ Jed Rubenfeld

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203-432-7631
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*Counsel for AV2024, Jeffrey Rose
and Class plaintiffs*

EXHIBIT 2



250 Vesey Street
27th Floor
New York, NY 10281

wmhwlaw.com
T: 212-335-2030
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September 9, 2024

Via ECF

Hon. Andrew L. Carter Jr.
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***Team Kennedy et al. vs. Berger et al.*** (1:24-cv-03897-ALC)

Dear Judge Carter:

Plaintiffs write in response to the Court's order to "provide citations to New York Election Law, or caselaw, that controls address/residence disclosure requirements for established party nominees." (ECF No. 66.)

The New York Election Law provision that apparently governs those requirements is found in Sec. 6-156 thereof, which, as Plaintiffs now understand, supports Defendants' statements to the Court. Contrary to statements made in Plaintiffs' First Amended Complaint and in Plaintiffs' opening Memorandum of Law in support of their motion for a preliminary injunction, Section 6-156 does require President nominees of national political parties—and not merely the nominees of their New York state affiliates who are recognized "parties" pursuant to New York Election Law—to file Certificates of Nomination that include their "residence" address.¹

Plaintiffs stress, however, that, even so, strict scrutiny should still apply here, because New York discriminates against independent parties in its application of the residence requirement in yet another way. New York permits recognized parties to submit "amended" Certificates of Nomination to correct errors. *See* Exhibits 1-3. By contrast, as a practical matter, independent candidates cannot submit amended nominating petitions (i.e., once they obtain signatures on a petition, they cannot amend the petition). Thus, independent candidates have no "opportunity to correct," whereas established party nominees do. *See, e.g.,* *Farrell v. Board of Elections*, No. 85 Civ. 6099 (JES), 1985 U.S. Dist. LEXIS 16669, at *27-28 (S.D.N.Y. Aug. 20, 1985) (issuing preliminary injunction ordering placement of candidate on ballot despite violation of petition cover-sheet requirement, where state could not justify rule that "a cover sheet omission invalidates every signature in the accompanying volume, ***without affording the candidate the opportunity to correct the omission***") ("In this case, there is no integrity interest asserted. The dangers of fraud

¹ We note that NY Elec. L. 6-104(7)(a) introduces certain ambiguity by requiring the filing of the name, but not the residence address, of the designees of the major (and other recognized) parties for President and other state-wide offices if a majority of the party's state committee approves their candidacy. However, if one of those candidates also later obtains the national party's nomination, then Section 6-156 would apply.

or inherent prejudice present in the cases discussed above do not exist.... There was no confusion, no prejudice and no threat to the integrity of the system.”) (emphasis added).²

Thank you for your consideration of this matter.

Respectfully submitted,

/s/ Gary Donovan

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/s/ Jim Walden

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/s/ Paul Rossi

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Counsel for Team Kennedy

/s/ Jed Rubenfeld

Jed Rubenfeld, Esq.
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203-432-7631
jed.rubenfeld@yale.edu

Counsel for AV2024, Jeffrey Rose

² In addition, strict scrutiny applies under *Anderson-Burdick*, because in ignoring the precedent that ballot exclusions for incorrect addresses requires evidence of an intent to mislead or confuse, the Third Department is not applying the residence requirement “evenhanded[ly].” *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983); *Cook v. Gralike*, 531 U.S. 510, 524 (2001). In the past, New York courts—including the Third Department, the same court that just excluded Mr. Kennedy from the ballot—have repeatedly and expressly held that invalid addresses on nominating petitions do not invalidate the petition in the absence of “an intent to mislead or confuse signatories *as to the candidate’s identity*.” *E.g., Matter of Maloney v. Ulster County Board of Elections*, 21 AD3d 692, 693, 800 N.Y.S.2d 249 (3d Dep’t 2005) (emphasis added); *Matter of Pagonos v. Irizarry*, 87 A.D.3d 648, 649, 928 N.Y.S.2d 467 (2d Dep’t 2011); *Shahzad v. Montesano*, No. 9368/12, 2012 N.Y. Misc. LEXIS 3865, at *4 (N.Y. Sup. Ct. Nassau County Aug. 2, 2012).

WORKING FAMILIES PARTY

August 29, 2024

New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, NY 12207-2729

To Whom it May Concern:

On August 27, 2024, the Working Families Party of New York State filed Certificates of Nomination and Authorization of Electors for President and Vice President of the United States. The Board received these certificates on August 29.

Due to an error on the part of the person preparing the certificates, the certificates included an incorrect address for one of the nominated electors. Attached for filing are corrected certificates.

Very Truly Yours,



Alexander Rabb
General Counsel

Working Families Party
77 Sands Street
Brooklyn, NY 11201
arabb@workingfamilies.org
(212) 414-2997

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**WORKING FAMILIES PARTY
AMENDED CERTIFICATE OF PARTY NOMINATION**

Pursuant to sections 6-102, 6-156, 6-158 of the New York State Election Law

To the Board of Elections in the State of New York:

The undersigned, Jessica Wisneski and Sandra Oxford, Presiding Officer and Secretary of the meeting of the State Committee of the Working Families Party of New York State,

DO HEREBY CERTIFY THAT at a meeting of the State Committee of the Working Families Party of New York State duly commenced and held on the 23rd day of August, 2024, a quorum being present at said meeting, the said committee by majority vote of the members present, voting by weighted ballot, did nominate the following individuals as candidates of the Working Families Party for the public offices indicated, to be voted for at the General Election to be held on November 5, 2024:

For President of the United States, Kamala D. Harris, residing at 435 N. Kenter Avenue, Los Angeles, CA 90049, County of Los Angeles;

For Vice President of the United States, Tim Walz, residing at 176 N. Mississippi River Boulevard, Saint Paul, MN 55104, County of Ramsey;

For Elector of President and Vice President of the United States, in support of Kamala D. Harris of California for President of the United States and Tim Walz of Minnesota for Vice President of the United States (28 Electors total):

Gerard Sweeney, residing at 69 I.U Willetts Rd, Old Westbury , NY 11568

Vanessa Gibson, residing at 2005 Paulding Ave, Bronx, NY 10462

Kathy C. Hochul, residing at 405 Gull Lndg, Buffalo, NY 14202

Antonio Delgado, residing at 27 Will Tremper Dr, Rhinebeck, NY 12572

Thomas P. DiNapoli, residing at 100 Great Neck Road, Great Neck, NY 11021

Letitia A. James, residing at 296 Lafayette Ave, Brooklyn, NY 11238

Jay S. Jacobs, residing at 1362 Ridge Rd, Syosset, NY 11791

Carl E. Heastie, residing at 4064 Hill Ave, Bronx, NY 10466

Andrea Stewart-Cousins, residing at 293 N Broadway Apt 32, Yonkers, NY 10701

Eric Adams, residing at 936 Lafayette Ave 1st Floor, Brooklyn, NY 11221

Byron W. Brown, residing at 14 Blaine Ave, Buffalo, NY 14208

Christine C. Quinn, residing at 263 9th Ave Apt 3A, New York, NY 10001

Mario F. Cilento, residing at 424 N. Greenbush Rd, Blauvelt, NY 10913

Michelle Crentsil, residing at 1138 E 35th St, Brooklyn, NY 11210

George K. Gresham, residing at 1313 East 233rd Street, Bronx, NY 10466

Anastasia M. Somoza, residing at 790 11th Ave Apt 14B, New York, NY 10019

Thomas Garry, residing at 504 Morris Avenue, Rockville Centre, NY 11570

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Amended Certificate of Party Nomination
Page 2 of 3

Stuart H. Appelbaum, residing at 405 E 82nd St Apt 5H, New York, NY 10028
Katherine M. Sheehan, residing at 18 1st Street, Albany, NY 12210
Gary S. LaBarbera, residing at 2938 Cambridge Road, Wantagh, NY 11793
Rhonda Weingarten, residing at 675 Academy Street 6D, New York, NY 10034
Luis Miranda, residing at 105 Payson Ave #2, New York, NY 10034
Mohammed Alam, residing at 87 Tehama St #2R, Brooklyn, NY 11218
Sandra Ung, residing at 14640 Beech Ave, Flushing, NY 11355
Carolyn Maloney, residing at 49 E 92nd St Apt. 1A, New York, NY 10128
Crystal People-Stokes, residing at 58 Linden Park, Buffalo, NY 14208
Hazel Dukes, residing at 10 W 135 Street 4E, New York, NY 10037
Latrice Walker, residing at 2137 Pacific St 2nd Floor, Brooklyn, NY 11233

WE FURTHER CERTIFY that the above nominations were made pursuant to New York State Election Law and the Rules of the Working Families Party of New York State;

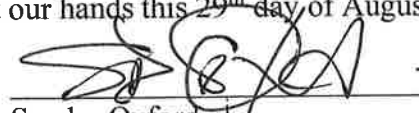
WE FURTHER CERTIFY that, pursuant to Article VIII, Section 1 of the Rules of the Working Families Party of New York State, substitution of candidates for statewide office shall be made by the State Executive Committee of the Working Families Party.

WE FURTHER CERTIFY that Jessica Wisneski was the Presiding Officer of said meeting and that Sandra Oxford was the Secretary thereof.

IN WITNESS WHEREOF, we have hereunto set our hands this 29th day of August, 2024.



Jessica Wisneski
Presiding Officer



Sandra Oxford
Secretary


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Amended Certificate of Party Nomination
Page 3 of 3

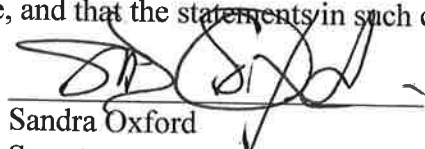
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STATE OF NEW YORK)
) ss.
COUNTY OF ULSTER)

We, the undersigned Jessica Wisneski and Sandra Oxford, hereby affirm that we are a Co-Chair and the Secretary, respectively, of the State Committee of the Working Families Party of New York State and the Presiding Officer and Secretary, respectively, of the meeting of said State Committee referred to in the foregoing certificate, and that the statements in such certificate are true.




Jessica Wisneski
Presiding Officer



Sandra Oxford
Secretary

Sworn to before me this
29th day of August, 2024




Notary Public - State of New York
No. 02RA0019446
Qualified in Westchester County
My commission expires 1/4/28

ACKNOWLEDGMENT

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

On the 29th day of August in the year 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Jessica Wisneski and Sandra Oxford, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to within the instrument and acknowledged to me that they executed the same in their capacities and that by their signatures on the instrument, the individuals, or the persons upon behalf of whom the individuals acted, executed the instrument.



Notary Public - State of New York
No. 02RA0019446
Qualified in Westchester County
My commission expires 1/4/2

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SWEENEY, GALLO, REICH & BOLZ, LLP

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ROBERT M. LINK
RENEE J. DIAKUN
SYLVIA J. NUNEZ

LONG ISLAND OFFICE
21 Locust Street
Manhasset, New York 11030

REPLY TO: REGO PARK

*MEMBER OF N.Y. & CT. BAR

August 31, 2012

Robert A. Brehm, Esq.
Co-Executive Director
New York State Board of Elections
40 North Pearl Street, 5th Floor
Albany, NY 12207-2729

2012 Special Business Meeting

Dear Mr. Brehm:

On behalf of the New York State Democratic Committee, I enclose two originals of each of a (1) Certificate of Nomination; and (2) Certificate of Authorization.

The Certificate of Nomination identifies the nominees of the Democratic Party for the office of elector of President and Vice President of the United States to be voted on at the general election on November 6, 2012 in support of the following:

For President of the United States:

Barack Obama
5046 South Greenwood Avenue
Chicago, Illinois 60615

For Vice President of the United States:

Joe Biden
1209 Barley Mill Road
Wilmington, Delaware 190807

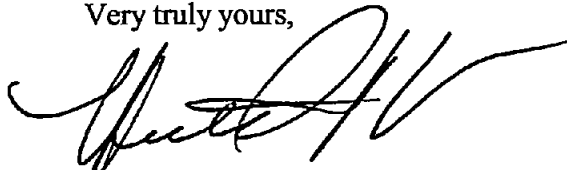
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NEW YORK STATE
BOARD OF ELECTIONS

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I would appreciate it if you would acknowledge receipt of the enclosures by stamp and returning a stamped original to me in the enclosed self addressed envelope.

Thank you for your attention to this matter.

Very truly yours,



Michael H. Reich, Esq
General Counsel
New York State Democratic Committee

Enclosures

cc: Hon. Keith L. T. Wright
Hon. Stephanie Miner

FILED

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NEW YORK STATE
BOARD OF ELECTIONS

CERTIFICATE OF NOMINATION

The undersigned, Hon. Keith L.T. Wright, Co-Chair, and Peter Stein, Secretary, of the State Committee of the Democratic Party (“the Committee”) of the State of New York,

DO HEREBY CERTIFY that, at a meeting of the Committee duly commenced and held at the New York Hotel and Motel Trades Council, 707 8th Avenue New York, NY 10036, on August 30, 2012, a quorum being present, the persons whose names and addresses appear on the attached list were nominated and their nominations were confirmed by a majority vote of the Committee as candidates of the Democratic Party for election to the public office of Elector of President and Vice President of the United States, to be voted for at the general election to be held on November 6, 2012, in support of Barack Obama of Illinois for President of the United States and Joe Biden of Delaware for Vice President of the United States.

WE FURTHER HEREBY CERTIFY that, at the aforesaid meeting, the following persons were duly appointed to fill the vacancies, if any, in the foregoing nominations:

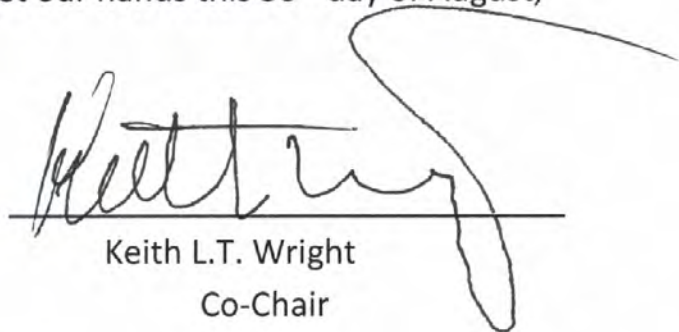
COMMITTEE MEMBER	RESIDENCE
Keith L.T. Wright	2225 5 th Avenue, NY, NY 10037
Stephanie Miner	102 Woodside Drive, Syracuse, NY 13224
Emily Giske	895 Horatio Street, NY, NY 10014
Michael H. Reich	255 Breezyway, Lawrence, NY 11559
Rodney S. Capel	10 West 135 th Street, NY, NY 10037

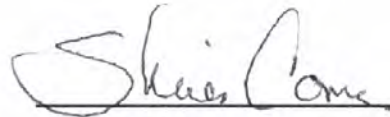
IN WITNESS WHEREOF, we have hereunto set our hands this 30th day of August, 2012.

NEW YORK STATE
BOARD OF ELECTIONS

2012 SEP -6 AM 11: 58

FILED

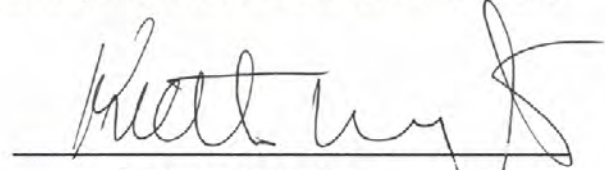

Keith L.T. Wright
Co-Chair



Sheila Comar
Acting Secretary

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

Keith L.T. Wright, being duly sworn, says that he is the Co-Chair of the State Committee of the Democratic Party and acted as such at the meeting duly convened and held at the New York Hotel and Motel Trades Council, 707 8th Avenue New York, NY 10036, on August 30, 2012, and that the statements in the foregoing Certificate are true.



Keith L.T. Wright

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

On the 30th day of August, 2012, before me came Keith L.T. Wright, Co-Chair of the State Committee of the Democratic Party of the State of New York, to me known to be such officer and to be the person described in and who executed the foregoing Certificate and acknowledged to me that he executed the same.



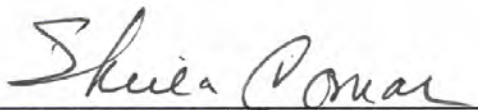
NOTARY PUBLIC

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

MICHAEL H. REICH
Notary Public, State of New York
No. 02RE4816390
Qualified in Nassau County
Commission Expires November 30, 2014

FILED
2012 SEP -6 AM 11:58
NEW YORK STATE
BOARD OF ELECTIONS

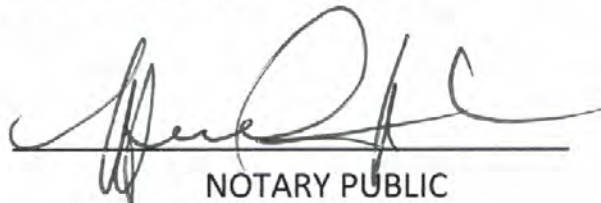
Sheila Comar, being duly sworn, says that she is the Acting Secretary of the State Committee of the Democratic Party and acted as such at the meeting duly convened and held at the New York Hotel and Motel Trades Council, 707 8th Avenue New York, NY 10036, on August 30, 2012, and that the statement in the foregoing Certificate are true.



Sheila Comar

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

On the 30th day of August, 2012, before me came Sheila Comar, Acting Secretary of the State Committee of the Democratic Party of the State of New York, to me known to be such officer and to be the person described in and who executed the foregoing Certificate and acknowledged to me that he executed the same.


NOTARY PUBLIC

MICHAEL H. REICH
Notary Public, State of New York
No. 02RE4816390
Qualified in Nassau County
Commission Expires November 30, 2014

NEW YORK STATE
BOARD OF ELECTIONS

2012 SEP -6 AM 11:58

FILED

2012 New York Presidential Elector Slate

New York

Total Presidential Electors: 29

First MI	Last	Address	City	State	Zip
Andrew M.	Cuomo	4 Bittersweet Lane	Mount Kisco,	NY	10549
Robert	Duffy	164 Croydon Road	Rochester	NY	14610
Eric	Schneiderman	645 West End Ave,8F	New York	NY	10025
Tom	DiNapoli	100 Great Neck Road	Great Neck	NY	11201
Sheldon	Silver	550 Grand Street, 5A	New York	NY	10002
Keith L.T.	Wright	2225 5 th Avenue	New York	NY	10037
Stephanie	Miner	102 Woodside Drive	Syracuse	NY	13224
Sheila	Comar	29 Depot Street	Middle Granville	NY	12849
Joseph	Morelle	133 Deerfield Drive	Rochester	NY	14609
Christine C.	Quinn	263 9 th Avenue, 3A	New York	NY	10001
Grace	Meng	14714 34 th Ave	Flushing	NY	11354
George	Gresham	1313 East 233 rd St	Bronx	NY	10466
Ruben	Diaz, Jr.	820 Boyton Ave, 6D	Bronx	NY	10473
Mario	Cilento	3 Isabel Road	Orangeburg	NY	10962
Irene	Stein	101 Brandywine Drive	Ithaca	NY	14850
Ken	Jenkins	108 Bushey Avenue	Yonkers	NY	10710
Steve	Bellone	107 Vanderbilt Ave	West Babylon	NY	11704
Hakeem	Jeffries	35 Underhill Ave, 2A	Brooklyn	NY	11238
Felix	Ortiz	189 B 33 rd Street	Brooklyn	NY	11232
Anne Marie	Anzalone	2827 48 th Street	Astoria	NY	11103
William	Thompson	106 West 121 st St	New York	NY	10027
Scott	Stringer	155 West 71 st St, 3A	New York	NY	10023
Bill	DeBlasio	442 11 th Street	Brooklyn	NY	11215
Byron	Brown	14 Blaine Street	Buffalo	NY	14208
Jerry	Jennings	1135 New Scotland Rd	Albany	NY	12208
Archie	Spigner	11210 175 th Street	Jamaica	NY	11433
Emily	Giske	95 Horatio Street	New York	NY	10014

NEW YORK STATE
 BOARD OF ELECTIONS

2012 SEP -6 AM 11:58

FILED

CERTIFICATION OF AUTHORIZATION

The undersigned, Keith L.T. Wright, Co-Chair, and Sheila Comar, Acting Secretary, of the State Committee of the Democratic Party (" the Committee") of the State of New York,

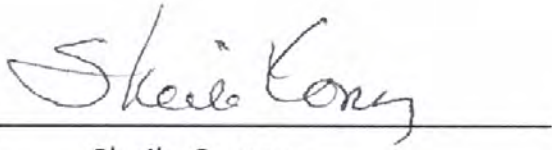
DO HEREBY JOINTLY AND SEVERALLY CERTIFY that, at a meeting of the Committee duly convened and held at the New York Hotel and Motel Trades Council, 707 8th Avenue New York, NY 10036, August 30, 2012, the following persons, not enrolled members of the Democratic Party, were nominated for the office of Elector of President and Vice President of the United States and said nominations were authorized by majority vote of the Committee without dissent:

Scott Adams	11 Poplar Ave, Orchard Park, NY 14127
Walter Cooper	150 W. 96 th Street, 12G NY, NY 10025

IN WITNESS WHEREOF, we have hereunto set our hands this 30th day of August, 2012.



Keith L.T. Wright
Co-Chair



Sheila Comar
Acting Secretary

BOARD OF ELECTIONS
NEW YORK STATE
2012 SEP -6 AM 11:58

FILED

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

On the 30th day of August, 2012, before me came Keith L.T. Wright, Co-Chair of the State Committee of the Democratic Party of the State of New York, to me known to be such officer and to be the person described in and who executed the foregoing Certificate and acknowledged to me that he executed the same.

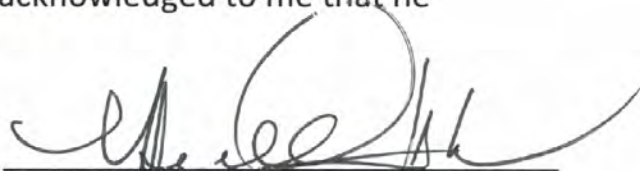


NOTARY PUBLIC

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

MICHAEL H. REICH
Notary Public, State of New York
No. 02RE4816390
Qualified in Nassau County
Commission Expires November 30, 2014

On the 30th day of August, 2012, before me came Sheila Comar, Acting Secretary of the State Committee of the Democratic Party of the State of New York, to me known to be such officer and to be the person described in and who executed the foregoing Certificate and acknowledged to me that he executed the same.



NOTARY PUBLIC

MICHAEL H. REICH
Notary Public, State of New York
No. 02RE4816390
Qualified in Nassau County
Commission Expires November 30, 2014

NEW YORK STATE
BOARD OF ELECTIONS
2012 SEP -6 AM 11:59
FILED

FILED
NEW YORK STATE
BOARD OF ELECTIONS
ALBANY, NEW YORK

2012 SEP -6 PM 1:05

Perkins
Coie

700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
PHONE: 202.654.6200
FAX: 202.654.6211
www.perkinscoie.com

September 5, 2012

New York State Board of Elections
ATTN: Anna Svizzero
40 North Pearl Street, Suite 5
Albany, New York 12207-2729

Dear Ms. Svizzero:

Please find enclosed the official Certificate of Nomination of President Barack Obama as the nominee of the Democratic Party of the United States for President of the United States and of Vice President Joe Biden as nominee for Vice President of the United States.

If you need any additional information, please contact Kip Wainscott, Counsel at Obama for America, at (312) 985-1459 or kwainscott@barackobama.com. Please confirm as soon as possible with Mr. Wainscott via email that you have now received all of the necessary documentation to place President Obama and Vice President Biden on your state's general election ballot for November 6, 2012. Thank you for your assistance.

Sincerely,



Robert F. Bauer
General Counsel, Democratic National Committee

Enclosure: Official Certification of Nomination



FILED
NEW YORK STATE
BOARD OF ELECTIONS
ALBANY, NEW YORK

2012 SEP -6 PM 1:06

OFFICIAL CERTIFICATION OF NOMINATION


As Chair and Secretary respectively of the National Convention of the Democratic Party of the United States of America, having assembled in Charlotte, North Carolina on September 4 through 6, 2012, WE DO HEREBY CERTIFY that the following are the nominees of said Party for President and Vice President of the United States respectively, and that the following are legally qualified to serve as President and Vice President of the United States respectively under the applicable provisions of the United States Constitution:

For President of the United States

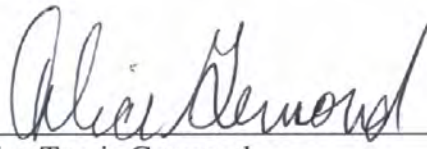
Barack Obama
5046 South Greenwood Avenue
Chicago, Illinois 60615

For Vice President of the United States

Joe Biden
1209 Barley Mill Road
Wilmington, Delaware 19807



Antonio Villaraigosa
Chair, Democratic National Convention

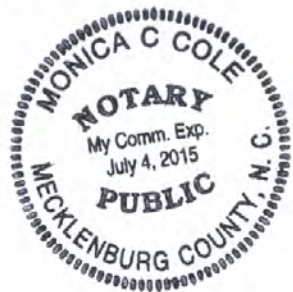



Alice Travis Germond
Secretary, Democratic National Convention

Mecklenburg County, North Carolina

Signed and sworn to before me this day by ANTONIO VILLARAIGOSA and ALICE TRAVIS GERMOND.

Date: September 5, 2012





Monica C. Cole, Notary Public

My commission expires: 7-4-2015

LEVY RATNER, P.C.

Attorneys at Law
80 Eighth Avenue, 8th Floor
New York, New York 10011-5126

Telephone (212) 627-8100
Telecopier (212) 627-8182

www.levyratner.com

Richard A. Levy
Daniel J. Ratner
Daniel Engelstein^o
Gwynne A. Wilcox^o
Pamela Jeffrey
Owen M. Rumelt
Kevin Finnegan
Carl J. Levine^o
David Slutsky^o
Allyson L. Belovin
Suzanne Hepner^o
Richard Dorn
Robert H. Stroup

Dana E. Lossia^o
Susan J. Cameron^o
Micah Wissinger^o
Ryan J. Barbur
Vanessa Flores^o
Alexander Rabb
Michael R. Hickson
Shira T. Roza
Laureve D. Blackstone^o

Counsel:
Paul Schachter^o
Anthony DiCaprio
Michael Steven Smith
David P. Horowitz¹



September 10, 2012

BY OVERNIGHT DELIVERY

Anna Svizzero
New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, NY 12207-2729

Re: Working Families Party

Dear Ms. Svizzero:

Enclosed please find for filing Walter Cooper's Certificate of Acceptance regarding his nomination as Elector by the Democratic Party.

Very truly yours,

Alexander Rabb

ACR:acr

FILED
NEW YORK STATE
BOARD OF ELECTIONS
ALBANY, NEW YORK
2012 SEP 11 PM 1:11

^oAdmitted in NY, MA and DC

^oAdmitted in NY and NJ

^oAdmitted in NY and CT

^oAdmitted in NY and DC

¹Admitted in NY and MA

**CERTIFICATE OF ACCEPTANCE
DEMOCRATIC PARTY**
(Election Law § 6-146)

I, Walter Cooper, residing at 150 W. 96th Street, 12G, New York, NY 10025, having been nominated by the Democratic Party as a candidate for the public office of Elector for President and Vice President of the United States of America, do hereby ACCEPT such nomination and consent to be such candidate of such party at the General Election to be held on November 6, 2012.

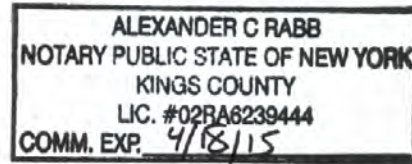
9/10/12
(Date)

Walter V. Cooper
(Signature of Candidate)

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

On the 10th day of September in the year 2012 before me, the undersigned, personally appeared Walter Cooper, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in their capacities, and that by his/her signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

[Signature]
Notary Public



FILED
NEW YORK STATE
BOARD OF ELECTIONS
ALBANY, NEW YORK
2012 SEP 11 PM 1:12

BUFFALO OFFICE, REGION 9
35 GEORGE KARL BLVD., SUITE 100
AMHERST, NEW YORK 14221

Phone: (716) 632-1540
FAX: (716) 632-1797



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW

INTERNATIONAL HEADQUARTERS • 8000 EAST JEFFERSON AVENUE • DETROIT, MICHIGAN 48214



BOB KING, *President*

DENNIS WILLIAMS, *Secretary-Treasurer*

SCOTT ADAMS, *Regional Director*

September 7, 2012

Via UPS Overnight

New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, NY 12207-2729

To Whom it May Concern:

Please find enclosed the "Certificate of Acceptance" – Democratic Party & Working Families Party for Scott Adams, which is for filing.

Thank you.

Sincerely,

Scott Adams, Director
Region 9, UAW

SA.das/opeiu494/afl-cio

Enclosures

NEW YORK STATE
BOARD OF ELECTIONS

2012 SEP 10 AM 10: 27

FILED

**CERTIFICATE OF ACCEPTANCE
DEMOCRATIC PARTY**
(Election Law § 6-146)

I, Scott Adams, residing at 11 Poplar Avenue, Orchard Park, NY 14127, having been nominated by the Democratic Party as a candidate for the public office of Elector for President and Vice President of the United States of America, do hereby ACCEPT such nomination and consent to be such candidate of such party at the General Election to be held on November 6, 2012.

9/7/12
(Date)

[Signature]
(Signature of Candidate)

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

On the 7th day of September in the year 2012 before me, the undersigned, personally appeared Scott Adams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in their capacities, and that by his/her signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

[Signature]
Notary Public

DARCY ANNE SMITH
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
MY COMMISSION EXPIRES 12/31/2013

NEW YORK STATE
BOARD OF ELECTIONS
2012 SEP 10 AM 10:27

FILED

SWEENEY, GALLO, REICH & BOLZ, LLP

ATTORNEYS AT LAW
95-25 QUEENS BOULEVARD
ELEVENTH FLOOR
REGO PARK, NEW YORK 11374
(718) 459-9000
FAX: (718) 459-5067

COUNSEL
MINDY J. TREPEL

GERARD J. SWEENEY
DAVID A. GALLO
MICHAEL H. REICH
FRANK A. BOLZ III

JOHN W. STEIGLER*
ROSEMARIE A. KLIE
RASHEL M. MEHLMAN
JOHN L. WOLTHOFF
MELANIE A. SWEENEY
ERIC SHEIDLLOWER
CHRISTOPHER A. XUEREB
ROBERT M. LINK
RENEE J. DIAKUN
SYLVIA J. NUNEZ

LONG ISLAND OFFICE
21 Locust Street
Manhasset, New York 11030

REPLY TO: REGO PARK

*MEMBER OF N.Y. & CT. BAR

September 9, 2012

Robert A. Brehm, Esq.
Co-Executive Director
New York State Board of Elections
40 North Pearl Street, 5th Floor
Albany, NY 12207-2729

2012 Special Business Meeting

FILED
2012 SEP 10 AM 10:11
NEW YORK STATE
BOARD OF ELECTIONS

Dear Mr. Brehm:

On behalf of the New York State Democratic Committee, I enclose two originals of each of a Amended Certificate of Nomination.

The Amended Certificate of Nomination identifies the nominees of the Democratic Party for the office of elector of President and Vice President of the United States to be voted on at the general election on November 6, 2012 in support of the following:

For President of the United States:

Barack Obama
5046 South Greenwood Avenue
Chicago, Illinois 60615

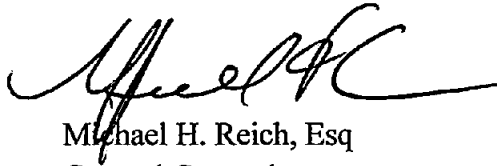
For Vice President of the United States:

Joe Biden
1209 Barley Mill Road
Wilmington, Delaware 19087

I would appreciate it if you would acknowledge receipt of the enclosures by returning a stamped original to me.

Thank you for your attention to this matter.

Very truly yours,



Michael H. Reich, Esq
General Counsel
New York State Democratic Committee

Enclosures

cc: Hon. Keith L. T. Wright
Hon. Stephanie Miner

FILED
2012 SEP 10 AM 10:12
NEW YORK STATE
BOARD OF ELECTIONS

AMENDED CERTIFICATE OF NOMINATION

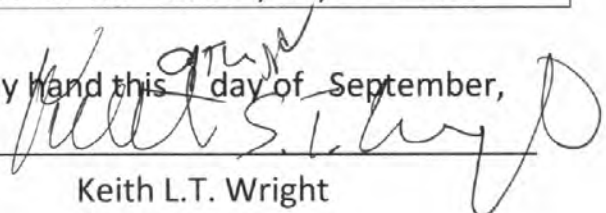
The undersigned, Hon. Keith L.T. Wright, Co-Chair, and Shelia Comar, Acting Secretary, of the State Committee of the Democratic Party ("the Committee") of the State of New York,

DO HEREBY CERTIFY that, at a meeting of the Committee duly commenced and held at the New York Hotel and Motel Trades Council, 707 8th Avenue New York, NY 10036, on August 30, 2012, a quorum being present, the persons whose names and addresses appear on the attached list were nominated and their nominations were confirmed by a majority vote of the Committee as candidates of the Democratic Party for election to the public office of Elector of President and Vice President of the United States, to be voted for at the general election to be held on November 6, 2012, in support of Barack Obama of Illinois for President of the United States and Joe Biden of Delaware for Vice President of the United States.

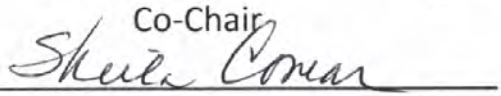
WE FURTHER HEREBY CERTIFY that, at the aforesaid meeting, the following persons were duly appointed to fill the vacancies, if any, in the foregoing nominations:

COMMITTEE MEMBER	RESIDENCE
Keith L.T. Wright	2225 5 th Avenue, NY, NY 10037
Stephanie Miner	102 Woodside Drive, Syracuse, NY 13224
Emily Giske	440 West 24 th Street, New York, NY 10014
Michael H. Reich	255 Breezyway, Lawrence, NY 11559
Rodney S. Capel	10 West 135 th Street, NY, NY 10037

IN WITNESS WHEREOF, I have hereunto set my hand this 1 day of September, 2012.



 Keith L.T. Wright

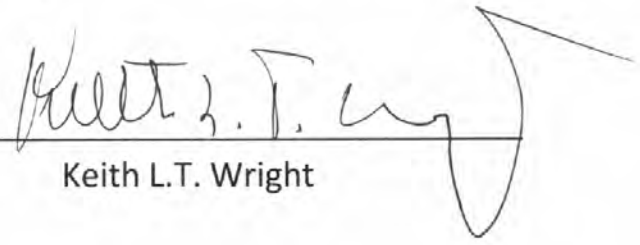
Co-Chair


 Sheila Comar
 Acting Secretary

NEW YORK STATE BOARD OF ELECTIONS
 2012 SEP 10 AM 10:12
 FILED

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

Keith L.T. Wright, being duly sworn, says that he is the Co-Chair of the State Committee of the Democratic Party and acted as such at the meeting duly convened and held at the New York Hotel and Motel Trades Council, 707 8th Avenue New York, NY 10036, on August 30, 2012, and that the statements in the foregoing Amended Certificate are true.



Keith L.T. Wright

STATE OF NEW YORK)
 :ss.:
County of New York)

On the ^{9th} day of September, 2012, before me came Keith L.T. Wright, Co-Chair of the State Committee of the Democratic Party of the State of New York, to me known to be such officer and to be the person described in and who executed the foregoing Amended Certificate and acknowledged to me that he executed the same.



NOTARY PUBLIC

MICHAEL H. REICH
Notary Public, State of New York
No. 02RE4816390
Qualified in Nassau County
Commission Expires November 30, 2014

NEW YORK STATE
BOARD OF ELECTIONS

2012 SEP 10 AM 10:12

FILED

STATE OF NEW YORK)
w- 9/9/12)
Albany)
COUNTY OF NEW YORK)
:SS.:

Sheila Comar, being duly sworn, says that she is the Acting Secretary of the State Committee of the Democratic Party and acted as such at the meeting duly convened and held at the New York Hotel and Motel Trades Council, 707 8th Avenue New York, NY 10036, on August 30, 2012, and that the statement in the foregoing Amended Certificate are true.

Sheila Comar
Sheila Comar

STATE OF NEW YORK)
w- 9/9/12)
Albany)
COUNTY OF NEW YORK)
:SS.:

On the 9 day of September, 2012, before me came Sheila Comar, Acting Secretary of the State Committee of the Democratic Party of the State of New York, to me known to be such officer and to be the person described in and who executed the foregoing Amended Certificate and acknowledged to me that he executed the same.

Michael H. Reich
NOTARY PUBLIC
MICHAEL H. REICH
Notary Public, State of New York
No. 02RE4816390
Qualified in Nassau County
Commission Expires November 30, 2014

NEW YORK STATE
BOARD OF ELECTIONS

2012 SEP 10 AM 10:12

FILED

Amended
2012 New York Presidential Elector Slate
New York

Total Presidential Electors: 29

First	MI	Last	Address	City	State	Zip
Andrew M.		Cuomo	138 Eagle Street	Albany	NY	12202
Robert		Duffy	164 Croydon Road	Rochester	NY	14610
Eric		Schneiderman	645 West End Ave,8F	New York	NY	10025
Tom		DiNapoli	100 Great Neck Road	Great Neck	NY	11201
Sheldon		Silver	550 Grand Street, 5A	New York	NY	10002
Keith	L.T.	Wright	2225 5 th Avenue	New York	NY	10037
Stephanie		Miner	102 Woodside Drive	Syracuse	NY	13224
Sheila		Comar	29 Depot Street	Middle Granville	NY	12849
Joseph		Morelle	133 Deerfield Drive	Rochester	NY	14609
Christine C.		Quinn	263 9 th Avenue, 3A	New York	NY	10001
Grace		Meng	14714 34 th Ave	Flushing	NY	11354
George		Gresham	1313 East 233 rd St	Bronx	NY	10466
Ruben		Diaz, Jr.	820 Boyton Ave, 6D	Bronx	NY	10473
Mario		Cilento	3 Isabel Road	Orangeburg	NY	10962
Irene		Stein	101 Brandywine Drive	Ithaca	NY	14850
Ken		Jenkins	108 Bushey Avenue	Yonkers	NY	10710
Steve		Bellone	107 Vanderbilt Ave	West Babylon	NY	11704
Hakeem		Jeffries	35 Underhill Ave, 2A	Brooklyn	NY	11238
Felix		Ortiz	189 B 33 rd Street	Brooklyn	NY	11232
Anne Marie		Anzalone	2827 48 th Street	Astoria	NY	11103
William		Thompson	106 West 121 st St	New York	NY	10027
Scott		Stringer	155 West 71 st St, 3A	New York	NY	10023
Bill		DeBlasio	442 11 th Street	Brooklyn	NY	11215
Byron		Brown	14 Blaine Street	Buffalo	NY	14208
Gerald D.		Jennings	1135 New Scotland Rd	Albany	NY	12208
Archie		Spigner	11210 175 th Street	Jamaica	NY	11433
Emily		Giske	440 West 24 th Street	New York	NY	10014
Scott		Adams	11 Poplar Avenue	Orchard Park	NY	14127
Walter		Cooper	150 W. 96 th Street, 12G	New York	NY	10025

NEW YORK STATE
 BOARD OF ELECTIONS

2012 SEP 10 AM 10:12

FILED

NEW YORK REPUBLICAN STATE COMMITTEE
AMENDED CERTIFICATE OF NOMINATION AND AUTHORIZATION
OF PRESIDENTIAL ELECTORS

PLEASE TAKE NOTICE, that we the undersigned, Nicholas A. Langworthy and Douglas Breakell, acting as the Presiding Officer/Chairman and Secretary, respectively, at a meeting of the New York Republican State Committee which was duly called and held at 315 State Street, Albany, New York 12210 at 12:00 pm on the 29th day of June, 2020, at which a quorum was present, do hereby certify that the persons whose names and addresses appear on the attached list were duly nominated by a majority of the committee for the offices of electors of the President and Vice-President of the United States, in accordance with Section 6-102 of the New York State Election Law, committed to candidacy of Donald J. Trump for President and Michael Pence for Vice President of the United States for the General Election to be held on November 3, 2020 and that the attached Committee to Fill Vacancies was also elected;

Furthermore, we do hereby certify, that Francis Vella-Marrone, Christopher Kendall, and Shaun Marie Levine, were duly authorized by a majority of the New York Republican State Committee pursuant to Section 6-120 of the NYS Election Law to be electors of the President and Vice President of the United States as such individuals are not enrolled in the Republican Party.

Dated: July 6, 2020



Nicholas A. Langworthy
Presiding Officer/Chairman



Douglas Breakell
Presiding Secretary

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**ATTACHMENT TO AMENDED CERTIFICATE OF NOMINATION
AND AUTHORIZATION OF PRESIDENTIAL ELECTORS**

I. 2020 PRESIDENTIAL ELECTORS

1. Nicholas A. Langworthy 10 Colonial Road, Amherst, NY 14226
2. Robert Keis 7621 California Hill Road Little Valley, NY 14755
3. Trisha Turner 1224 Red Fox Run Victor, NY 14564
4. Todd Rouse 99 Will New Blvd. Canastota, NY 13032
5. Rodney Strange 386 Raecrest Circle Elmira, NY 14904
6. John Gereau 5880 State Route 9N Westport, NY 12993
7. Andrea Catsimatidis 817 5th Avenue, 14th Floor New York, NY 10065
8. Douglas Colety 1 Roland Drive, White Plains NY 10605
9. Jesus Garcia 37 Setauket Trl. Ridge, NY 11961
10. Susan McNeil 2010 County Highway 107 Amsterdam, NY 12010
11. Joseph Cairo 40 Parkwold Drive W, Valley Stream, NY 11580
12. Tom Dadey 15 Pebble Hill Road North Dewitt, NY 13214
13. William Napier 3211 East Avenue, Rochester, NY 14618
14. Karl Simmeth 6678 Meadowbrook Drive, Boston, NY 14025
15. Christine Benedict 27 Reber Street Albany, NY 12205
16. Joann Ariola 89-35 155th Ave., 6L Howard Beach, NY 11414
17. Carl Zeilman 11 Chapel Hill Blvd. Ballston Lake, NY 12019
18. Jennifer Saul Rich 1120 Fifth Ave., 4th Flr New York, NY 10128
19. Charlie Joyce 4165 Grandview Wellsville, NY 14895
20. Adrian (Butch) Anderson 10 West Street Pawling, NY 12564
21. Robert Ortt 1494 D'Angelo Drive, North Tonawanda, NY 14120
22. Will Barclay 4312 State Route 13 Pulaski, NY 13142
23. John Burnett 8 West 130th Street Apt. 2R New York, NY 10037
24. Chloe Sun 200 E 57 Apt 10H New York, NY 10022
25. Elie Hirschfeld 995 5th Avenue, New York, NY 10028
26. Yechezkel Moskowitz 23-98 Bayswater Apt 2 Far Rockaway 11691
27. Shaun Marie Levine 325 Parkview Drive, Schenectady, NY 12303
28. Christopher Kendall 2051 Spring Street, Hamilton, NY 13345
29. Francis Vella-Marrone 7317 12th Avenue, Brooklyn, NY 11228

II. COMMITTEE TO FILL VACANCIES FOR PRESIDENTIAL ELECTORS

Nicholas A. Langworthy, 10 Colonial Road, Amherst, NY 14226
Charles Joyce, 4165 Grandview Avenue, Wellsville, NY 14895 and
Jennifer Saul Rich, 1120 Fifth Avenue, 4th Floor, New York, NY 10128.
Joseph Burns, 1811 Northwood Drive, Williamsville, NY 14221
Jesse Prieto, 14 Granger Place, Apt. 6, Buffalo, NY 14203

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

Nicholas A. Langworthy being sworn, says that said Nicholas A. Langworthy was the Presiding Officer/Chairman of the meeting of the New York Republican State Committee mentioned in the foregoing certificate and that Douglas Breakell was Secretary of such meeting and that the statements contained therein are true.

Dated: July 6, 2020


Nicholas A. Langworthy
Presiding Officer/Chairman

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

Severally subscribed and
Sworn to me this 6 day
of July, 2020.


Notary Public

Ross M. Kosticky
Notary Public - State of New York
Qualified in Erie County
Commission Expires 03/24/2022

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

Douglas Breakell being sworn, says that Nicholas A. Langworthy was the Presiding Officer/Chairman of the meeting of the New York Republican State Committee mentioned in the foregoing certificate and that said Douglas Breakell was Secretary of such meeting and that the statements contained therein are true.

Dated: July 7th, 2020



Douglas Breakell
Presiding Secretary

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

Severally subscribed and
Sworn to me this 7th day
of July, 2020.



Notary Public
Eileen Miller
NYS Notary Public
07M16257798
Albany County
Term Expires: 3/19/2024

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TEAM KENNEDY, AMERICAN VALUES 2024
and JEFFREY ROSE,

Plaintiffs,

-against-

No. 24-cv-03897-ALC

HENRY T. BERGER, in his official capacity as the Co-Chair of the New York State Board of Elections; PETER S. KOSINSKI, in his official capacity as the Co-Chair of the New York State Board of Elections; ESSMA BAGNUOLA, in her official capacity as a Commissioner of the New York State Board of Elections; ANTHONY J. CASALE, in his official capacity as a Commissioner of the New York State Board of Elections; KRISTEN ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the New York State Board of Elections; RAYMOND J. RILEY, III, in his official Capacity as Co-Executive Director of the New York State Board of Elections; and LETITIA JAMES, in her official capacity as the Attorney General of the state of New York,

**DECLARATION OF
KRISTEN ZEBROWSKI
STAVISKY**

Defendants.

KRISTEN ZEBROWSKI STAVISKY declares the following to be true and correct under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I serve as Co-Executive Director for the New York State Board of Elections. I have held this position since 2021. I previously served as Commissioner of Elections at the Rockland County Board of Elections. I am familiar with ballot access procedures, election processes, statutory and practical timeframes and related processes at the State and County Boards of Elections. I am fully familiar with the facts and circumstances set forth in this declaration based

on my personal knowledge, and I submit this declaration in opposition to the motion of the Plaintiffs in this action for a preliminary injunction.

A. New York State Law Requires State Ballot Certification By September 11, 2024

2. The New York State Board of Elections (“the Board”) publishes a list of all statutory election deadlines. Attached hereto as Exhibit A is a true and correct copy of the current 2024 political calendar.

3. The limited time in the political calendar for ballot access matters to be resolved has long been recognized. Until the ballots are settled, millions of ballots containing thousands of variations cannot be printed, the work of programming and testing voting machines cannot begin.

4. In a Presidential year, the influx of voter registrations and absentees/early mail ballots and the high turnout (sometimes presidential turnout in some jurisdictions is 50% or more higher than in any other year of the four-year election cycle, and statewide in 2020 turnout was 39% higher than in the gubernatorial election of 2018) places significant pressures on the logistics of preparing for the election. In New York, the 58 local-level county or city boards of election carry out the bulk of such preparations.

5. When everything has to be readied before the election – ensuring all new voter registration forms are processed, poll sites confirmed, logistics and packing completed, emergency poll worker recruitment completed to fill gaps, etc.—a delay in any one aspect of the county board of elections’ preparations often impacts and delays others. This is particularly true at smaller county boards of elections where the same employees perform many functions in the process.

6. The ballot certification is the most important piece of the entire process. Without a certified ballot a county board of elections cannot ready and test machines (this entails running printed ballots of the type to be used at the election through each piece of voting equipment) and proceed to seal them for shipping and document security protocols. Boards cannot pack and seal poll worker supply bags until ballots are in hand. And of course a board cannot mail absentee, early mail, and overseas ballots without a certified ballot. Even a relatively modest delay at the front end ripples through the process and can be difficult to manage. It is therefore important that the ballot certification deadline be respected to the extent possible.

7. The deadline for the State Board to “certify” the general election ballot is **September 11, 2024**, fifty-five days before the election pursuant to Election Law 4-112(1)¹, providing county boards of elections ten (10) days to craft, proof, translate (as required) and print ballots before the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §20302 (“UOCAVA”) transmittal deadline.

8. For federal offices in 2024, general election ballots must be transmitted to voters covered by the UOCAVA no later than **September 20, 2024** – forty-five days before the election². 52 U.S.C. 203.02(a)(8)(A).

B. Factual Overview of 2024 Petition for Presidential Electors for Robert F. Kennedy Jr. and Nicole Shanahan for President and Vice President of the United States

¹ County Boards of Elections have until the following day to certify local ballot component, candidates for contests contained wholly within the county.

² The New York State deadline for mailing these ballots is forty-six (46) days under Election Law 10-108(a).

9. In New York, only political organizations that polled at least one hundred and thirty thousand votes in the last preceding election for Governor or United States President—or two percent of the vote at an election—whichever is greater, are recognized as “parties.” N.Y. Election Law § 1-104(3). New York currently has four such parties. They are the Democratic Party, the Republican Party, the Conservative Party, and the Working Families Party.

10. 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. N.Y. Election Law §§ 6-138(4), 6-140. In 2024, for example, the first day for signing independent nominating petitions was April 16, 2024, and the filing period was between May 21, 2024 and May 28, 2024.

11. The nominating petition and the required number of signatures provides a means for proposed candidates to demonstrate sufficient support in the electorate to obtain ballot access, so that candidates that are politically viable are able to access the ballot and those without a modicum of support are not, thus avoiding a ballot that lists so many candidates that voters would become confused or overwhelmed. 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. For example, Georgia requires 1% of registered voters as a signature requirement (O.C.G.A. 21-2-170(b) (2010)), and Oklahoma requires 2% of registered voters (26 O.S. § 5-112 (OSCN 2022)). Comparatively, New York’s signature threshold imposes much less of a burden on both candidates and their supporters.

12. In many states, a petition signature at filing is an inchoate expression of support that literally does not count until the government verifies and validates the signature, typically by cross reference to the voter rolls of the jurisdiction. This is not the case in New York, in which Election Law § 6-154(1) provides that a signature is “presumptively valid” upon the filing of a petition. Upon the filing of a petition, the State Board does not even count the number of signatures on a petition, provided it “appears to bear the requisite number of signatures.” *Id.* The application of this provision ensures a maximum likelihood that signatures submitted will be credited.

13. To invalidate a petition at the State Board, the burden falls to objectors to rebut the statutory presumption of validity. Such objectors have three days from the filing of a petition to object, and then must provide “specifications of the grounds of the objection” within six days from the objection. *See* N.Y. Election Law § 6-154 (2). Only upon receiving specifications alleging sufficient deficiencies to invalidate a petition does the State Board assign staff to research the validity of the signatures objected to on the basis of the specifications. After a staff research report is produced, typically a hearing is held at which the candidate and the objectors may present relevant information to a hearing officer as to any errors or omissions in the staff report. *Id.* § 6-154(4). The hearing officer’s report makes findings as to the number of valid and invalid signatures on the petition, and this is referred to the four commissioners for final State Board action. *Id.* § 6-154(4)(b).

14. If an aggrieved candidate or citizen-objector (who can be any voter eligible to vote for the office at issue who filed an objection) is dissatisfied with the Board’s determination, they may seek expedited judicial review in New York State Supreme Court pursuant to Article 16 of the Election Law to challenge the validity of a designating petition. N.Y. Elec. Law § 16-102(2). Under Article 16, the Supreme Court “is vested with jurisdiction to summarily determine any

question of law or fact arising as to any subject set forth in this article, which shall be construed liberally.” N.Y. Elec. Law § 16-100. Orders and judgments of the New York State Supreme Court in proceedings brought pursuant to Article 16 of the Election Law may be appealed to the Supreme Court, Appellate Division, and ultimately to the New York Court of Appeals. *See* N.Y. C.P.L.R. §§ 5701, *et seq.*

15. All of these steps related to making objections and ruling on their merits normally unfolds in a matter of weeks to ensure that the pre-election deadlines and processes discussed previously can be effectively carried out.

16. I advise the Court of the following events that have occurred in relation to the petition for presidential electors for Robert F. Kennedy Jr. and Nicole Shanahan for President and Vice President of the United States, respectively, for the “We The People” independent nominating body:

- a. May 21, 2024 – TEAM Kennedy files Complaint in this matter (but does not serve it until August 16, 2024).
- b. May 28, 2024 – TEAM Kennedy independent nominating petition with 146,467 signatures filed at the Board
- c. May 31, 2024 – The Board receives General Objections (*Elaine Portuondo Smith et al and Caroline Cartwright et al*).
- d. June 6, 2024 – The Board receives specifications of objections of objections (*Elaine Portuondo Smith et al and Caroline Cartwright et al*).
- e. The Board begins review of TEAM Kennedy independent nominating petition signatures.


- f. June 10, 2024 – Complaint served on the Board in *Smith v Kennedy et al* (Nassau County Supreme Court Index No. 24-000427; case involves fraud allegations, trial underway).
- g. June 11, 2024 – Complaint served on the Board in *Cartwright v Kennedy et al* (originally filed in Dutchess County but then transferred to Albany County Supreme Court Index No. 906349-24; case involved residency of the candidate Kennedy).
- h. June 11, 2024 – Limitations period to commence a proceeding relating to ballot access runs (Election Law 16-102 [2]).
- i. July 8, 2024 – The Board completes review of petition.
- j. July 16, 2024 – The Board’s hearing officer finds petition has sufficient signatures.
- k. July 29, 2024 – The Board’s commissioners, defendants herein Berger, Bagnuola, Kosinski, Casale, determine the Kennedy “We The People” petition is valid “subject to judicial action in any court proceeding.” Attached hereto as Exhibit B is a true and correct copy of the notification to Team Kennedy and objectors finding the petition valid.
- l. August 9, 2024 – Team Kennedy files status report advising that it intends to file Amended Complaint addressing constitutionality of residence requirements based on developments in *Cartwright* case.
- m. August 13, 2024 – Decision after trial in *Cartwright v Kennedy et al* (Albany County Supreme Court Index No. 906349-24) directing Candidate Kennedy et al. not to appear on the ballot. The Board is enjoined from including

candidate on ballot: “ORDERED AND ADJUDGED that Respondent New York State Board of Elections is hereby directed not to place and/or print the name of the Respondent-Candidates aforesaid as candidates of the We The People Independent Body on the official ballots to be used at the General Election to be held on the 5th day of November, 2024.”

- n. August 14, 2024 – Appeal is taken in *Cartwright* case (to be heard by the Appellate Division Third Department on August 28, 2024); defendants appear as interested-parties only.
- o. August 14, 2024 – New counsel appeared in this case, being the same as those on the *Cartwright* state appeal, promising Amended Complaint by August 23, 2024.
- p. August 16, 2024 – Service of the May 21, 2024 Complaint in this matter.
- q. August 22, 2024 -- Trial remains underway in *Smith* case, to conclude imminently.
- r. August 22, 2024 – TRO application and amended complaint (anticipated).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Albany, New York
August 28, 2024



KRISTEN ZEBROWSKI STAVISKY

EXHIBIT A

****2024 POLITICAL CALENDAR****

40 NORTH PEARL STREET – SUITE 5,
ALBANY, NEW YORK 12207 (518) 474-6220
For TDD/TTY, call the NYS Relay 711
www.elections.ny.gov



Primary Election **General Election**
June 25, 2024 **November 5, 2024**

PRIMARY ELECTION DATES	
June 25	Primary Election §8-100(1)(a)
June 15 – 23	Days of Early Voting for the Primary Election. §8-600(1)

Feb 1	Certification of offices to be filled at 2024 General Election by SBOE and CBOE. §4-106 (1&2)
Feb 13	PARTY CALLS: Last day for State & County party chairs to file a statement of party positions to be filled at the Primary Election. §2-120(1)

VOTER REGISTRATION FOR PRIMARY	
Feb 21	List of Registered Voters: Publication of February enrollments. § 5-604
June 15	Voter Registration Deadline for Primary: Last day application must be received by board of elections to be eligible to vote in primary election. §§5-210, 5-211, 5-212
June 10	Changes of address for Primary received by this date must be processed. §5-208(3)

CHANGE OF ENROLLMENT	
Feb 14	A change of enrollment rec'd by the BOE not later than Feb. 14 th or after July 2 nd is effective immediately. Any change of enrollment made between Feb 15-July 2 nd , shall be effective July 2 nd . §5-304(3)

Designation of Polling Places Primary	
May 1	Last day to file early voting communication plan with SBOE. 9 NYCRR 6211.7(c)
May 13	Last day to designate early voting sites for primaries. 8-600(4)(e)(i)

CERTIFICATION OF PRIMARY BALLOT	
May 1	Certification of primary ballot by SBOE of designations filed in its office. §4-110
May 2	Certification of primary ballot by CBOE of designations filed in its office. §4-114

CANVASS OF PRIMARY RESULTS	
July 8	Canvass of Primary returns by County Board of Elections. §9-200(1)
July 8	Verifiable Audit of Voting Systems. §9-211(1)
July 15	Recanvass of Primary returns. §9-208(1)

ABSENTEE / EARLY VOTING BY MAIL FOR PRIMARY	
June 15	Last day to RECEIVE application or letter of application by mail or online portal for primary ballot. §8-400(2)(c), 8-700 (2) (c), (d)
June 24	Last day to apply in person for primary ballot. §8-400(2)(c), 8-700 (2) (c), (d)
June 25	Last day to postmark primary election ballot. Must be received by the county board no later than July 2. §8-412(1), 8-710
June 25	Last day to deliver primary ballot in person to your county board or a poll site in your county, by close of polls. §8-412(1), 8-710.

MILITARY/SPECIAL FEDERAL VOTERS FOR PRIMARY	
May 10	Deadline to transmit ballots to eligible Military/Special Federal/UOCAVA Voters. §10-108(1) & §11-204(4)
June 15	Last day for a board of elections to RECEIVE application for Military/Special Federal/UOCAVA absentee ballot for primary if not previously registered. §10-106(5) & §11-202(1)(a)
June 18	Last day for a board of elections to RECEIVE application for Military/Special Federal/UOCAVA absentee ballot for primary if already registered. §10-106(5) & §11-202(1)(b)
June 24	Last day to apply personally for Military ballot for primary if previously registered. §10-106(5)
June 25	Last day to postmark Military/Special Federal/UOCAVA ballot for primary. Date by which it must be received by the board of elections is July 2 nd . §10-114(1) & §11-212

PARTY NOMINATION OTHER THAN PRIMARY	
Feb 6 – 27	Holding state committee meeting to nominations for statewide office. §6-104(6) *(Except Pres. And Vice Pres. Electors - Sep 6)
Feb 27	First day to hold a town caucus. §6-108
July 5	Last day to decline all party nominations after primary loss. § 6-146(6)
July 9	Last day to fill vacancy after declination by primary loser. § 6-158(3)
July 15	Last day to file authorization of substitution after declination by primary loser. § 6-120(3)
July 25	Last day for filing nominations made at a town or village caucus or by a party committee. §6-158(6)
July 25	Last day to file certificates of nomination to fill vacancies created pursuant to § 6-116, §6-104 & §6-158(6)
July 29	Last day to accept or decline a nomination for office made based on § 6-116 & §6-158(7)
July 29	Last day to file authorization of nomination made based on § 6-116. § 6-120(3)
Aug 2	Last day to fill a vacancy after a declination made based on § 6-116. § 6-158(8)

DESIGNATING PETITIONS FOR PRIMARY	
Feb 27 – Apr 4**	Dates for circulating petitions. §6-134(4)
Apr 1-4	Dates for filing designating petitions. §6-158(1)
Apr 8	Last day to authorize designations. §6-120(3)
Apr 8	Last day to accept or decline designations. §6-158(2)
Apr 12	Last day to fill a vacancy after a declination. §6-158(3)
Apr 16	Last day to file authorization of substitution after declination of a designation. §6-120(3)

OPPORTUNITY TO BALLOT PETITIONS	
Mar 19	First day for signing OTB petitions. §6-164
April 11	Last day to file regular OTB petitions. §6-158(4)
April 15	Last day for member of committee to receive notices to file acceptance. §6-166(3)
April 18	Last day to file OTB petition if there has been a declination by a designated candidate. §6-158(4)

April 22	Last day for member of committee to receive notices to file acceptance if declination filed by a candidate. §6-166(3)
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SIGNATURE REQUIREMENTS FOR DESIGNATING AND OPPORTUNITY TO BALLOT PETITIONS §6-136

5% of the active enrolled voters of the political party in the political unit or the following, whichever is less:

For any office to be filled by all the voters of:

The entire state15,000 (with at least 100 or 5% of enrolled voters from each of one-half of the congressional-districts)

*New York City.....7,500

*Any county or borough of NYC.....4,000

*A municipal court district within NYC.....1,500

*Any city council district within NYC..... 900

Cities/counties having more than 250,000 inhabitants.....2,000

Cities/counties having more than 25,000 but not more than 250,000 inhabitants.....1,000

Any city, county, councilmanic or county legislative districts in any city other than NYC.....500

Any congressional district.....1,250

Any state senatorial district1,000

Any assembly district.....500

Any county legislative district.....500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision; a political subdivision containing more than one assembly district, county or other political subdivision, requirement is not to exceed the aggregate of the signatures required for the subdivision or parts of subdivision so contained.

***NOTE: Section 1057-b of the New York City Charter supersedes New York Election Law signature requirements for Designating and OTB petitions and independent nominating petitions with respect to certain NY City offices.**

**Pursuant to Chapter 93 of the Laws of 2024, the first day to circulate designating petitions for Member of Congress (House of Representatives) or any party position elected by Congressional District is Thursday, February 29, 2024. The Congressional Districts for such designating petitioning for the June 25, 2024 Primary are defined by Chapter 92 of Laws of 2024.

All Dates Subject to Change by the State Legislature

FILING REQUIREMENTS: All certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations or nominations, certificates of authorization for such designations or nominations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the State Board of Elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service, in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than two business days after the last day to file such certificates, petitions, objections or specifications. Failure of the post office or authorized overnight delivery service to deliver any such petition, certificate, or objection to such board of elections outside the city of New York no later than two business days after the last day to file such certificates, petitions, objections, or specifications shall be a fatal defect per NY Election Law §1-106.

All papers required to be filed, unless otherwise provided, shall be filed between the hours of 9 AM – 5 PM. If the last day for filing shall fall on a Saturday, Sunday or legal holiday, the next business day shall become the last day for filing. NYEL §1-106

Within NYC: all such certificates, petitions and specifications of objections required to be filed with the board of elections of the city of New York must be actually received on or before the last day to file. The New York City Board of Elections is open for the receipt of such petitions, certificates and objections until midnight on the last day to file.

GENERAL ELECTION DATES	
Nov 5	General Election. §8-100(1)(c)
Oct 26 – Nov 3	Days of Early Voting for the General Election. §8-600(1)

Feb 1	Certification of offices to be filled at 2024 General Election by SBOE and CBOE. §4-106 (1&2)
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VOTER REGISTRATION FOR GENERAL	
Oct 26	Voter Registration Deadline registration for General: Last day application must be received by board of elections to be eligible to vote in general election. §§5-210, 5-211, 5-212
Oct 21	Changes of address for General received by this date must be processed. §5-208(3)

Designation of Polling Places General Election	
March 15	Last day to designate General Election polling places for each election district for ensuing year §4-104
May 1	Last day to designate early voting sites for the general election. 9 NYCRR 6211.1(a)
May 1	Last day to file early voting communication plan with SBOE. 9 NYCRR 6211.7(c)

VACANCY IN OFFICE	
Aug 5	A vacancy occurring three (3) months before a General Election in any year in any office are authorized to be filed at a General Election. §6-158(14)

REFERENDUMS/PROPOSITIONS/PROPOSALS	
Aug 5	For any election conducted by a BOE, the clerk of such subdivision shall provide the BOE with a certified text copy of any proposal, proposition, or referendum at least three (3) months before the General Election. §4-108

JUDICIAL DISTRICT CONVENTIONS	
Minutes of a convention must be filed within 72 hours (3 days) of adjournment. §6-158(6)	
Aug 8–14	Dates for holding Judicial conventions. §6-158(5)
Aug 15	Last day to file certificates of nominations. §6-158(6)
Aug 19	Last day to decline nomination. §6-158(7)
Aug 23	Last day to fill vacancy after a declination. §6-158(8)

CERTIFICATION OF GENERAL ELECTION BALLOT	
Sept 11	Certification of general election ballot by SBOE of nominations filed in its office. §4-112(1)
Sept 12	Certification of general election ballot by CBOE of nominations and questions; CBOEs. §4-114

CANVASS OF GENERAL ELECTION RESULTS	
Nov 20	Recanvass of General Election returns to occur no later than Nov. 20. §9-208(1)
Nov 20	Verifiable Audit of Voting Systems to occur no later than Nov. 20. §9-211(1)
Nov 30	Certification and transmission of Canvass of General Election returns by County Board of Elections §9-214(1)

Dec 9	Last day for State Board of Canvassers to meet to certify General Election. §9-216(2)
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ABSENTEE / EARLY VOTING BY MAIL FOR GENERAL	
Oct 26	Last day for board of elections to RECEIVE application or letter of application by mail or online portal for general election ballot. §8-400(2)(c), 8-700 (2) (c), (d)
Nov 4	Last day to apply in person for general election ballot. §8-400(2)(c), 8-700 (2) (c), (d)
Nov 5	Last day to postmark general election ballot. Must be received by the county board no later than Nov 12 th . §8-412(1), 8-710
Nov 5	Last day to deliver general election ballot in person to your county board or poll site in your county, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR GENERAL	
Sept 20	Deadline to transmit ballots to eligible Military/Special Federal/UOCAVA voters. §10-108(1) & §11-204(4)
Oct 26	Last day for a board of elections to receive application for Special Federal/UOCAVA absentee ballot for general if not previously registered. §11-202(1)(a) & §10-106(5)
Oct 26	Last day for a board of elections to receive application for Military absentee ballot for general if not previously registered. §10-106(5)
Oct 29	Last day for a board of elections to receive application for Military/Special Federal absentee ballot for general if already registered. §10-106(5) & §11-202(1)(b)
Nov 4	Last day to apply personally for a Military absentee ballot for general if previously registered. §10-106(5)
Nov 5	Last day to postmark Military/Special Federal/UOCAVA ballot for general. Date by which it must be received by the board of elections is Nov. 18 th . §10-114(1) & §11-212

INDEPENDENT PETITIONS	
April 16	First day for signing nominating petitions. §6-138(4)
May 21-28	Dates for filing independent nominating petitions. §6-158(9)

May 31	Last day to accept or decline a nomination. §6-158(11)
June 3	Last day to fill vacancy after a declination. §6-158(12)
June 28	Last day to decline after acceptance if nominee loses party primary. §6-158(11)

SIGNATURE REQUIREMENTS FOR INDEPENDENT NOMINATING PETITIONS §6-142	
1% of the total number of votes excluding blank and void cast for the office of governor at the last gubernatorial election in the political unit for any office to be voted for by all the voters of: the entire state.....45,000 (with at least 500 or 1% of enrolled voters from each of one-half of the congressional districts)	
5% of the total number of votes excluding blank and void cast for the office of governor at the last gubernatorial election in the political unit except that not more than 3,500 signatures shall be required on a petition for an office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of: Any county or portion thereof outside NYC.....1,500 *New York City7,500 *Any county or borough or any two counties or boroughs within New York City4,000 Any municipal court district3,000 *Any city council district within NYC2,700 Any congressional district.....3,500 Any state senatorial district3,000 Any assembly district.....1,500	
Any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number for the larger subdivision.	
*NOTE: Section 1057-b of the New York City Charter supersedes New York Election Law signature requirements for Designating and OTB petitions and Independent nominating petitions with respect to certain NY City offices.	

All Dates Subject to Change by the State Legislature

EXHIBIT B



Peter S. Kosinski
Co-Chair

Henry T. Berger
Co-Chair

Anthony Casale
Commissioner

Essma Bagnuola
Commissioner

Raymond J. Riley, III
Co-Executive Director

40 NORTH PEARL STREET, SUITE 5
ALBANY, N.Y. 12207-2109
Phone: 518/474-8100 Fax: 518/486-4068
<http://www.elections.ny.gov>

Kristen Zebrowski Stavisky
Co-Executive Director

July 29, 2024

STATE OF NEW YORK
STATE BOARD OF ELECTIONS

DETERMINATION

In the Matter of the Objections of CAROLINE CARTWRIGHT / MATTHEW NELSON / ALEXANDER PEASE / JOSEPH R. RHONE and ELAINE PORTUONDO SMITH / ANDRENA Y. WYATT to the Independent Nominating Petition of the independent body titled "We The People" purporting to nominate Electors for ROBERT F. KENNEDY, JR. as candidate for the public office of President of the United States, and NICOLE SHANAHAN as candidate for the public office of Vice-President of the United States.

After an examination of the Independent Nominating Petition of the independent body titled "We The People" purporting to nominate Electors for ROBERT F. KENNEDY, JR. as candidate for the public office of President of the United States, and Electors for NICOLE SHANAHAN as candidate for the public office of Vice-President of the United States for the November 5, 2024 General Election, and of the objections thereto, and a hearing having been held July 16, 2024, and the matter having been considered by the Commissioners of the State Board of Elections, a determination rendered by the Commissioners of the New York State Board of Elections on July 29, 2024, finds that:

The Petition containing 146,467 signatures was filed at the New York State Board of Elections on May 28, 2024. As to the Cartwright, et al objections: 24,503 signatures were found to be invalid leaving 121,964 valid signatures. As to the objections of Smith, et al: 37,753 signatures were found to be invalid leaving 108,714 valid signatures. 45,000 valid signatures are required to receive the nomination. The petition contains the requisite number of valid signatures required to receive the nomination sought and is valid.

As to the objections challenging the validity of candidate Kennedy's residency and raising allegations of fraud, such issues are more appropriately resolved through judicial proceedings, and are the subject of litigation currently pending in Albany County Supreme Court, *Cartwright, et al*, Index No. 906349-24 (transferred from Dutchess County Supreme Court, Index No.2024-52389), and in the Nassau County Supreme Court, *Smith, et al*, Index No. 000427/2024. The petition retains its presumption of validity, subject to judicial action in any court proceeding.



Kristen Zebrowski Stavisky
Co-Executive Director



Raymond J. Riley, III
Co-Executive Director

Robert F. Kennedy, Jr., Candidate, 84 Croton Lake Road, Katonah, NY 10536
Nicole Shanahan, Candidate, 271 Dedalera Drive, Portola Valley, CA 94028
Susan E. Peters, Candidate Contact, Sue.P@teamkennedy.com

Donna L Harris, Elector, 82 Sages Loop, Kerhonkson, NY 12446
Dawn M. D'Arcangelo, Elector, 111 Lake Drive, Schenectady, NY 12306
Ross W Elakman, Elector, 5 Cardinal Drive, Woodstock, NY 12498
Alan S. Gompers, Elector, 4705 Henry Hudson Parkway West #10N, Bronx, NY 10471
Lisa B. Jacques, Elector, 1106 Kinne Street, E. Syracuse, NY 13057
Kevin J. Madonna, Elector, 48 Dewitt Mills Road, Hurley, NY 12443
Victoria E. Madonna, Elector, 48 Dewitt Mills Road, Hurley, NY 12443
Philip J. Maresco, Elector, 3 Stony Brook Place, Armonk, NY 10504
Jensuh Y McCormack, Elector, 389 1st Avenue, Bayport, NY 11705
Javier Eduardo Merizalde, Elector, 109-10 Queens Boulevard #1K, Forest Hills, NY 11375
Jennifer I. Meyerson, Elector, 447 Johnson Avenue, Ronkonkoma, NY 11779
Kenneth A Noga, Elector, 25 Richard Road, Hyde Park, NY 12538
Mary C O'Donnell, Elector, 725 W. Chester Street, Long Beach, NY 11561
Gina M Krause, Elector, 27 Milltown Road, Brewster, NY 10509
Valentin Parks Jr, Elector, 39 Fieldstone Drive, Gansevoort, NY 12831
Nancy V. Pierro, Elector, 54B Jeronimo Ct, Pine Bush, NY 12566
Teresa E Polsky, Elector, 15 McEwen Street, Warwick, NY 10990
Varin D. Sawh, Elector, 20 Darin Road, Warwick, NY 10990
Lawrence P. Schnapf, Elector, 55 East 87 Street #8B, New York, NY 10128
Celeste L Shear, Elector, 21 Montclair Dr, Scotia, NY 12302 twoofus15@gmail.com
James L Shear, Elector, 21 Montclair Dr, Scotia, NY 12302, twoofus15@gmail.com
Jehanzeb Syed, Elector, 297 Huntington Ave, Buffalo, NY 14214
Eileen S Tepper, Elector, 2550 Independence Ave #6P, Bronx, NY 10463
Bruce T. Thorne, Elector, 314 Harriman Heights Rd, Harriman, NY 10926
Lita L. Thorne, Elector, 314 Harriman Heights Rd, Harriman, NY 10926
Joshua Vogel, Elector, 264 Swartekill Road, Highland, NY 12528
Kristen Ann Marie White, Elector, 5 Kingsley Pl, Syracuse, NY 13204
Kelly A Zaneto, Elector, 264 Swartehill Road, Highland, NY 12528

Caroline Cartwright, Objector, 28 Park Drive, Menands, NY 12204
Matthew Nelson, Objector, 513 County Route 28, Valatie, NY 12184
Alexander Pease, Objector, 555 West 23 St #N11C, New York, NY 10011
Joseph R. Rhone, Objector, 15 Point St, New Hamburg, NY 12590
Howard E. Colton, Esq, Objector Contact, 53 East Merrick Road, Suite 237, Freeport, NY 11520
coltonlaw1@coltonlaw.net

Elaine Portuondo Smith, Objector, 110 Merillon St, Uniondale, NY 11553,
newelaine2013@gmail.com
Andrena Y. Wyatt, Objector, 79 Maplewood Avenue, Hempstead, NY 11550,
andrenamay@aol.com

Objector Contacts:

gdonoyan@verizon.net
iquinn@kaplanhecker.com
JKasschau@HarrisBeach.com
tgarry@harrisbeach.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 24-cv-3897-ALC

TEAM KENNEDY, AMERICAN VALUES 2024,
AND JEFFREY ROSE,

Plaintiffs,

-against-

**REPLY DECLARATION OF
DEIRDRE GOLDFARB
IN SUPPORT OF PLAINTIFFS’
MOTION FOR A PRELIMINARY
INJUNCTION**

HENRY T. BERGER, in his official capacity as the Co-Chair of the New York State Board of Elections; PETER S. KOSINSKI, in his official capacity as the Co-Chair of the New York State Board of Elections; ESSMA BAGNUOLA, in her official capacity as a Commissioner of the New York State Board of Elections; ANTHONY J. CASSALE, in his official capacity as a Commissioner of the New York State Board of Elections; KRISTEN ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the New York State Board of Elections; RAYMOND J. RILEY, III, in his official Capacity as Co-Executive Director of the New York State Board of Elections; and, LETITIA JAMES, in her official capacity as the Attorney General of the state of New York,

Defendants.

Deirdre Goldfarb, declares, pursuant to 28 U.S.C. § 1746:

1. I am the Chief Legal Counsel of American Values 2024 (“AV24”), a Plaintiff in this action.
2. I submit this declaration, based upon my personal knowledge, in support of Plaintiffs’ motion, pursuant to Rule 65 of the Federal Rules of Civil Procedure, seeking a

preliminary injunction directing the Defendants to place Robert F. Kennedy, Jr. on the ballot in New York.

3. AV24 is a super PAC committed to educating and mobilizing voters to elect candidates who will restore and protect the soul of democracy in the United States.

4. AV24 supports Mr. Kennedy's candidacy for the office of President of the United States, and has spent millions of dollars advocating for him and promoting his candidacy.

5. The Federal Elections Commission (FEC) prescribes at 11 CFR Section 109 the guidelines regarding Coordinated and Independent Expenditures. (52 USC Sections 30101 (17), 30016(a) and (d).) Under federal law, a super PAC "is a PAC that makes only independent expenditures and cannot contribute to candidates," *McCutcheon v. FEC*, 572 U.S. 185, 193 n.2 (2014), and may not coordinate expenditures with the candidate or the candidate's campaign.

6. AV24 adopted and implemented a Firewall Policy. Please find form AV24 Firewall Policy attached hereto as **Exhibit A**. All consultants were required to sign the Firewall Policy as a condition precedent to working for AV24. All consultants underwent a firewall training after their hire date.

7. During AV24's election support efforts for Robert F. Kennedy Jr.'s candidacy, AV24 supported not only his candidacy but other minor parties and independents.

8. AV24 sponsored the Libertarian National Convention in Washington D.C. from May 24 to May 26, 2024. Additionally, AV24 is sponsoring the Independent National Convention to be held in Denver, Colorado on September 17-19, 2024.

9. During the ongoing ballot access litigation funded by the Clear Choice Action PAC, a Democratic-funded super PAC established to fight minor parties' and independents' ballot

access, it became obvious that legal hurdles would make ballot access nearly impossible for not only Mr. Kennedy Jr., but all minor parties and independents running for President of the United States.

10. In support of other minor parties and all independents running for president, AV24 provided substantial funding to two ballot access legal funds, both of which are national political organizations exempt under IRC § 527(e)(1).

11. The first is More Voter Choice Fund Inc. (“MVCF”). The following are a few of the cases the entity has or is handling for minor parties:

- a. MVCF’s first case represented Justice for All in the United States District Court for the Eastern District of North Carolina, Western Division, *Ortiz II v. North Carolina State Board of Elections*, Civil Action No. 5:24-cv-420. The Court held NCSBE must put Justice for All party, in which Cornel West was nominee, on the ballot in North Carolina.
- b. MVCF also represented We the People Party of North Carolina whose nominees include Robert F. Kennedy for President with Nicole Shanahan for Vice-President, Jeff Scott for State Senate District 40, and Mark Ortiz for Rowan County Commissioner to stay on the ballot in *North Carolina Democratic Party v. NCSBE* in the General Court of Justice Superior Court Division, Case Number 24CV023631-910. The Court held NCSBE must keep We The People party on the ballot.
- c. MVCF currently is representing the Libertarian Party of NY, the Green Party of NY, Dr. Jill Stein, and numerous members of these parties in this case as intervenors.

12. The second entity that received funding from AV24 is the Ballot Access Freedom Fund.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Beverly Hills, California on August 30, 2024.



Deirdre Goldfarb, Esq.
Chief Legal Counsel

EXHIBIT A



American Values 2024

Federal Campaign Finance Law Firewall Policy

_____ (“Consultant”) has enjoyed success performing services for a wide range of clients, which now includes Federal candidates to political parties to issue advocacy and independent expenditure groups. Campaign finance laws place difficult challenges on the way AV24 conducts our business. It is important that you read and understand this firewall policy described herein because our continued success depends on complying with the prohibitions, limitations and requirements of the Bipartisan Campaign Reform Act of 2002 Act and corresponding Federal Election Commission (“FEC”) regulations (collectively “BCRA”).

Under the law, public communications by independent expenditure-only committees known as SuperPACs, issue advocacy groups or political party committees may be considered in support of a candidate or party committee (and, therefore, an in-kind contribution to the candidate or party) if the communications are coordinated between the Super PAC and the candidate or party committee, or between the issue advocacy group and the candidate or party committee, or between the party committee independent expenditure unit and the candidate committee. See 11 C.F.R. 109.21. Common vendors working for both outside groups and candidates or party committees in the same election can also trigger coordination unless the rules described in this Firewall Policy are followed.

As a result, AV24 recognizes that BCRA places limits on vendors such as Consultant who have a wide range of clients engaged in political activities, including candidate and party committees, as well as issue advocacy and independent expenditure groups. That means the employees, if any, of Consultant need to maintain “firewalls” to ensure that neither Party inadvertently provides or transmits non-public information (1) about our issue advocacy/independent expenditure clients to our campaign or party committee clients, (2) about candidate and party committee clients to our issue advocacy group, independent expenditure committee, or party committee independent expenditure unit clients, or (3) about party committee independent expenditure unit clients to our candidate committee clients, regular party committee, issue advocacy group or independent expenditure clients.

Principals and employees working on opposite sides of the “firewall” must not under any circumstances communicate any information whatsoever about their separate clients.

Being “firewalled” off means Consultant, and employees, if any, working on behalf of each client must not share or discuss, in any way, their separate client’s private plans, projects, activities or needs, including messages. This “firewall” must be maintained to ensure that no principal or employee inadvertently provides or transmits non-public information to the others.



Accordingly, Consultant has created a firewall structure that prevents the flow of information about different clients in such a way that the coordination rules would **NOT** be triggered. Personnel and client information is compartmentalized so that one client's information (e.g., federal candidate or political party committee) is **not shared** with, or used in, another client's communications (e.g., issue ad group).

The firewalls are not intended to prevent Consultant and its employees, if any, from discussing administrative issues or procedures that will improve the services you provide to your clients. Similarly, these firewalls are not intended to prevent Consultant from maintaining management and financial controls on the company's operations – only that the private plans, projects, activities or needs of a client on one side of the firewall not be communicated or shared with a client on the other side of the firewall.

In addition, Consultant or employees, if any, must not perform services for any:

- Independent expenditure or issue advocacy client within 120 days of having performed services for any federal candidate (Presidential, House, or Senate) or party committee client if the issue advocacy/independent expenditure client's communications name the same candidate or party or an opposing Presidential, House or Senate candidate or party.
- Party committee client making independent expenditures (excluding the permissible coordinated expenditure work for that party) within 120 days of having performed services for any federal candidate committee client (Presidential, House, or Senate) or party committee non-independent expenditure client if the party committee's communications name the same or an opposing candidate.

With respect to communications disseminated within these windows of 120 days, Consultant or its employees, if any, must not:

- Discuss the private political plans, projects, activities or needs, including messages, of a Presidential campaign, Senate campaign, Congressional campaign or relevant state or national party committee with Consultant or employee, if any, who is providing services to any independent expenditure or issue advocacy group whose communications mention the same candidate or party or their opponents; or
- Discuss the private political plans, projects, activities or needs, including messages, of any independent expenditure or issue advocacy group with Consultant, or employee, if any, who is providing services to a Presidential campaign, Senate campaign, Congressional campaign



or a state or national party committee whose candidates or opponents may be mentioned in any issue advocacy or independent expenditure group's communications;

AV24 takes these issues seriously, and no individual candidate or party committee or issue advocacy/independent expenditure committee client is worth exposing AV24 to potential legal liability.

By signing below, you acknowledge that you have read and understand Firewall Policy outlined above. If you have any questions or concerns about how this policy applies to a specific situation, please do not hesitate to contact us so that we may consult counsel and advise you in a comprehensive and efficient manner. We are continually in the process of reviewing additional changes to implement the safeguards necessary to be in compliance with the regulations and will keep you updated.

Signature: _____

Title: _____

Date: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 24-cv-3897-ALC

TEAM KENNEDY, AMERICAN VALUES 2024,
AND JEFFREY ROSE,

Plaintiffs,

-against-

HENRY T. BERGER, in his official capacity as the Co-Chair of the New York State Board of Elections; PETER S. KOSINSKI, in his official capacity as the Co-Chair of the New York State Board of Elections; ESSMA BAGNUOLA, in her official capacity as a Commissioner of the New York State Board of Elections; ANTHONY J. CASSALE, in his official capacity as a Commissioner of the New York State Board of Elections; KRISTEN ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the New York State Board of Elections; RAYMOND J. RILEY, III, in his official Capacity as Co-Executive Director of the New York State Board of Elections; and, LETITIA JAMES, in her official capacity as the Attorney General of the state of New York,

Defendants.

**DECLARATION OF
DEIRDRE GOLDFARB IN
SUPPORT OF PLAINTIFFS’
MOTION FOR A
TEMPORARY
RESTRAINING ORDER
AND/OR PRELIMINARY
INJUNCTION**

Deirdre Goldfarb, declares, pursuant to 28 U.S.C. § 1746:

1. I am the Chief Legal Counsel of American Values 2024 (“AV24”), a Plaintiff in this action.
2. I submit this declaration, based upon my personal knowledge, in support of Plaintiffs’ motion, pursuant to Rule 65 of the Federal Rules of Civil Procedure, seeking a temporary restraining order and/or preliminary injunction staying enforcement of the Albany

County Supreme Court's unconstitutional ruling and directing the Defendants to place Robert F. Kennedy, Jr. on the ballot in New York.

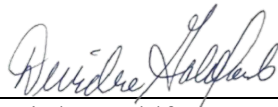
3. AV24 is a super PAC committed to educating and mobilizing voters to elect candidates who will restore and protect the soul of democracy in the United States.

4. AV24 supports Mr. Kennedy's candidacy for the office of President of the United States, and has spent millions of dollars advocating for him and promoting his candidacy.

5. The Albany Supreme Court's decision to keep Mr. Kennedy off New York's general election ballot ensures that the chosen candidate of AV24's members is not fairly represented on the ballot, burdening our ability to make a meaningful vote for that candidate.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Beverly Hills, California
August 22, 2024



Deirdre Goldfarb
Chief Legal Counsel
American Values 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
TEAM KENNEDY, AMERICAN VALUES 2024,
AND JEFFREY ROSE,

Case No. 24-cv-3897-ALC

Plaintiffs,

-against-

HENRY T. BERGER, in his official capacity as the Co-Chair of the New York State Board of Elections; PETER S. KOSINSKI, in his official capacity as the Co-Chair of the New York State Board of Elections; ESSMA BAGNUOLA, in her official capacity as a Commissioner of the New York State Board of Elections; ANTHONY J. CASSALE, in his official capacity as a Commissioner of the New York State Board of Elections; KRISTEN ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the New York State Board of Elections; RAYMOND J. RILEY, III, in his official Capacity as Co-Executive Director of the New York State Board of Elections; and, LETITIA JAMES, in her official capacity as the Attorney General of the state of New York,

Defendants.

----- X

DECLARATION OF JEFFREY ROSE IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

JEFFREY ROSE, declares, pursuant to 28 U.S.C. § 1746:

1. I am a Plaintiff in this action and submit this declaration, based upon my personal knowledge, in support of my and my co-plaintiffs' motion, pursuant to Rule 65 of the Federal Rules of Civil Procedure, seeking a temporary restraining order and/or preliminary injunction staying enforcement of the Albany County Supreme Court's unconstitutional ruling and directing the Defendants to place Robert F. Kennedy, Jr. on the ballot in New York.


2. I am a registered voter in Albany County, New York and a supporter of Mr. Kennedy's candidacy for the office of President of the United States.

3. In or around April or May of 2024, I signed a petition to have Mr. Kennedy placed on New York's 2024 general election ballot. I understand that the petition has been invalidated by a New York Supreme Court sitting in Albany County.

4. Mr. Kennedy is my preferred presidential candidate. The Albany Supreme Court's decision therefore ensures that my chosen candidate is not fairly represented on the ballot, burdening my ability to make a meaningful vote for that candidate.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Albany, New York
August 22, 2024



Jeffrey Rose

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 24-cv-3897-ALC

----- X
TEAM KENNEDY, AMERICAN VALUES 2024,
AND JEFFREY ROSE,

Plaintiffs,

-against-

**DECLARATION OF ROBERT
F. KENNEDY, JR. IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A
TEMPORARY RESTRAINING
ORDER AND/OR
PRELIMINARY INJUNCTION**

HENRY T. BERGER, in his official capacity as the Co-Chair of the New York State Board of Elections; PETER S. KOSINSKI, in his official capacity as the Co-Chair of the New York State Board of Elections; ESSMA BAGNUOLA, in her official capacity as a Commissioner of the New York State Board of Elections; ANTHONY J. CASSALE, in his official capacity as a Commissioner of the New York State Board of Elections; KRISTEN ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the New York State Board of Elections; RAYMOND J. RILEY, III, in his official Capacity as Co-Executive Director of the New York State Board of Elections; and, LETITIA JAMES, in her official capacity as the Attorney General of the state of New York,

Defendants.

----- X

ROBERT F. KENNEDY, JR., declares, pursuant to 28 U.S.C. §1746:

1. My campaign organization, for President of the United States, Team Kennedy, is a Plaintiff in this action.

2. I submit this declaration, based upon my personal knowledge, in support of Plaintiff Team Kennedy's motion, pursuant to Rule 65 of the Federal Rules of Civil Procedure, seeking a temporary restraining order and/or preliminary injunction staying enforcement of the

Albany County Supreme Court's unconstitutional ruling and directing the Defendants to place me on the ballot in New York.

Background Facts Regarding My Residency

3. I am a candidate for the office of President of the United States.

4. On April 19, 2023, I declared my intention to seek the 2024 Democratic Party nomination for the office of President of the United States.

5. On October 9, 2023, in Philadelphia, Pennsylvania, I declared my independence from the Democratic Party and publicly announced my independent candidacy for the office of President of the United States for the 2024 general election.

6. Immediately prior to moving to my current residence at 84 Croton Lake Road, Katonah, New York, I resided at One Twin Lakes Drive, Bedford, New York.

7. Upon my decision to contest the Democratic Party's 2024 nomination for the office of President of the United States, in March 2023, my friend and host David Michaelis requested that I move out of my residence at One Twin Lakes Drive, as he remains a supporter of President Biden.

8. Because I am, at the very fiber of my being, a New Yorker, instead of moving permanently to our California home, I immediately secured a new residence for myself at 84 Croton Lake Road, Katonah, New York in April 2023, staying with my friends Timothy Haydock and his wife, Barbara Moss.

9. I pay monthly rent to the Haydocks and maintain my own private room in the home.

10. My decision to maintain my residence in the Bedford area of New York by moving to the Croton Lake Road address predates, by nine months, my selection of Nicole

Shanahan as my vice-presidential running mate. Had I been concerned about the Twelfth Amendment, I could have just switched my residence to the house I own in Hyannis Port, Massachusetts. But of course, my move to 84 Croton Lake Road had nothing to do with the eventual selection of my vice-presidential candidate.

11. I consider New York as my domicile, which has been my domicile since the age of ten.

12. I am now and have always been registered to vote in New York. I am currently registered to vote at 84 Croton Lake Road, Katonah, New York. I maintain my driver's license at this same address, and my automobile is registered there.

13. I am a member of the New York State bar, and I am not a member of the California bar.

14. I maintain all of my recreational licenses in New York, including falconry, hunting, and fishing licenses.

15. I maintain a law office for my firm Kennedy & Madonna in New York and pay income taxes in New York.

16. At all times, upon any absence from the state of New York, my intention is and has always been to return to my home at 84 Croton Lake Road in Katonah, New York.

17. I have never expressed an intention to be a resident of any state other than New York.

18. Attached as Exhibit 1 is an affidavit I submitted in the state court, which further details my personal and professional history in New York, and my tenure as a New York resident.

Background Facts Regarding the Nominating Petition

19. In New York (as elsewhere), presidential nominees chosen by the Democratic and Republican Parties (and other recognized parties) automatically appear on the state’s ballot by, for example, being nominated at a national convention, but independent candidates must file a nominating petition and collect signatures from a minimum number of citizens in order to do so, running a gauntlet of onerous, arcane requirements.

20. My campaign complied with New York’s requirement for independent candidates for president to collect 45,000 petition signatures between April 16 and May 28, 2024, and did so at a cost of over \$1,000,000.

21. In fact, we collected over 100,000 valid petition signatures, satisfying a number of New York’s complicated statutory requirements.

22. On May 28, 2024, Team Kennedy properly submitted over 100,000 Kennedy petition signatures to the New York State Board of Elections (“NYSBOE”).

23. In collecting the petition signatures, my campaign and I had to—and did— (i) use a separate petition sheet for each 10 signatures; (ii) arrange for 28 pledged elector candidates (and list them on each petition) long before party-nominated presidential candidates are required to name their elector candidates; (iii) comply with New York’s ban on per-signature payment to petition signature collectors; (iv) comply with New York’s ban on the use of petition signature collectors who had agreed to collect petition signatures for another candidate, and sign their petition; (v) record a town, city, or county residence when many New York voters use their village address and numerous New York voters are listed in the state’s voter registration rolls by their village address; and (vi) bear the expense of New York’s statutorily created private petition-verification process.

24. Nationwide, I am the leading independent presidential candidate in the coming election, with millions and millions of supporters, I have to date collected over a million voter signatures, at an expense of over \$12,000,000, and I am securing ballot access across the country.

25. In fact, I have thus far secured direct ballot access in California, Michigan, Delaware, South Carolina, and Florida by accepting the nomination of state-recognized parties; I have timely filed (or intend to timely file) ballot access petitions containing sufficient signatures to be placed on the ballot of 40 other states and the District of Columbia; I have secured ballot access in two further states through the payment of filing fees, and I expect to secure ballot access in three other states through new party nominations.

The Recent New York State Court Decision

26. On August 13, 2024, the New York Supreme Court, Albany County directed the NYSBOE to strike my name from for the ballot, basing its ruling on one—and only one—ground: that the petition, with more than 100,000 valid petition signatures, indicated an incorrect address. *See Cartwright v. Kennedy*, 2024 N.Y. Misc. LEXIS 3768 (Sup. Ct. Albany Cty.) at *50-51. An appeal from that ruling is pending in the Third Department.

The Grounds for the Emergency Relief Sought by Plaintiffs

27. Plaintiff Team Kennedy seeks this emergency relief, along with the other Plaintiffs, directing the Defendants to add my name to the ballot in New York because we have no other adequate remedy at law. New York's window to submit petitions has long closed and I have already complied with all of the statutory requirements.

28. The state court's conclusion that I listed an incorrect address and therefore must be removed from the ballot is unconstitutional (for the reasons discussed in Plaintiffs' brief and amended complaint).

29. My selection of a residence address—which was based on legal advice concerning where I am registered to vote—has now obstructed me from appearing on the New York ballot.

30. The state court's ruling and imposition of this additional qualification hurdle put me in an impossible position: if I listed my residence as being in New York, I could be ineligible to run in New York State (which is the current posture), but if I listed my residence as being in California or Massachusetts, I would be ineligible to run in states like New Hampshire or Maine, which require the candidate to list his or her residence as being in the state in which he or she is registered to vote.

31. I am registered to vote in New York and for consistency purposes, I was advised by election law counsel to use my New York residence on all ballots across the United States.

32. If the state court's ruling stands and I am refused access to the ballot in New York, I will be deprived of my constitutional right to run for the office of President and hundreds of thousands of voters will be disenfranchised from voting for the candidate of their choice.

33. The ruling also disenfranchises voters in New York and, because of the potential ripple effects of the ruling in other states, voters in other states as well.

34. With the presidential election looming, ballots in New York (and in other states) will be printed in a few weeks, necessitating decision of the constitutional issues raised herein on an emergency basis.

35. There are no factual disputes here. I and the other Plaintiffs have expended substantial effort and financial investment obtaining the required number of signatures in New York to gain access to the ballot. Having done everything required by New York law to gain a place on the ballot, I and others similarly situated are disenfranchised by a state court ruling that infringes some of our most sacred rights as citizens under the U.S. Constitution.


36. By contrast, the harm to Defendants (and the State of New York) of granting the relief sought is minimal to none. The requested relief only requires placing my name on the ballot, as I have satisfied the requirements and my nominating petition was approved by the NYSBOE.

Request to Waive Security

37. I respectfully request that the Court waive any otherwise applicable requirement to post security for a temporary restraining order or preliminary injunction, as it would provide an effective bar to Plaintiffs' ability to bring this action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Los Angeles, CA
August 22, 2024



Robert F. Kennedy, Jr.

EXHIBIT 1

Rhone, Jr., and Alexander Pease's Memorandum of Law in Support of Their Cross-Motion For a Summary Determination Under CPLR 409(b), dated June 26, 2024.

2. I am an inhabitant of the state of New York, which has been my home and domicile since the age of ten.

3. My home at 84 Croton Lake Road, in Katonah, New York is my principal residence.

4. I am a candidate for the office of President of the United States.

5. On April 19, 2023, I declared my intention to seek the 2024 Democratic Party nomination for the office of President of the United States.

6. Upon the difficult realization that the Democratic National Committee (DNC) had significantly biased the delegate selection process in favor of the re-nomination of Joseph Biden for a second term, I determined to end my quest for the 2024 Democratic Party nomination in favor of an independent candidacy for the 2024 general election.

7. On October 9, 2023, in Philadelphia, Pennsylvania, I declared my independence from the DNC and publicly announced my independent candidacy for the office of President of the United States for the 2024 general election.

8. Immediately prior to moving my residence to 84 Croton Lake Road, Katonah, New York, I resided at Two Twin Lakes Road, Bedford, New York.

9. Upon my decision to contest the Democratic Party's 2024 nomination for the office of President of the United States, in March 2023, my friend and landlord David Michaelis requested that I move out of my residence at Two Twin Lakes Road, as he remains a supporter of President Biden.

10. Because I am, at the very marrow of my being, a New Yorker, instead of moving

permanently to our California home, I immediately secured a new residence for myself at 84 Croton Lake Road, Katonah, New York in April 2023, staying with my friends Timothy Haydock and his wife, Barbara Moss.

11. I pay monthly rent to the Haydocks and maintain my own private room in the home.

12. My personal possessions including those I kept at Two Twin Lakes Road have been moved to 84 Croton Lake Road, Katonah, New York.

13. My decision to maintain my residence in the Bedford area of New York by moving to the Croton Lake address predates, by nine months, my selection of Nicole Shanahan as my vice-presidential running mate. Had I been concerned about the 12th Amendment, I could have just switched my residence to the house I own in Hyannis Port, Massachusetts. But of course, my move to 84 Croton Lake Road had nothing to do with the eventual selection of my vice-presidential candidate.

14. Accordingly, electoral politics had no bearing on my decision to immediately secure a new residence in New York, at 84 Croton Lake Road, Katonah, just a few miles from the Michaelis home.

15. I am registered to vote at 84 Croton Lake Road, Katonah, New York and have always been registered to vote and have voted only in the state of New York.

16. I maintain a New York driver's license with my residence registered at 84 Croton Lake Road, Katonah, New York.

17. My automobile is registered at 84 Croton Lake Road, Katonah, New York.

18. I am a member of the New York state bar, with my residence registered at 84 Croton Lake Road, Katonah, New York, and I am not a member of the California bar.

19. I maintain my Falconry license in New York, with my residence registered at 84 Croton Lake Road, Katonah, New York.

20. I maintain hunting and fishing licenses in New York, with my residence registered at 84 Croton Lake Road, Katonah, New York.

21. I retain no licenses in the state of California, Massachusetts or any other state.

22. I maintain a law office for my firm Kennedy & Madonna in New York State.

23. I pay income taxes in New York State.

24. At all times, upon any absence from the state of New York, my intention is and has always been to return to my home at 84 Croton Lake Road in Katonah, New York.

25. I have never expressed an intention to be a resident of any state other than New York.

26. In 1978 I was interviewed during a book tour on the "GOOD DAY" morning television program, and in response to questions about my "home base" and my "home" I steadfastly and adamantly insisted that it was New York and only New York. A copy of the transcript of the relevant part of that interview, and the YouTube link to the entire interview, is annexed hereto as **Exhibit 1**.

27. My agreement with my wife, Cheryl Hines, to temporarily join her in the state of California, was that we would both return to the state of New York upon her retirement. We will return to my current residence at 84 Croton Lake Road, Katonah, New York.

28. I have resided and slept at 84 Croton Lake Road in Katonah, New York at every available opportunity during a very busy schedule campaigning for the office of President of the United States.

29. Katonah is a hamlet in the Town of Bedford where I have lived for forty years. I

have lived in Bedford at eight separate addresses over the past four decades. I considered each of these addresses to be my permanent and principal home during the times I lived there.

30. Bedford lies both within the Hudson River and the New York City reservoir watersheds, the two great waterways that I have spent my career protecting.

31. My life, my passions, the years I spent raising my family, my career and my political contacts, and my orientation have been and are ever in my home state of New York.

32. I was born at Georgetown University Hospital in Washington D.C., on January 17, 1954.

33. I was raised in Hyannis Port, Massachusetts and at Hickory Hill in McLean, Virginia.

34. At the age of 10, I moved with my family into an apartment in New York City at United Nations Plaza and a summer home on Glen Cove, Long Island, New York, and my father served as New York's United States Senator from 1964 until his assassination in 1968.

35. After my father's death, his friend LeMoyne Billings gave me a room in his home at Five East 88th Street, where I lived until 1984. That home was my principal and primary residence.

36. I attended boarding school at Millbrook School in Millbrook, Dutchess County, New York, which is also in the Hudson valley. During this formative period of my life, I learned both falconry and fly fishing, practicing them intensely. Those sports would provide central gravities to my life over the next fifty-five years. I served as president of the New York State Falconry Association and I wrote the examination that New York State falconry apprentices take to qualify for the state-issued falconry license. I fell in love with those landscapes which left me with the permanent yearning for rolling hills and broken agricultural fields and forests, interlaced

by abundant streams. That yearning drove me eventually to settle permanently in nearby Bedford.

37. I continued my education at Harvard University, graduating in 1976 with a Bachelor of Arts in American History and Literature.

38. Thereafter I studied at the London School of Economics before earning my Juris Doctor degree from the University of Virginia School of Law in 1982, and a Master of Laws (LLM) from Pace University in 1987, a law school located in White Plains, New York.

39. In 1982, I became an assistant district attorney in the Manhattan District Attorney's office.

40. I inherited his Manhattan home when LeMoyne Billings passed away in 1981.

41. In January 1984 I moved to a rental property at 384 Succabone Road in Bedford, New York. The following year I moved to a rental property at 81 Main Street in Mount Kisco, a village in the Town of Bedford. Later that year, I sold my Manhattan home and purchased a home at 326 South Bedford Road in Bedford.

42. In 2009, during my separation from my second wife Mary Richardson while I continued to own that South Bedford Road property, I moved to 284 Guard Hill Road in Bedford.

43. In 2011, I moved to 42 Rock Gate Farm Road in Bedford, New York.

44. Following my wife's tragic death in May 2012, I moved back into my marital home at 326 South Bedford Road in Bedford.

45. Following my marriage to actress Cheryl Hines, in 2014, I regretfully sold my Bedford home to purchase a property on FernHill Road in Malibu, California.

46. In order to maintain my Bedford residency, I moved into Two Twin Lakes Road,

and this became my permanent and principal residence, and the place where I stayed during my frequent visits home to New York. For many of those years, I stayed there two to three days each week.

47. Cheryl and I sold the Malibu home in June 2021, and we purchased a home at 2195 Mandeville Canyon Road in Brentwood. In 2021, we sold that home and purchased a home at 2975 Mandeville Canyon Road. During all that time I maintained my official residence in Bedford, New York at Two Twin Lakes Road.

48. My longstanding dedication to New York manifested in my advocacy on environmental issues within this state.

49. In my first case as an environmental lawyer, I represented the NAACP in a lawsuit against a proposal to build a garbage transfer station in a minority neighborhood in Ossining, New York.

50. In 1984, after leaving the Manhattan district attorney's office, I began to volunteer at the Hudson River Fishermen's Association (HRFA), since renamed the Riverkeeper.

51. HRFA was founded by world-famous fly fisherman Robert Bogle and a group of commercial fishermen on the Hudson River, to reclaim the Hudson from its polluters.

52. In 1985, Riverkeeper hired me as their senior attorney. I litigated and supervised environmental enforcement lawsuits on the east coast estuaries on behalf of Hudson Riverkeeper and the Long Island Soundkeeper, where I was also a founding board member.

53. In 1987, I successfully sued Westchester County, New York, my home county, to reopen Croton Point Park, which was heavily used primarily by poor and minority communities from the Bronx. Thereafter, I was successful in forcing the reopening of Pelham Bay Park in the Bronx, New York, which New York City had closed to the public and converted to a police

firing range.

54. In 1987, I founded the Environmental Litigation Clinic at Pace University School of Law. I served as the clinic's supervising attorney and co-director and Clinical Professor of Law for over three decades.

55. As supervising attorney at Pace University's Environmental Litigation Clinic, I secured a special order from the New York State Court of Appeals to permit, under my supervision and the clinic's co-director, second- and third-year law students to practice law and try cases against Hudson River polluters in state and federal court.

56. During my tenure with Pace University's Environmental Litigation Clinic, we have sued governments and companies for polluting Long Island Sound and the Hudson River and its tributaries, we expanded citizen access to the shoreline and won hundreds of settlements for the Hudson Riverkeeper, and we sued dozens of municipal wastewater treatment plants and forced them to comply with the requirements of the Clean Water Act.

57. Beginning in 1991, I represented environmentalists and New York City watershed consumers in a series of lawsuits against New York City and upstate watershed polluters.

58. Working with Riverkeeper, I spearheaded a 34-year battle to close Indian Point nuclear power plant in my home county of Westchester, New York – a battle featured in a 2004 documentary called *Indian Point: Imagining the Unimaginable*.

59. I also spearheaded a thirty-year battle to force the General Electric Company to remove its toxic PCBs from the Hudson. I brought hundreds of successful lawsuits against sewer plants and other polluters in New York City's drinking water watersheds in the Hudson River, and Long Island Sound.

60. In 2010, a Pace lawsuit I led forced ExxonMobil to remediate tens of millions of

gallons of oil from legacy oil refinery spills in Newtown Creek in Brooklyn, New York.

61. In 2013, as a member of Governor Andrew Cuomo’s natural gas fracking commission, I helped engineer the Governor’s ban of fracking in New York State.

62. I am the author of a series of articles and reports alleging that the state of New York was abdicating its responsibility to protect the water repository and supply system. In 1996, on behalf of environmentalists and New York City watershed consumers, I negotiated the \$1.2 billion New York City Watershed Agreement with Mayor Giuliani, Governor Pataki, and US EPA, and the state DOH and DEC. This agreement is widely regarded as an international model in stakeholder consensus negotiations and sustainable development.

63. In 1997, I co-authored with John Cronin *The Riverkeepers*, a history of the early Riverkeepers, a primer for the broader Waterkeeper movement.

64. As an independent candidate for the office of President of the United States, I am required to provide my address to every state as part of the filing process.

65. Many states require the address to be provided to be where I am registered to vote, which is at 84 Croton Lake Road, Katonah, New York.

66. As a registered voter of New York with a residence in New York, coupled with my expressed intention to return to that residence upon the completion of the campaign, or of my term of office, and of my wife’s career pursuits in California, the only residence that may be recognized under the 12th Amendment to the U.S. Constitution is my home at 84 Croton Lake Road, Katonah, New York.

67. For forty years, I kept my boat at the Ossining boatyard. I taught my kids to ski in the Catskills and Adirondacks and to waterski on the Hudson, and spent evenings fishing on the Hudson. I have fished in most of the hundreds of streams and tributaries that feed the Hudson

River. I have hiked and camped across the Adirondacks and Catskill Mountains. I am immensely proud of New York's landscapes and waterways. I am proud to be a New Yorker. I wouldn't want anyone to think of me as a resident of any other state. New York is the central locus of everything I have fought for and with which I identify myself.

68. With respect to presidential and vice-presidential candidates, the Supremacy Clause of the U.S. Constitution prohibits New York from challenging a residency determination made according to the 12th Amendment as interpreted by the courts.

69. Furthermore, recording different addresses on ballot access petitions, based on individual parochial application of state residency rules, would trigger ballot access challenges which would constitute violations of the First and Fourteenth Amendments to the U.S. Constitution.

70. As part of the process of qualifying my candidacy for the Nevada ballot, I swore to and signed a Statement of Domicile, confirming that "my residence for the past 14 months was and is at 84 Croton Lake Road, Katonah, New York 10536," which document is now on file with the Clerk of the Court in Clark County, Nevada. A copy of that document is annexed hereto as **Exhibit 2**.

71. Frankly, if I had claimed a California address as my residence, there is no doubt an objection would have been brought against our New York nominating petition, and that objection would likely have been upheld, as I am not registered to vote in California, I have no license in California, I pay taxes in New York, and I have always expressed my intent to return to my home at 84 Croton Lake Road, Katonah, New York.

72. The objections filed in this court are an exercise of pure politics and should not be entertained by any fair-minded judge.

73. In *Jones v. Bush*, three Texas registered voters alleged that Richard “Dick” Cheney, the 2000 nominee of the Republican Party for Vice President of the United States, was an inhabitant of the state of Texas and not, as claimed by Cheney, the state of Wyoming. The U.S. District Court for the Northern District of Texas rejected this claim (even though Mr. Cheney transferred his domicile from Texas to Wyoming upon his selection as George W. Bush’s vice-presidential nominee as late as July 21st of the election year) because:

“The record shows that Secretary Cheney has both a physical presence within the state of Wyoming and the intent that Wyoming be his place of habitation. It is undisputed that he was born, raised, educated, and married in Wyoming and represented the state as a Member of Congress for six terms. After additional public service, he eventually moved to Dallas, Texas to become the Chief Executive Officer of Halliburton Corporation. On or about July 21, 2000 Secretary Cheney declared his intent to return to his home state of Wyoming. On or after that date, and before today, he traveled to Wyoming and registered to vote there, requested withdrawal of his Texas voter registration, voted in Wyoming in two elections, obtained a Wyoming driver’s license.”

74. Unlike the broken link between Secretary Cheney and Wyoming, I have been, for many decades, a resident of New York, I continue to work in New York, I pay state income taxes to New York, I have and continue to advocate for New York environment protection, I have intentionally maintained a continuous physical address in New York, I maintain all of my licenses in New York, I am registered to vote in New York, I have only ever voted in New York elections, I was married in New York, I have expressed a clear intention to remain a New Yorker and intend to return to New York after any absence. My wife has agreed to return to our New York residence after her own current employment concludes, and I have habituated at 84 Croton Lake Road, Katonah, New York as a principal and my only current residence in the state of New York.

75. The 12th Amendment requires and uses the term “inhabitant” precisely to permit

persons absent occasionally for a considerable time on public or private business to maintain their attachment to their state. *Schaefer v. Townsend*, 215 F.3d 1031, 1036 n.5 (9th Cir. 2000).

76. The 12th Amendment to the United States Constitution does not require a presidential or vice-presidential candidate to maintain a principal residence, just a physical presence.

77. The Supremacy Clause of the United States Constitution prohibits New York from imposing any substantive qualification on presidential and vice-presidential candidates exceeding those imposed under the relevant federal constitutional provisions.

78. To the extent the New York residency rule imposes any requirement beyond the requirements of the 12th Amendment to the United States Constitution, the rule is unconstitutional as applied to presidential and vice-presidential candidates. *See e.g., Griffin v. Padilla*, 408 F.Supp.3d 1169 (E.D. CA 2019) (establishing states have no authority to impose substantive requirements beyond those enumerated in the federal constitution).

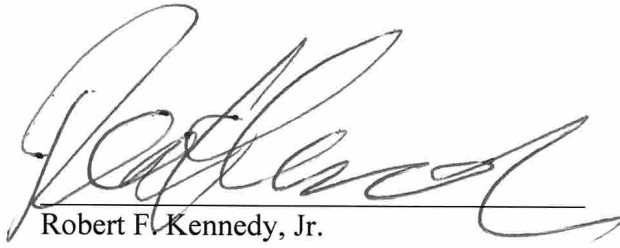
79. New York cannot prevent independent presidential candidates from recording a bona fide residential address in conformance with the requirements of the 12th Amendment to the United States Constitution on ballot access petitions where such a rule would require presidential and vice presidential candidates to record different residential addresses in different states, inviting additional ballot access challenges by Democratic and Republican rivals seeking to drain campaign resources – as is the sole purpose behind this challenge filed in this particular court.

80. Objectors’ argument that California is essential to winning the 270 electoral votes to win the presidential election is, on its face, false, and belies their lack of credibility with this Court should that be an issue this court is interested in folding into its decision of the pending motions.

81. Republican candidates for the office of President of the United States have routinely prevailed in presidential elections without carrying California’s electoral college votes since George H.W. Bush’s 1988 presidential victory (followed by 3 additional Republican victories thereafter in 2000, 2004 and 2016).

82. Objectors’ argument essentially rests on the premise that because my vice-presidential running mate is a resident of California, I improperly selected New York as my residence on the theory that winning California is critical to my electoral prospects and that the New York address is a fraudulent effort directed at the voters of New York to improperly convince them I can win as a condition to securing their signature –all of which is, on its face, factually and legally provable as incorrect. First, and foremost, I changed my principal residence in New York to 84 Croton Lake Road many months before I ever considered the selection of Nicole Shanahan as my vice-presidential running-mate.

WHEREFORE, in my own behalf and for the sake of my fellow respondents-candidates, I respectfully request that this Court deny petitioners-objectors’ cross-motion for a summary determination invalidating our nominating petition, together with such other and further relief as this Court finds just.



Robert F. Kennedy, Jr.

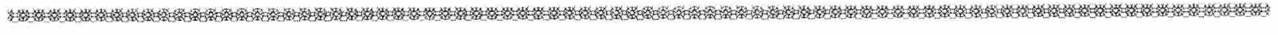
Sworn to before me this
4th day of July 2024

See Attached Certificate

NOTARY PUBLIC

CALIFORNIA JURAT

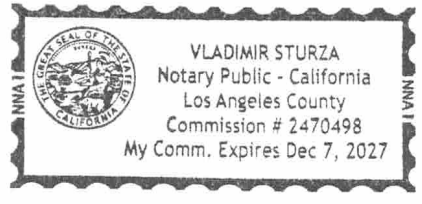
GOVERNMENT CODE § 8202



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on
this 4th day of July, 2024, by
Date Month Year



(1) ROBERT F. KENNEDY JR.

(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature *Sturza*
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Supreme Court of the state of New York
Affidavit in opposition

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
TEAM KENNEDY, AMERICAN VALUES 2024,
AND JEFFREY ROSE,

Case No. 24-cv-3897-ALC

Plaintiffs,

-against-

HENRY T. BERGER, in his official capacity as the Co-Chair of the New York State Board of Elections; PETER S. KOSINSKI, in his official capacity as the Co-Chair of the New York State Board of Elections; ESSMA BAGNUOLA, in her official capacity as a Commissioner of the New York State Board of Elections; ANTHONY J. CASSALE, in his official capacity as a Commissioner of the New York State Board of Elections; KRISTEN ZEBROWSKI STAVISKY, in her official capacity as Co-Executive Director of the New York State Board of Elections; RAYMOND J. RILEY, III, in his official Capacity as Co-Executive Director of the New York State Board of Elections; and, LETITIA JAMES, in her official capacity as the Attorney General of the state of New York,

FIRST AMENDED COMPLAINT

Defendants.

----- X

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Counsel for AV2024, Jeffrey Rose

INTRODUCTION

1. Forty years ago, Ohio’s Secretary of State barred independent presidential candidate John Anderson from that state’s ballot because—although Anderson had collected the requisite number of signatures from Ohio voters—he missed a filing deadline. But in *Anderson v. Celebrezze*, the U.S. Supreme Court held that Anderson’s exclusion from the ballot was unconstitutional.¹ Ohio’s interests in strictly enforcing its filing deadline did not outweigh the First and Fourteenth Amendment rights at stake²—in particular, the “right of voters to associate and *to have candidates of their choice placed on the ballot.*”³

2. On August 13, 2024, a state judge in Albany, New York ordered the Board of Elections to remove independent presidential candidate Robert F. Kennedy, Jr. from that state’s ballot because—although Mr. Kennedy had collected more than the requisite number of signatures from New York voters—the nominating petition bore an incorrect address. *Cartwright v. Kennedy*, No. 906349-24, 2024 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. Albany Cnty. Aug. 13, 2024). The state court did not find that anyone was misled by the address, nor did the court identify any state interests that were compromised by its use. Rather, the state court simply ruled that New York’s policy of “strict compliance” with the state’s petition regulations required Mr. Kennedy’s name to be struck from the ballot. *Id.* at *35-36.

3. *Anderson v. Celebrezze* controls this case. Under *Anderson*, the state court’s ruling is plainly unconstitutional, violating the right of voters to have a candidate of their choice placed on the ballot. Because New York will finalize its ballot in a matter of weeks, Plaintiffs seek, and *Anderson* mandates, immediate injunctive relief.

¹ See 460 U.S. 780 (1983).

² *Id.* at 806.

³ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (emphasis added).

4. This Amended Complaint involves two interrelated issues: (1) whether New York can bar an independent presidential candidate—who has millions of supporters all over the country, and who has submitted over 100,000 otherwise valid signatures on their nominating petition—on the basis of an incorrect address; and (2) whether New York can constitutionally impose a gauntlet of onerous, unnecessary ballot access petition requirements, the result of which is to make it virtually impossible for an independent presidential candidate to obtain access to the ballot.

5. Together, these two issues implicate profound threats to the democratic process, the freedom of speech, and the right to vote in New York.

6. *First*, New York’s requirement, as applied by the Albany Supreme Court, that an independent candidate for U.S. President must include his or her residence on the nominating petition—a burden *not* required of major-party candidates—unconstitutionally interferes with First Amendment rights of free speech and association, and also unconstitutionally expands the qualifications required of an individual in order to run for President.

7. No legitimate state interests are served by this residence requirement: the Presidential election is the only *national* election and there is no state interest that a candidate reside in any particular state.

8. For a Presidential election, apart from satisfying the Constitution’s Qualification Clause requirement of living in the U.S. for 14 years, residence *does not matter*.

9. *Second*, several of New York’s ballot access requirements for independent presidential candidates unconstitutionally impose significant burdens on those candidates, including by: (1) invalidating petitions signed by circulators who signed a petition for another candidate; (2) requiring independent candidates to vet and name their electors in a short timeframe four-to-five months before the major-party candidates must do so; (3) invalidating signatories who

list their village rather than their city or town; (4) banning a campaign from compensating circulators on the basis of valid signatures obtained; and, above all, (5) requiring an exorbitant, unjustifiable number of signatures (45,000) to be collected in a period of six weeks.

10. These ballot access requirements serve to disadvantage independent presidential candidates so severely that no non-major-party presidential candidate was able to run this gauntlet in 2024 with the exception of Mr. Kennedy, who was then removed from the ballot under the strict residence requirement imposed by the state court decision challenged here.

11. For the reasons set forth below, Plaintiffs ask this Court to immediately enjoin the New York State Board of Elections (“NYSBOE”) from removing Mr. Kennedy’s name from the New York ballot and to declare unconstitutional the residence requirement and the other ballot access requirements described below.

PARTIES

12. Plaintiff TEAM KENNEDY is the campaign organization dedicated to the election of Robert F. Kennedy, Jr. as the next President of the United States and of Nicole Shanahan as the next Vice President of the United States.

13. Team Kennedy has spent more than \$12 million dollars to secure Mr. Kennedy’s and Ms. Shanahan’s appearance on ballots all over the country, including over \$1.1 million in New York alone.

14. Team Kennedy is a registered campaign committee with the Federal Elections Commission. Team Kennedy filed FEC Form 1, Statement of Organization on April 5, 2023. Team Kennedy’s FEC Committee I.D. Number is C00836916. The address for Team Kennedy is: 124 Washington Street, STE 101, Foxborough, MA 02035.

15. Plaintiff AMERICAN VALUES 2024 (“AV24”) is a super PAC committed to educating and mobilizing voters to elect candidates who will restore and protect the soul of

democracy in the United States. Currently, AV24 supports Mr. Kennedy's presidential campaign. AV24 has spent millions of dollars advocating for Mr. Kennedy and promoting his candidacy.

16. Plaintiff JEFFREY ROSE is a New York citizen, Albany resident, and registered New York voter who supports Mr. Kennedy's candidacy; seeks to have Mr. Kennedy placed on New York's 2024 general election ballot; and signed Kennedy's petition that has been invalidated by the state court ruling at issue here.

17. Defendant HENRY T. BERGER is Co-Chair of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Berger is a resident of the state of New York.

18. Defendant PETER S. KOSINSKI is Co-Chair of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Kosinski is a resident of the state of New York.

19. Defendant ESSMA BAGNUOLA is a Commissioner of the New York State Board of Elections. She is sued in her official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Bagnuola is a resident of the state of New York.

20. Defendant ANTHONY J. CASSALE is a Commissioner of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is

an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Cassale is a resident of the state of New York.

21. Defendant KRISTEN ZEBROWSKI STAVISKY is Co-Executive Director of the New York State Board of Elections. She is sued in her official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Stavisky is a resident of the state of New York.

22. Defendant RAYMOND J. RILEY, III is Co-Executive Director of the New York State Board of Elections. He is sued in his official capacity. The New York State Board of Elections is an agency within the Executive Department of the state of New York and is responsible for administering and enforcing all laws relating to elections in the state of New York. Based on information and belief, Defendant Riley is a resident of the state of New York.

23. Defendant LETITIA JAMES is the Attorney General of the state of New York. Defendant James is the chief legal and law enforcement officer of the state of New York.

24. Collectively, Defendants Berger, Kosinski, Bagnuola, Cassale, Stavisky, and Riley (the “NYSBOE Defendants”) and Defendant James are the chief New York officials charged with enforcing the residence requirement, administering New York Election Law, overseeing production of the state’s general election ballot, and executing the state court judgment challenged in this action.

JURISDICTION AND VENUE

25. This Court has jurisdiction under the U.S. Constitution, 28 U.S.C. § 1331, and 42 U.S.C. § 1983.

26. Venue is proper because all Defendants reside in this state and at least one Defendant resides in this District; thousands of Kennedy petitions were collected in this District; the events in question substantially took place here; and/or several of the Defendants are subject to personal jurisdiction here. 28 U.S.C. § 1391(b)(1)-(3).

FACTS

Residence Requirement

27. Robert F. Kennedy, Jr. is an announced independent candidate for the office of President of the United States for the 2024 general election.

28. Mr. Kennedy is the leading independent presidential candidate, receiving between 5% and 20% support in national polls taken at various times during the campaign.

29. On August 13, 2024, a New York state court judge in Albany ordered that Robert F. Kennedy, Jr. be removed from that state’s ballot as a candidate for President in the coming election. *See Cartwright v. Kennedy*, No. 906349-24, 2024 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. Albany Cnty. Aug. 13, 2024)

30. The court so ruled notwithstanding the fact that Mr. Kennedy had submitted to New York election officials a nominating petition signed by over 100,000 New Yorkers seeking to have him appear on the ballot—more than twice the number that New York requires.

31. The court so ruled notwithstanding the fact that this petition complied with the onerous, costly, and, in some cases, arcane requirements imposed by New York on ballot-access petitions, including the requirement for independent candidates that 45,000 valid signatures be collected between April 16 and May 28—a period of only 6 weeks.

32. The court so ruled notwithstanding the fact that the New York Board of Elections had certified the validity of these more than 100,000 petition signatures and voted to place Mr. Kennedy on the ballot.

33. Notwithstanding all this, the state court rejected the petition, holding it invalid on one basis and one basis alone: according to the court, it listed the wrong address for Mr. Kennedy.

34. Under New York Election Law, each sheet of a ballot-access petition must show the candidate's "place of residence." The Kennedy petition listed the address of a house in New York where Mr. Kennedy pays rent and keeps personal belongings. The state court found that this address did not satisfy New York's definition of "residence," which is an individual's "fixed, permanent and principal home" to which he "intends to return."

35. The state court did not find that any voters or petition-signers were misled by the supposedly incorrect address. Nor did the state court identify any state interests that were compromised by the supposedly incorrect address. Rather, the court simply held that New York has a rule of "strict compliance" with petition requirements and that under the "strict compliance" rule, the petition was invalid and Mr. Kennedy's name had to be struck from the ballot.

36. Whether or not this ruling was correct under New York law, it was and is in plain violation of the U.S. Constitution.

37. For avoidance of doubt: under the Constitution, presidential candidates are not like gubernatorial candidates, as to whom in-state residency can be required for ballot eligibility. An individual from any state can run for President in every state. A state has no constitutional right to—and New York does not purport to—require that an individual be an in-state resident in order to appear on the ballot as a candidate for President.

38. By contrast, the “right of voters to associate and *to have candidates of their choice placed on the ballot*” is well established.⁴

39. Forty years ago, the Supreme Court enforced that right in a case that controls the outcome here.

40. In *Anderson v. Celebrezze*, 460 U.S. 780 (1983), Ohio’s Secretary of State had declared independent presidential candidate John Anderson ineligible to appear on the state ballot because, although Anderson collected the requisite number of signatures from Ohio voters, he missed the filing deadline. The Secretary of State’s decision was unquestionably correct under Ohio law: Anderson’s campaign had submitted the signatures on May 16, 1980, whereas Ohio’s deadline was March 20. Nevertheless, Anderson challenged the Secretary of State’s decision in federal District Court and won. The District Court issued an injunction ordering that Anderson’s name appear on the ballot. The Sixth Circuit reversed, but the United States Supreme Court reversed again, agreeing with the district court.

Said the Court:

Constitutional challenges to specific provisions of a State’s election laws ... cannot be resolved by any “litmus paper test” that will separate valid from invalid restrictions. Instead, a court ... must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.

Anderson, 460 U.S. at 789 (internal citations omitted).

41. Under this test, the Court found unconstitutional Ohio’s attempt to exclude Anderson from the ballot, despite Anderson’s having missed the filing deadline.

⁴ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (emphasis added).

42. Of critical relevance to this case, the *Anderson* Court emphasized the First Amendment importance of “*figures outside the two major parties*” and the First Amendment rights of “independent-minded voters”—“*voters whose political preferences lie outside the existing political parties.*” *Id.* at 793-94.

43. Typically, such voters can exercise their right “to have candidates of their choice placed on the ballot” only through a ballot-access petitioning process, which (as here) is often subject to cumbersome and complex state regulation.

44. The *Anderson* Court found that the Constitution not only protects but favors such petitioning by “independent-minded voters,” because the First Amendment does not countenance two-party monopolization of the electoral process, and the ability of independent candidates to run for the presidency serves the First Amendment’s “primary values”:

Historically, political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have, in time, made their way into the political mainstream. In short, the primary values protected by the First Amendment—‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open’—are served when election campaigns are not monopolized by the existing political parties.

45. For these reasons, the *Anderson* Court concluded that while state filing deadlines of course serve important and legitimate interests, the First Amendment rights at stake were paramount, and the state interests supporting Ohio’s choice to set its deadline nine months before the election could not justify completely blocking Anderson from the ballot.

46. *Anderson* controls this case. The constitutional rights injured are identical, and New York’s interests are weaker than Ohio’s.

47. In fact, New York has no legitimate interest in applying its residency rule to a presidential candidate.

48. New York’s requirement that a ballot-access petition list the candidate’s “place of residence” defined as the candidate’s “fixed,” “permanent home” (the “Residence Requirement” is set forth in a statute that applies to all elections, high and low, whether for town dogcatcher or President of the United States.

49. With respect to all state elective offices, states can lawfully impose residency requirements on candidates. Typically, in New York, a candidate for office in a given political unit is required to reside in that political unit. The governor must be a state resident; a town selectman must be a resident of that town.

50. Even for United States Senators and Representatives, states can make in-state residency a condition of ballot eligibility, because the Constitution itself requires that candidates for the Senate and House shall be an “inhabitant” of the state they seek to represent.

51. Thus, for nearly all elective offices, states undoubtedly have a substantial, legitimate interest in ensuring that the candidate has a home in the state and in ascertaining the location of that home. New York’s Residence Requirement serves that interest.

52. But none of this applies to the Presidency.

53. States cannot impose any kind of in-state residency requirement on a candidate for President. They cannot require that he live in-state, they cannot require that he be registered to vote in-state, and they cannot require that he have a home in-state.

54. Thus, when it comes to the Presidency, New York’s Residence Requirement does not serve the interest it serves with respect to virtually all other electoral offices.

55. Instead, as applied to the Presidency, that requirement serves no legitimate state interests at all.

56. If the state has an interest in obtaining from the candidate an address for service of process, it could achieve that interest without asking the candidate to publicly disclose his home address.

57. If the state has any other interests served by the Residence Requirement, the state court did not identify them.

58. If the state had any weighty interest served by the Residence Requirement, it would impose that requirement not merely on independent presidential candidates, but on party-nominee presidential candidates as well.

59. But New York does not do so. Presidential candidates nominated at the national convention of the Democratic Party, the Republican Party, or any other recognized party are automatically placed on the New York ballot. They do not have to disclose their place of residence.

60. Under *Anderson*, a state's interest in "strict compliance" with its petitioning rules cannot outweigh First Amendment rights; if it could, Ohio's insistence on strict compliance with its filing deadline would then have been constitutional.

61. In fact, as applied to the Presidency, the Residence Requirement is simply an arbitrary artifact of New York's one-size-fits-all statutory scheme regulating all ballot-access petitioning, in which a residency requirement that makes sense for town selectmen and all other state officers happens to apply as well to the Presidency.

62. Accordingly, under *Anderson*, the state court's decision to strike Mr. Kennedy from the ballot is unconstitutional and must be enjoined.

63. The Board of Elections thereafter certified the validity of over 100,000 of those petition signatures and voted for Mr. Kennedy to be placed on the ballot.

64. Suit was brought by objectors in New York Supreme Court challenging the petition.

65. On August 13, 2024, the state court issued its decision and judgment, ordering the NYSBOE to remove Mr. Kennedy from the ballot on the ground that his petition listed an incorrect address for him.

66. Mr. Kennedy has homes in California, New York, and Massachusetts.

67. His home in New York is a house in Katonah where he pays rent and keeps personal belongings.

68. Mr. Kennedy is registered to vote in New York, pays income taxes in New York, has his drivers' license from New York, holds professional and recreational licenses in New York, and has testified under oath that he intends to return to New York. These facts and others made it reasonable for Mr. Kennedy and Team Kennedy to believe that Mr. Kennedy's state of residence is New York, and Team Kennedy was advised by counsel that the Katonah address satisfied New York's definition of residence.

69. For those and other reasons, the Kennedy petitions listed Mr. Kennedy's New York address as his place of residence. Because in some states (such as Maine) the candidate's residence must be the state where he is registered to vote, and because of concern that use of different places of residence on Kennedy petitions in different states could trigger costly and uncertain challenges, Team Kennedy, on the advice of counsel, used the same address on Kennedy petitions wherever states required the candidate to list a residence.

70. Nicole Shanahan is a California resident, and her residence has not been disputed.

71. On August 13, the state court ruled that Mr. Kennedy's New York home is not his residence as New York Election Law defines it.

72. By then, New York's window for petition-collection had long since closed, and the (supposed) error in the petitions could not be corrected.

73. On September 11, 2024, the NYSBOE will issue its final certification of the 2024 general election ballot. To avoid irreparable harm, Defendants must be ordered before that date to restore Mr. Kennedy's name to the ballot.

Ballot Access

74. In order to secure ballot access, Team Kennedy has, on behalf of Mr. Kennedy and Ms. Shanahan: (1) accepted the nomination of several state political parties with preexisting ballot access;⁵ (2) paid filing fees to secure direct ballot access;⁶ (3) assisted local supporters who formed new political parties in order to secure ballot access in certain states;⁷ and (4) circulated ballot access petitions for voters to record their support for the Kennedy/Shanahan ticket and timely filed them with 40 states and the District of Columbia to secure ballot access for the general election.⁸

75. As part of the petition circulation component of the 50-state ballot access drive, Team Kennedy collected over 1,000,000 signatures from voters at a total estimated cost of \$12,000,000.00. In New York alone, Plaintiff Team Kennedy spent over \$1,100,000 to collect and file ballot-access petitions for Mr. Kennedy to secure general election ballot access.

⁵ Team Kennedy has accepted the nomination of the Kennedy/Shanahan ticket as the presidential and vice-presidential nominees for the American Independent Party in California; the Natural Law Party in Michigan; the Delaware Independent Party in Delaware; the Alliance Party in South Carolina; and the Reform Party in Florida.

⁶ Team Kennedy paid ballot access filing fees in Oklahoma and Louisiana to secure ballot access for the 2024 general election.

⁷ Local supporters in Hawaii, Oregon and North Carolina formed new political parties and then nominated or have expressed their intent on nominating the Kennedy/Shanahan ticket as their nominees for President and Vice President of the United States for the 2024 general election.

⁸ Team Kennedy organized, circulated and either timely filed or intends to timely file ballot access petitions containing a number of signatures sufficient to demonstrate that the Kennedy/Shanahan national ticket enjoys sufficient local support to secure ballot access for the 2024 general election in: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, the District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

76. In the vast majority of states, Plaintiff Team Kennedy's volunteer and professional petition circulators collected a multiple number of signatures in excess of the minimum number of signatures required and timely filed to secure ballot access within a state.

77. Team Kennedy has worked assiduously to secure ballot access on New York's general election ballot for Mr. Kennedy and Nicole Shanahan for the office of President and Vice President of the United States.

78. Under New York law, Team Kennedy was required to circulate nominating petitions to collect the signatures, printed names, street address, city or town (or county if the voter resides in New York City) of registered New York voters and the date the voter signs the nominating petition to place Robert F. Kennedy, Jr. and Nicole Shanahan on the 2024 New York general election ballot for the offices of President and Vice President of the United States.

79. The names of Robert F. Kennedy, Jr. and Nicole Shanahan are required to be printed on the nominating petition used to collect signatures to secure ballot access in the state of New York.

80. In addition to the names of Robert F. Kennedy, Jr. and Nicole Shanahan, Team Kennedy is also required to name and print on the nominating petition the names of 28 presidential electors pledged to cast their votes for Robert F. Kennedy, Jr. and Nicole Shanahan for the office of President and Vice President of the United States in the 2024 electoral college.

81. Presidential candidates for the major political parties are not required to publicly name their slates of presidential electors until after their national nominating conventions held in July and August of a presidential election year.

82. Providing independent presidential candidates less time to select their slate of presidential electors is an unequal application of the law.

83. Independent presidential candidates have less time than presidential candidates for the major political parties to discover any fact which would disqualify an elector from serving in New York's electoral college.

84. If it is discovered that a presidential elector is not qualified to serve as a presidential elector after their name has been printed on a nominating petition, the disqualification threatens to invalidate the entire nominating petition and deny ballot access to an independent presidential candidate in New York.

85. Candidates seeking the nomination of a major political party are not required to name their slate of presidential electors in New York until after receiving their party's nomination and access to New York's general election ballot.

86. The first date Plaintiff Team Kennedy was permitted to circulate nominating petitions was Tuesday, April 16, 2024.

87. Plaintiff Team Kennedy was required to file with the NYSBOE a nominating petition containing a minimum of 45,000 valid signatures from registered voters of the state of New York no later than May 28, 2024.

88. Voters are required to personally sign the nominating petition.

89. Either the voter or the person circulating the nominating petition or some other person may record the printed name, street address and city or town (or county for voters registered in New York City) of the registered voter and the date the voter signed the petition.

90. Other than the voter's signature and the date, Plaintiff Team Kennedy is permitted, prior to filing, to correct the street address and city or town (or county if the voter is registered in New York city) for each signer of the petition.

91. Failure to record the exact name and street address and city or town (or county for voters registered in New York city) as recorded on the voter's registration record threatens to invalidate a signature if the signature is subject to a private challenge after the nominating petition is filed.

92. The New York voter file does not exclusively require voters to be identified by their city or town of residence.

93. Significant portions of the New York voter file designate voters by the village of their residence.

94. The New York voter file does not conform to the rules governing the designation of voters by only their city or town on the nominating petition.

95. The failure of the New York voter file to comply with the city or town designation of registered voters makes it impossible for Plaintiff Team Kennedy to validate many nominating petition signatures prior to filing with the NYSBOE Defendants. Plaintiff Team Kennedy hired the most accurate and reliable petition verification firm to report to Plaintiff with a 5% margin of certainty the number of valid signatures collected in each state, including New York.

96. Because Plaintiff Team Kennedy cannot validate the required city or town designation of voters, it must collect many thousands of additional petition signatures to compensate for the inability to correct a voter's recorded village with the required city or town designation.

97. Furthermore, even if Plaintiff Team Kennedy can correct a recorded village with the corresponding city or town, the discrepancy between the nominating petition and the New York voter files threatens to trigger a large number of unnecessary and invalid specific challenges to Plaintiff Team Kennedy's nominating petition signatures.

98. Due to the fact the New York voter file does not limit its data to city or town designations for registered voters, the NYSBOE Defendants lack any legitimate state interest to continue to enforce the challenged restriction of Section 6-130 of the New York Election Law.

99. Plaintiff Team Kennedy used volunteer and professional petition circulators in New York to collect the required number of 45,000 valid petition signatures to secure access for Robert F. Kennedy, Jr. and Nicole Shanahan for New York's 2024 general election ballot.

100. The U.S. Supreme Court has established that the First and Fourteenth Amendments to the U.S. Constitution guarantees Plaintiff Team Kennedy the right to use and compensate professional petition circulators to assist in the collection of the required number of valid petition signatures to secure ballot access for New York's 2024 general election.

101. Defendants are charged with enforcing a limit on the established right to compensate professional petition circulators through a ban on compensating professional petition circulators based on the number of valid petition signatures collected—the Valid Per-Signature Compensation Ban.

102. As a direct and proximate result of New York's ban on valid per-signature compensation, Plaintiff Team Kennedy is forced to compensate professional petition circulators up to \$90.00 per hour for the collection of nominating petition signatures.

103. Plaintiff Team Kennedy is required to pay professional petition circulators no matter how few signatures a circulator collects.

104. If a petition circulator reports to Plaintiff Team Kennedy that he/she worked 8 hours, at \$90.00 per hour and only collected 1 signature, Plaintiff Team Kennedy is legally required to pay that petition circulator \$720.00 for a single signature.

105. While Plaintiff Team Kennedy may terminate the services of a petition circulator who collects only 1 signature during an 8-hour shift, it is still legally required to pay that circulator \$720.00 for that single signature.

106. Under a valid per-signature compensation model, that single signature, if valid, would only cost Plaintiff Team Kennedy about \$12.00 to \$15.00.

107. New York's Valid Per-Signature Compensation Ban forces Plaintiff Team Kennedy to provide compensation for circulators who engage in fraud.

108. New York's ban on valid per-signature compensation imposes the only compensation model which requires Plaintiff Team Kennedy to compensate petition circulators who engage in fraud.

109. Because Plaintiff Team Kennedy is required to compensate petition circulators for fraud, New York's ban on valid per-signature compensation encourages fraud.

110. New York's Valid Per-Signature Compensation Ban permits Plaintiff Team Kennedy's political adversaries to infiltrate its petition drive, engage in fraud and then force it to compensate intentional petition fraud and sabotage with full compensation, all of which has the knock-on benefit for Plaintiff Team Kennedy's political enemies of reducing its campaign war-chest.

111. Meridian Strategies and Dark Horse Strategies are petition firms aligned with the Democratic National Committee and prominent Democrats within the state of New York.

112. Plaintiff was not aware of the political agenda of Meridian Strategies and Dark Horse Strategies before they were hired to circulate Plaintiff's nominating petitions in New York.

113. New York Times reporters discovered and reported on Meridian Strategies and Dark Horse Strategies petition circulators engaging in actual fraud in the circulation of Plaintiff Team Kennedy's nominating petitions.

114. The New York Times reported witnessing Meridian Strategies and Dark Horse Strategies petition circulators: (1) folding over the top of Plaintiff Team Kennedy's nominating petition to obscure the name of Robert F. Kennedy, Jr.; and then (2) telling voters that signing the petition was to support the progressive movement.

115. Plaintiff Team Kennedy has discovered nominating petitions with obvious folds at the top of the nominating petition by Meridian Strategies and Dark Horse Strategies petition circulators which contain over 8,000 petition signatures.

116. Plaintiff Team Kennedy was forced to provide full compensation to Meridian Strategies and Dark Horse Strategies for the 8,000 fraudulent "fold-over" nominating petition signatures.

117. Plaintiff Team Kennedy excluded all 8,000 fraudulent nominating petition signatures from the filing to be made with NYSBOE Defendants on May 28, 2024.

118. The total number of nominating petition signatures collected by Meridian Strategies and Dark Horse Strategies was over 30,000.

119. As a sole result of New York's Valid Per-Signature Compensation Ban, Plaintiff Team Kennedy is forced to provide full compensation to Meridian Strategies and Dark Horse Strategies petition circulators for the time they spent engaged in fraudulent conduct.

120. The total cost to Plaintiff Team Kennedy for the fraudulent signatures collected by Meridian Strategies and Dark Horse Strategies petition circulators was approximately \$313,000.00.

121. Under New York Election Law, Section 6-140(1)(b), any signature collected after a petition circulator signs a designating or nominating petition for a candidate for the same office is invalid.

122. As a result of Section 6-140(1)(b), Plaintiff Team Kennedy's political opponents were permitted to hire Plaintiff Team Kennedy's petition circulators and tell them to sign the nominating petition for the Green Party's presidential candidate, thereby invalidating all of the nominating petition signatures subsequently collected by that petition circulator. Plaintiff Team Kennedy is still required to provide full compensation to any such petition circulator, despite the invalid signatures caused by the political manipulation scheme devised by its political opponents.

123. Based on information and belief, the Republican Party and/or the campaign for Donald Trump hired Plaintiff Team Kennedy's petition circulators and instructed them to sign the nominating petition for the Green Party's presidential candidate as a condition precedent to receiving compensation.

124. As a result, any petition signature subsequently collected by Plaintiff Team Kennedy's petition circulators after they accepted payment and signed the nominating petition for the Green Party's presidential candidate would be invalid.

125. The state of New York has no legitimate interest in the invalidation of otherwise valid nominating petition signatures collected by a petition circulator/witness who signs a nominating petition for another nominating petition for the same office.

126. At most, the proper remedy for a petition circulator/witness signing a nominating petition for another candidate for the same office is to merely invalidate the signature of the petition circulator—not the signatures of innocent voters who properly signed Plaintiff Team Kennedy's nominating petition and did nothing in violation of New York law.

127. Any registered voter may file general objections to a nominating petition within three days after the last day to file nominating petitions.

128. After filing general objections, specific objections to signatures, or to any other alleged defect of the nominating petition, must be filed within six days after the filing of the general objection.

129. Section 6-154 of the New York Election Law invites and establishes a process allowing private-party challenges to the validity of petition signatures.

130. The private challenge process requires Plaintiff Team Kennedy to pay for the validation of its own petition signatures.

131. Upon a challenge to Plaintiff Team Kennedy nominating petitions, Plaintiff Team Kennedy is required to spend funds for: (1) fees, costs, travel and accommodation for legal counsel; (2) travel and accommodation of witnesses, including any and all of Plaintiff Team Kennedy's petition circulators who will be subpoenaed with the hope by its political adversaries that a large number of such petition circulators will fail to comply thereby invalidating all petition signatures collected by any such petition circulator; (3) compensable time for handwriting experts and other witnesses; (4) hearing preparation; (5) staff; (6) process servers' fees and expenses; (7) photocopies; (8) meals; (9) legal research; and (10) conference call expenses.

132. The imposition of costs on a candidate to secure ballot access, specifically, the cost of validating ballot access petition signatures has been held unconstitutional as a severe burden to rights guaranteed under the First and Fourteenth Amendments to the U.S. Constitution.

133. In *Constitution Party of Pennsylvania v. Aichele*, the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit held Pennsylvania's less burdensome petition requirements followed by the costs of a

private petition challenge process was unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution and forced the Commonwealth of Pennsylvania to choose between the statutory formula which, in 2012, required independent presidential candidates to collect 20,601 valid petition signatures or the private challenge process used by the Commonwealth to validate petition signatures.

134. Prior to 2019, New York required independent presidential candidates to collect only 15,000 nominating petition signatures to secure ballot access.

135. NYSBOE Defendants must be required to accept either the reduced 15,000 valid nominating petition signatures for independent presidential candidate ballot access or forego the private challenge system to validate nominating petition signatures in favor of in-house validation by the NYSBOE staff.

136. The combination of the increased 45,000 valid signatures now required for ballot access for independent presidential candidates and the private challenge process to validate petition signatures imposes a far more severe burden on core political speech protected under the First and Fourteenth Amendments to the U.S. Constitution than the facts confronted by the district court and Third Circuit in *Constitution Party of Pennsylvania v. Aichele*.

137. Complying with all the above-described conditions and requirements in the condensed timeframe between April 16 and May 28, 2024—the six-week period for signature collection and petition filing permitted by New York—Plaintiff Team Kennedy collected over 100,000 petition signatures seeking to place Mr. Kennedy on the ballot.

138. Plaintiff Team Kennedy paid expenses of over \$1,000,000 to do so.

139. Nationwide, at an expense of over \$12,000,000, Plaintiff Team Kennedy has collected more than 1,000,000 signatures for Mr. Kennedy to secure ballot access across the country.

140. On May 21, anticipating various petition challenges, this action was originally filed by Plaintiff Team Kennedy, asserting that the various, onerous New York petition regulations described above are unconstitutional.

141. Nevertheless, on May 28, 2024, Team Kennedy properly submitted over 100,000 Kennedy petition signatures to the NYSBOE.

142. Plaintiffs have no adequate remedy at law.

COUNT I – Freedom of Speech and Right to Vote

(42 U.S.C. § 1983: First & Fourteenth Amendments to the U.S. Constitution)

143. Plaintiffs reassert each preceding allegation as if set forth fully herein.

144. The Residence Requirement that an independent presidential candidate list on his ballot-access petitions his “fixed” “permanent” “home” address is severely burdensome and discriminatory and therefore subject to strict scrutiny under the First and Fourteenth Amendments.

145. The Residence Requirement is severely burdensome because it: (A) imposes risk and danger on the candidate by publicizing his home address; (B) forces a candidate with more than one home to guess at and gamble on which of those homes, if any, will later be determined by a New York court to be the candidate’s “place of residence” under New York law, at which time it will be too late under New York law to correct the error and collect new petitions; (C) conflicts with the requirements of other states’ petitioning laws; and (D) excludes candidates who have no fixed home address.

146. It is discriminatory because it applies to independent candidates but not to candidates nominated by recognized parties, who are not required to petition for ballot access and are not required to declare or even submit to New York officials their home address.

147. The Residence Requirement cannot survive strict scrutiny because the state interests it allegedly serves are not compelling and it is not narrowly tailored to achieve them.

148. A majority of the States—twenty-eight—do not require presidential candidates to publish either a domicile or residential address on ballot access petitions. Of those, twenty-four states do not require any address to be recorded on their presidential ballot access petitions.⁹ Two states—New Hampshire and Maine—require presidential candidates to publish the address on their ballot access petition at which they are registered to vote. And two states—Louisiana and Oklahoma—do not require presidential candidates to circulate any petitions to qualify for the general election ballot.

149. If it is not subject to strict scrutiny, the Residence Requirement is still subject to and cannot satisfy *Anderson* scrutiny, because it serves no legitimate state interests whatsoever.

150. Accordingly, the Residence Requirement violates Plaintiffs', Mr. Kennedy's and voters' rights under the First and Fourteenth Amendments.

COUNT II – Qualifications Clause

(42 U.S.C. § 1983: Violation of the Presidential Qualifications Clause)

151. Plaintiffs reassert each preceding allegation as if set forth fully herein.

⁹ Those states are: Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Iowa, Kentucky, Massachusetts, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Virginia, and Washington.

152. The Presidential Qualifications Clause establishes three—and only three—qualifications for eligibility to serve as President of the United States: (1) an age requirement; (2) native-born citizenship; and (3) 14 years of U.S. residency.

153. States have no power to add to those qualifications.

154. As applied to presidential candidates, the Residence Requirement operates to impose two additional qualifications on eligibility to serve as President.

155. First, the Residence Requirement bars individuals who have no permanent home address that meets that requirement from running for President.

156. Second, it bars individuals who have a home address but choose not to disclose it from running for President.

157. On both grounds, the Residence Requirement violates the Presidential Qualifications Clause.

COUNT III – Per Signature Compensation Ban

(42 U.S.C. § 1983: First and Fourteenth Amendments to the U.S. Constitution)

158. Plaintiffs reassert all previous allegations as if fully set forth herein.

159. The other above-described burdensome, arbitrary, and unjustified requirements imposed by New York on ballot access petitioning also violate, individually and collectively, the First and Fourteenth Amendments.

160. New York's Valid Per-Signature Compensation Ban requires an independent candidate to provide full compensation for the time petition circulators engage in petition fraud.

161. The criminal sanctions imposed under Section 17-122(4) of the New York Election Law dramatically and severely increase the costs of collecting nominating petition signatures.

162. The criminal sanctions imposed under Section 17-122(4) of the New York Election Law required Plaintiff Team Kennedy to provide full compensation to petition circulators aligned

with political opponents who engaged in petition fraud rendering their nominating petition signatures of no value.

163. The Valid Per-Signature Compensation Ban fails to advance any legitimate state interest because it requires compensation to be paid to petition circulators who engage in petition fraud.

164. The Valid Per-Signature Compensation Ban reduces the scope of the constitutional right to compensate professional petition circulators, in the most efficient manner possible, under the First and Fourteenth Amendments to the U.S. Constitution.

COUNT IV – Circulator Restriction and Early Elector Selection

(42 U.S.C. § 1983: First and Fourteenth Amendments to the U.S. Constitution)

165. Plaintiffs reassert all previous allegations as if fully set forth herein.

166. The other above-described burdensome, arbitrary, and unjustified requirements imposed by New York on ballot access petitioning also violate, individually and collectively, the First and Fourteenth Amendments.

167. New York’s requirement that independent presidential candidates seeking access to the ballot must collect 45,000 valid petition signatures and file them with NYSBOE Defendants within a short six-week window is unnecessarily burdensome and designed not just to keep frivolous candidates off the general election ballot, but to keep any independent presidential candidate off New York’s general election ballot.

168. In addition to the cost of securing 45,000 valid signatures, Plaintiff Team Kennedy is also required to bear the substantial costs of defending its nominating petition signatures through a private challenge system which has, in tandem with a high signature collection requirement, been held unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution in Pennsylvania by federal courts.

169. Collecting enough signatures to survive a challenge by private voters under New York's excessively restrictive ballot access rules cost Plaintiff Team Kennedy over \$1.1 million.

170. The cost of defending and validating nominating petition signatures was even more—over \$2.9 million dollars.

171. In tandem, Sections 6-142 and 6-154 operate to impose a severe burden on rights guaranteed to Plaintiffs and the voters of New York under the First and Fourteenth Amendments to the U.S. Constitution for which Plaintiffs respectfully request the relief detailed in this action.

172. Section 6-140(1)(b) invalidates any signature collected by a petition circulator/witness if that petition circulator/witness signs a nominating petition for another candidate for the same office.

173. No state interest is advanced by invalidating otherwise valid signatures by voters who have done nothing wrong and want to record their support for ballot access for the candidate of their choice.

174. New York lacks any interest in disenfranchising New York voters to sign a ballot access petition, which is core political speech afforded the highest level of protection under the First and Fourteenth Amendments to the U.S. Constitution, based on the conduct of some third-party who merely offered them a clipboard with a petition to sign.

175. The only operative signatures on a nominating petition to secure ballot access are the signatures of the registered voters signing a nominating petition to support ballot access for a candidate.

176. To the extent New York has any interest in preventing a petition circulator/witness from signing a nominating petition for another candidate of the same office, the penalty should be limited to the invalidation of the petition circulator/witness's signature from the nominating

petition for another candidate—not the invalidation of hundreds of otherwise valid and constitutionally protected signatures of innocent registered voters.

177. Section 6-140(1)(b) invites political opponents to hire Plaintiff Team Kennedy’s petition circulators and instruct them to sign a nominating petition for another candidate of the same office and thereby sabotage the ballot access efforts of a political opponent.

178. Accordingly, Section 6-140(1)(b) is a severe burden on core political speech protected under the First and Fourteenth Amendments.

179. In addition, NYSBOE Defendants require Plaintiff Team Kennedy and independent presidential candidates to name their slate of presidential electors in April/May of a presidential election year when they only require presidential nominees for the major political parties to name their slate of presidential electors after the conclusion of the national nominating convention on or about August of a presidential election year.

180. The shorter time period to interview, vet, select and name presidential electors on an independent presidential candidate’s nominating petition imposes an additional fail point to invalidate a ballot access petition upon a late discovery that a named presidential elector does not meet the requirements to hold the position of presidential elector—a threat not imposed against the presidential candidates of the major political parties.

181. Accordingly, NYSBOE Defendants’ requirement for independent presidential candidates to name their presidential electors on their nominating petitions as a condition precedent to secure ballot access violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution for which Plaintiffs respectfully request the relief detailed in this action.

COUNT V –City/Town Petition Requirement

(42 U.S.C. § 1983: First and Fourteenth Amendments to the U.S. Constitution)

182. Plaintiffs reassert all previous allegations as if fully set forth herein.

183. The other above-described burdensome, arbitrary, and unjustified requirements imposed by New York on ballot access petitioning also violate, individually and collectively, the First and Fourteenth Amendments.

184. New York's requirement that independent presidential candidates seeking access to the ballot must collect 45,000 valid petition signatures and file them with NYSBOE Defendants within a short six-week window is unnecessarily burdensome and designed not just to keep frivolous candidates off the general election ballot, but to keep any independent presidential candidate off New York's general election ballot.

185. NYSBOE Defendants lack any interest in invalidating a petition signature which can be identified as that of a registered voter of New York just because the voter records their village rather than their city or town.

186. The New York voter file contains numerous registrations whose address is indicated by the village where the voter resides rather than their city or town.

187. Because the New York voter file does not conform with NYSBOE Defendants' ballot access rule that voters must record their city or town (or county in the City of New York), it is impossible for independent candidates to validate in advance such voters' signatures, causing independent candidates to have to collect many more thousands of additional signatures on nominating petitions than otherwise required.

188. Further, the failure of the New York voter file to record only the city or town of registered voters makes it impossible for an independent candidate to correct a voter's recordation of a village to the correct city or town as required by NYSBOE Defendants.

189. The fact that the New York voter file includes village designations rather than exclusively city and town designations, demonstrates that Section 6-130 fails to advance any legitimate state interest sufficient to save the requirement from constitutional scrutiny.

190. The inability of an independent candidate to either validate and/or correct signature lines because the New York voter file does not conform to ballot access rules, is a severe burden on rights guaranteed to Plaintiffs under the First and Fourteenth Amendments to the U.S. Constitution for which Plaintiffs respectfully request the relief detailed in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter immediate emergency injunctive and permanent relief ordering that Mr. Kennedy's name be kept on the New York general election ballot;
2. Declare that the Residence Requirement under Section 6-140 of the New York Election Law is unconstitutional as applied to Mr. Kennedy;
3. Declare that Section 6-140(1)(b) of the New York Election Law is unenforceable to the extent it invalidates any petition signature on a nominating petition made after the date the signature of that sheet's petition circulator/witness was made on a nominating or designating petition for a different candidate for the same office as on Plaintiff Team Kennedy's nominating petition.
4. Declare that New York must validate the signatures on nominating petitions when the signer's village, and not their city or town, is indicated on the signature line.
5. Declare that New York may not henceforth enforce the requirement that independent presidential candidates collect 45,000 valid signatures on nominating petitions to secure ballot access, but may enforce the previous requirement to collect 15,000 valid signatures.

6. Enter permanent injunctive relief enjoining NYSBOE Defendants from enforcing Section 6-140(1)(b) of the New York Election Law to the extent it invalidates any petition signature made on a nominating petition after the date of the signature of that sheet's petition circulator/witness on a nominating or designating petition for a different candidate for the same office as Plaintiff Team Kennedy's nominating petition.

7. Enter permanent injunctive relief enjoining NYSBOE Defendants from enforcing Section 6-130 of the New York Election Law prohibiting otherwise identifiable registered voters of New York from recording their village instead of their city or town.

8. Permanently enjoin NYSBOE Defendants from enforcing the requirement for independent presidential candidates to name their slate of presidential electors before presidential candidates of the major political parties do during a presidential election year.

9. Permanently enjoin Defendant James from enforcing criminal sanctions for violation of the Valid Per-Signature Compensation Ban imposed under Section 17-122(4) of the New York Election Law.

10. Award such other and further relief as the Court deems proper and just.

11. Award Plaintiffs reasonable attorney fees and costs associated with the prosecution of this action pursuant to 42 U.S.C. § 1988.

Dated: August 22, 2024

Respectfully submitted,

/s/ Gary Donoyan

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APPEAL,ECF

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:24-cv-03897-ALC

Team Kennedy v. Berger et al
Assigned to: Judge Andrew L. Carter, Jr
Cause: 42:1983 Civil Rights Act

Date Filed: 05/20/2024
Jury Demand: None
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

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Interpleader Plaintiff

Mark Braiman

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/20/2024	1	FILING ERROR - DEFICIENT PLEADING - FILED AGAINST PARTY ERROR COMPLAINT against All Defendants. (Filing Fee \$ 405.00, Receipt Number ANYSDC-29379000) Document filed by Team Kennedy..(Donoyan, Gary) Modified on 5/21/2024 (jgo). (Entered: 05/20/2024)
05/20/2024	2	CIVIL COVER SHEET filed..(Donoyan, Gary) (Entered: 05/20/2024)
05/20/2024	3	REQUEST FOR ISSUANCE OF SUMMONS as to Henry T. Berger, re: 1 Complaint. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/20/2024)
05/20/2024	4	REQUEST FOR ISSUANCE OF SUMMONS as to Peter S. Kosinski, re: 1 Complaint. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/20/2024)
05/20/2024	5	REQUEST FOR ISSUANCE OF SUMMONS as to Essma Bagnuola, re: 1 Complaint. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/20/2024)
05/20/2024	6	REQUEST FOR ISSUANCE OF SUMMONS as to Anthony J. Cassale, re: 1 Complaint. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/20/2024)
05/20/2024	7	REQUEST FOR ISSUANCE OF SUMMONS as to Kristen Zebrowski Stavisky, re: 1 Complaint. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/20/2024)
05/20/2024	8	REQUEST FOR ISSUANCE OF SUMMONS as to Raymond J. Riley, III, re: 1 Complaint. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/20/2024)
05/20/2024	9	REQUEST FOR ISSUANCE OF SUMMONS as to Letitia James, re: 1 Complaint. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/20/2024)
05/21/2024		***NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney Gary Leon Donoyan to RE-FILE Document No. 1 Complaint. The filing is deficient for the following reason(s): the All Defendant radio button was selected. Re-file the pleading using the event type Complaint found under the event list Complaints and Other Initiating Documents - attach the correct signed PDF - select the individually named filer/filers - select the individually named party/parties the pleading is against. (jgo) (Entered: 05/21/2024)
05/21/2024	10	COMPLAINT against Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Staviskly. Document filed by Team Kennedy..(Donoyan, Gary) (Entered: 05/21/2024)

05/21/2024		***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Gary Leon Donoyan. The party information for the following party/parties has been modified: Henry T. Berger; Peter S. Kosinski; Essma Bagnuola; Anthony J. Cassale; Kristen Zebrowski Staviskly; Raymond Riley; Leticia James. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error; party text was omitted;. (jgo) (Entered: 05/21/2024)
05/21/2024		***NOTICE TO ATTORNEY REGARDING CIVIL CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Gary Leon Donoyan. The following case opening statistical information was erroneously selected/entered: Nature of Suit code 440 (Civil Rights: Other); County code New York;. The following correction(s) have been made to your case entry: the Nature of Suit code has been modified to 950 (Constitutional - State Statute); the County code has been modified to XX Out of State;. (jgo) (Entered: 05/21/2024)
05/21/2024		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Andrew L. Carter, Jr. Please download and review the Individual Practices of the assigned District Judge, located at https://nysd.uscourts.gov/judges/district-judges . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at https://nysd.uscourts.gov/rules/ecf-related-instructions ..(jgo) (Entered: 05/21/2024)
05/21/2024		Magistrate Judge Jennifer Willis is designated to handle matters that may be referred in this case. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (jgo) (Entered: 05/21/2024)
05/21/2024		Case Designated ECF. (jgo) (Entered: 05/21/2024)
05/21/2024	11	ELECTRONIC SUMMONS ISSUED as to Anthony J. Cassale..(jgo) (Entered: 05/21/2024)
05/21/2024	12	ELECTRONIC SUMMONS ISSUED as to Essma Bagnuola..(jgo) (Entered: 05/21/2024)
05/21/2024	13	ELECTRONIC SUMMONS ISSUED as to Henry T. Berger..(jgo) (Entered: 05/21/2024)
05/21/2024	14	ELECTRONIC SUMMONS ISSUED as to Kristen Zebrowski Staviskly..(jgo) (Entered: 05/21/2024)
05/21/2024	15	ELECTRONIC SUMMONS ISSUED as to Letitia James..(jgo) (Entered: 05/21/2024)
05/21/2024	16	ELECTRONIC SUMMONS ISSUED as to Peter S. Kosinski..(jgo) (Entered: 05/21/2024)
05/21/2024	17	NOTICE OF CHANGE OF ADDRESS by Gary Leon Donoyan on behalf of Team Kennedy. New Address: Law Office of Gary L. Donoyan, 565 Plandome Road, #209, Manhasset, New York, United States of America 11030, 5163128782..(Donoyan, Gary) (Entered: 05/21/2024)
05/21/2024	18	ELECTRONIC SUMMONS ISSUED as to Raymond J. Riley, III..(jgo) (Entered: 05/21/2024)
08/02/2024	19	FILING ERROR - DEFICIENT DOCKET ENTRY - WRONG PDF FILE ASSOCIATED WITH DOCKET ENTRY - FIRST INTERVENOR COMPLAINT against Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Staviskly.Document filed by Gloria Mattera, Mark Braiman, Howie Hawkins, Jill Stein, crystal Sharedin, Richard Purtell,

		Green Party of New York, Andrew Kolstee, Libertarian Party of New York, Margaret Walton. (Attachments: # 1 Affidavit Memorandum of Law, # 2 Exhibit Proposed Intervenor Complaint).(Cowan, Melissa) Modified on 8/5/2024 (gp). (Entered: 08/02/2024)
08/05/2024	20	MOTION to Intervene . Document filed by Mark Braiman, Green Party of New York, Howie Hawkins, Andrew Kolstee, Libertarian Party of New York, Gloria Mattera, Richard Purtell, crystal Sharedin, Jill Stein, Margaret Walton. (Attachments: # 1 Exhibit Proposed Intervenor Complaint).(Cowan, Melissa) (Entered: 08/05/2024)
08/05/2024	21	MEMORANDUM OF LAW in Support re: 20 MOTION to Intervene . . Document filed by Mark Braiman, Green Party of New York, Howie Hawkins, Andrew Kolstee, Libertarian Party of New York, Gloria Mattera, Richard Purtell, crystal Sharedin, Jill Stein, Margaret Walton..(Cowan, Melissa) (Entered: 08/05/2024)
08/07/2024	22	ORDER. Plaintiff is ORDERED to file a status report, indicating how Plaintiff would like to proceed with this matter and when Plaintiff expects to effect service. Plaintiff should file this report on or before August 9, 2024. SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 8/7/24) (yv) (Entered: 08/07/2024)
08/09/2024	23	STATUS REPORT. <i>By Plaintiff Team Kennedy</i> Document filed by Team Kennedy.. (Donoyan, Gary) (Entered: 08/09/2024)
08/14/2024	24	NOTICE OF APPEARANCE by Jim Walden on behalf of Team Kennedy..(Walden, Jim) (Entered: 08/14/2024)
08/14/2024	25	NOTICE OF APPEARANCE by Daniel Joseph Chirlin on behalf of Team Kennedy.. (Chirlin, Daniel) (Entered: 08/14/2024)
08/14/2024	26	NOTICE OF APPEARANCE by Georgia K. Winston on behalf of Team Kennedy.. (Winston, Georgia) (Entered: 08/14/2024)
08/14/2024	27	NOTICE OF APPEARANCE by Ivy Xiaotian Yao on behalf of Team Kennedy..(Yao, Ivy) (Entered: 08/14/2024)
08/14/2024	28	LETTER addressed to Judge Andrew L. Carter, Jr. from Jim Walden dated August 14, 2024 re: Amended Complaint. Document filed by Team Kennedy..(Walden, Jim) (Entered: 08/14/2024)
08/16/2024	29	MEMO ENDORSEMENT on re: 28 Letter filed by Team Kennedy, ENDORSEMENT: SO ORDERED (Signed by Judge Andrew L. Carter, Jr on 8/16/2024) (Amended Pleadings due by 8/23/2024.) (ks) (Entered: 08/16/2024)
08/21/2024	30	NOTICE OF APPEARANCE by Erin Ruth McAlister on behalf of Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Staviskly..(McAlister, Erin) (Entered: 08/21/2024)
08/22/2024	31	NOTICE OF APPEARANCE by Seth Jonathan Farber on behalf of Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Staviskly..(Farber, Seth) (Entered: 08/22/2024)
08/22/2024	32	FIRST AMENDED COMPLAINT amending 10 Complaint against Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Staviskly.Document filed by Team Kennedy, American Values 2024, Jeffrey Rose. Related document: 10 Complaint..(Walden, Jim) (Entered: 08/22/2024)
08/22/2024	33	PROPOSED ORDER TO SHOW CAUSE WITH EMERGENCY RELIEF. Document filed by Team Kennedy..(Walden, Jim) Proposed Order to Show Cause to be reviewed by Clerk's Office staff. (Entered: 08/22/2024)

08/22/2024	34	MEMORANDUM OF LAW in Support re: 33 Proposed Order to Show Cause With Emergency Relief <i>for a Temporary Restraining Order and/or Preliminary Injunction</i> . Document filed by Team Kennedy..(Walden, Jim) (Entered: 08/22/2024)
08/22/2024	35	DECLARATION of Robert F. Kennedy, Jr. in Support re: 33 Proposed Order to Show Cause With Emergency Relief. Document filed by Team Kennedy. (Attachments: # 1 Exhibit 1).(Walden, Jim) (Entered: 08/22/2024)
08/22/2024	36	DECLARATION of Deirdre Goldfarb in Support re: 33 Proposed Order to Show Cause With Emergency Relief. Document filed by Team Kennedy..(Walden, Jim) (Entered: 08/22/2024)
08/22/2024	37	DECLARATION of Jeffrey Rose in Support re: 33 Proposed Order to Show Cause With Emergency Relief. Document filed by Team Kennedy..(Walden, Jim) (Entered: 08/22/2024)
08/22/2024	38	DECLARATION of Daniel Chirlin in Support re: 33 Proposed Order to Show Cause With Emergency Relief. Document filed by Team Kennedy..(Walden, Jim) (Entered: 08/22/2024)
08/23/2024	39	ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION: Plaintiff's request for a Temporary Restraining Order is hereby DENIED: ORDERED, that the above named Defendants show cause before a motion termof this Court, at the Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 1306, in the City, County and State of New York, on September 4, 2024 at 2:30 P.M. Eastern Time. thereof, or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the Defendants during the pendency of this action and directing them to not remove from the ballot the name of Robert F. Kennedy, Jr., independent party candidate for the office of the President of the United States. (Signed by Judge Andrew L. Carter, Jr on 8/23/2024) (sgz) (Entered: 08/23/2024)
08/23/2024		***NOTICE TO COURT REGARDING PROPOSED ORDER TO SHOW CAUSE WITH EMERGENCY RELIEF. Document No. 33 Proposed Order to Show Cause With Emergency Relief was reviewed and approved as to form. (tp) (Entered: 08/23/2024)
08/23/2024	40	ORDER denying without prejudice 20 Motion to Intervene. In light of the amended complaint, the proposed intervenors' motion to intervene (ECF No. 20) is DENIED without prejudice. Proposed intervenors may file a new motion to intervene by August 28, 2024. Plaintiffs and Defendants shall file any response by August 30, 2024. SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 8/23/24) (yv) (Entered: 08/23/2024)
08/23/2024		Set/Reset Deadlines: Motions due by 8/28/2024. Responses due by 8/30/2024 (yv) (Entered: 08/23/2024)
08/23/2024		***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Jim Walden. The party information for the following party/parties has been modified: Kristen Zebrowski Staviskly. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error;. (jgo) (Entered: 08/23/2024)
08/26/2024	41	MOTION to Intervene . Document filed by Caroline Cartwright, Matthew Nelson, Joseph R. Rhone, Jr..(Quinn, John) (Entered: 08/26/2024)
08/26/2024	42	MEMORANDUM OF LAW in Support re: 41 MOTION to Intervene . . Document filed by Caroline Cartwright, Matthew Nelson, Joseph R. Rhone, Jr..(Quinn, John) (Entered: 08/26/2024)

08/26/2024	43	DECLARATION of John C. Quinn in Support re: 41 MOTION to Intervene .. Document filed by Caroline Cartwright, Matthew Nelson, Joseph R. Rhone, Jr.. (Attachments: # 1 Exhibit A - Proposed Intervenor-Defendants Answer, # 2 Exhibit B - Proposed Intervenor-Defendants Opposition to PI, # 3 Exhibit C - Verified Petition from State Court Proceeding, # 4 Exhibit D - Judgment from State Court Proceeding).(Quinn, John) (Entered: 08/26/2024)
08/28/2024	44	MOTION to Intervene . Document filed by Mark Braiman, Green Party of New York, Howie Hawkins, Andrew Kolstee, Libertarian Party of New York, Gloria Mattera, Richard Purtell, crystal Sharedin, Jill Stein, Margaret Walton..(Cowan, Melissa) (Entered: 08/28/2024)
08/28/2024	45	MOTION to Intervene . Document filed by Mark Braiman, Green Party of New York, Howie Hawkins, Andrew Kolstee, Libertarian Party of New York, Gloria Mattera, Richard Purtell, crystal Sharedin, Jill Stein, Margaret Walton. (Attachments: # 1 Exhibit Proposed Intervenor Complaint).(Cowan, Melissa) (Entered: 08/28/2024)
08/28/2024	46	OPPOSITION BRIEF re: 39 Order to Show Cause,,, <i>Opposition to Motion for Preliminary Injunction</i> . Document filed by Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky.. (McAlister, Erin) (Entered: 08/28/2024)
08/28/2024	47	OPPOSITION BRIEF re: 39 Order to Show Cause,,, <i>Declaration of Erin R. McAlister in opposition to motion for preliminary injunction</i> . Document filed by Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky. (Attachments: # 1 Exhibit 1 - State Court Decision, # 2 Exhibit 2 - Petition in State Action, # 3 Exhibit 3 - 6.10.24 OSC in State Action, # 4 Exhibit 4 - 7.5.24 Transfer Order in State Action, # 5 Exhibit 5 - Answer in State Action, # 6 Exhibit 6 - Trial Memo in State Action, # 7 Exhibit 7 - Appeal Brief in State Action, # 8 Exhibit 8 - Appellate Schedule Letter).(McAlister, Erin) (Entered: 08/28/2024)
08/28/2024	48	OPPOSITION BRIEF re: 39 Order to Show Cause,,, <i>Declaration of Kristen Zebrowski Stavisky in opposition to motion for preliminary injunction</i> . Document filed by Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky. (Attachments: # 1 Exhibit A - 2024 Political Calendar, # 2 Exhibit B - Notification to Team Kennedy and objectors).(McAlister, Erin) (Entered: 08/28/2024)
08/29/2024	49	LETTER addressed to Judge Andrew L. Carter, Jr. from Jim Walden dated August 29, 2024 re: Intervention Motions. Document filed by Team Kennedy..(Walden, Jim) (Entered: 08/29/2024)
08/29/2024	50	LETTER addressed to Judge Andrew L. Carter, Jr. from John C. Quinn dated August 29, 2024 re: Third Department's Decision. Document filed by Caroline Cartwright, Matthew Nelson, Joseph R. Rhone, Jr.. (Attachments: # 1 Exhibit A - Third Department Memorandum and Order).(Quinn, John) (Entered: 08/29/2024)
08/30/2024	51	LETTER MOTION to Expedite <i>Discovery</i> addressed to Judge Andrew L. Carter, Jr. from Jim Walden dated August 30, 2024. Document filed by Team Kennedy. Return Date set for 8/31/2024 at 05:00 PM..(Walden, Jim) (Entered: 08/30/2024)
08/30/2024	52	MEMORANDUM OF LAW in Opposition re: 44 MOTION to Intervene . . Document filed by Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky..(McAlister, Erin) (Entered: 08/30/2024)
08/30/2024	53	ORDER: The Court is in receipt of Plaintiffs' letter motion for expedited discovery to serve subpoenas on Caroline Cartwright, Matthew Nelson, Joseph R. Rhone, Jr., ("Intervenor

		Defendants"), and Alexander Pease (ECF No. 51). Intervenor Defendants are order to file a response by September 3, 2024. SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 8/30/2024) (Responses due by 9/3/2024) (ks) (Entered: 08/30/2024)
08/30/2024	54	REPLY MEMORANDUM OF LAW in Support re: 39 Order to Show Cause,,, <i>for a Preliminary Injunction</i> . Document filed by Team Kennedy..(Walden, Jim) (Entered: 08/30/2024)
08/30/2024	55	DECLARATION of Deirdre Goldfarb in Support re: 39 Order to Show Cause,,, Document filed by Team Kennedy. (Attachments: # 1 Exhibit A).(Walden, Jim) (Entered: 08/30/2024)
08/30/2024	56	DECLARATION of Daniel Chirlin in Support re: 39 Order to Show Cause,,, Document filed by Team Kennedy. (Attachments: # 1 Exhibit B).(Walden, Jim) (Entered: 08/30/2024)
08/31/2024	57	NOTICE OF APPEARANCE by Jed Rubinfeld on behalf of American Values 2024, Jeffrey Rose..(Rubinfeld, Jed) (Entered: 08/31/2024)
09/03/2024	58	LETTER RESPONSE in Opposition to Motion addressed to Judge Andrew L. Carter, Jr. from John C. Quinn dated September 3, 2024 re: 51 LETTER MOTION to Expedite <i>Discovery</i> addressed to Judge Andrew L. Carter, Jr. from Jim Walden dated August 30, 2024. . Document filed by Caroline Cartwright, Matthew Nelson, Joseph R. Rhone, Jr... (Quinn, John) (Entered: 09/03/2024)
09/03/2024	59	ORDER. In advance of tomorrow's Order to Show Cause hearing, Plaintiffs and Defendants will have ten minutes each for opening statements and three minutes each to respond. Intervenor Plaintiffs and Intervenor Defendants are granted eight minutes each to present their arguments. Plaintiffs and Defendants are each granted eight minutes to respond to Intervenor Plaintiffs and Intervenor Defendants. SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 9/3/24) (yv) (Entered: 09/03/2024)
09/03/2024	60	NOTICE OF APPEARANCE by Katherine Rhodes Janofsky on behalf of Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky..(Janofsky, Katherine) (Entered: 09/03/2024)
09/04/2024	61	LETTER MOTION for Extension of Time to File Answer <i>or otherwise Respond to the Amended Complaint</i> addressed to Judge Andrew L. Carter, Jr. from Erin R. McAlister dated September 4, 2024. Document filed by Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky. (Attachments: # 1 Exhibit Correspondence with Plaintiffs' Counsel).(McAlister, Erin) (Entered: 09/04/2024)
09/04/2024		Minute Entry for proceedings held before Judge Andrew L. Carter, Jr: Show Cause Hearing for temporary restraining order and/or preliminary injunction held on 9/4/2024. Jim Walden, Daniel Chirlin, Gary Donoyan and Jed Rubinfeld for Plaintiff. Erin McAlister, Katherine Janofsky and Seth Farber for Defendants Berger, Kosinski, Bagnuola, Cassale, Stavisky, Riley III and James. John Quinn for Intervenor Defendants. Oliver Hall for Intervenor Plaintiffs. Arguments heard. Court's decision reserved. (tdh) (Entered: 09/06/2024)
09/05/2024	62	ORDER granting 61 Letter Motion for Extension of Time to Answer. SO ORDERED. (Signed by Judge Andrew L. Carter, Jr on 9/5/2024) (ks) (Entered: 09/05/2024)
09/06/2024	63	LETTER addressed to Judge Andrew L. Carter, Jr. from Jim Walden dated September 6, 2024 re: P.I. Hearing. Document filed by Team Kennedy..(Walden, Jim) (Entered: 09/06/2024)
09/06/2024	64	LETTER addressed to Judge Andrew L. Carter, Jr. from Erin R. McAlister dated September 6, 2024 re: Preliminary Injunction Hearing. Document filed by Essma

		Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky..(McAlister, Erin) (Entered: 09/06/2024)
09/08/2024	65	In the amended complaint, Mr. Jeffrey Rose is named as an individual plaintiff, described as a registered New York voter who seeks to have Mr. Kennedy placed on New Yorks 2024 general election ballot and signed Kennedys petition that has been invalidated. See First Amended Complaint, ECF No. 32 at 16. In oral argument on Wednesday, September 4, 2024, Plaintiffs counsel, Mr. Jed Rubinfeld, made several references to representing multiple voters (plural) as opposed to simply Mr. Rose. On page 4 of Plaintiffs Reply Memorandum, counsel states Plaintiff Rose speaks for those New York voters. ECF No. 54. To avoid delay, the Court orders the parties to file a joint status report, indicating whether Mr. Rubinfeld wishes to amend the complaint to indicate that Mr. Rose represents any putative class of voters. See <i>Hoblock v. Albany Cnty. Bd. of Elections</i> , 422 F.3d 77, 96 (2d Cir. 2005). The JSR is due by 12:30 p.m. on September 9, 2024. (HEREBY ORDERED by Judge Andrew L. Carter, Jr) (Text Only Order) (Carter, Andrew) (Entered: 09/08/2024)
09/08/2024	66	In their opening brief, Plaintiffs claim that New York will not require either former President Trump, Vice President Harris, or any other established partys presidential nominee to declare a place of residence. See ECF No. 34 at 18. During oral argument on Wednesday September 4, 2024, Defendants opposed this, stating that every candidate must include basic identifying information, including their name and address. In context, Defendants appeared to use address and residence interchangeably. By Monday September 9th at 2 p.m., the Parties are ordered to provide citations to New York Election Law, or caselaw, that controls address/residence disclosure requirements for established party nominees. The parties need not submit this information jointly. (HEREBY ORDERED by Judge Andrew L. Carter, Jr) (Text Only Order) (Carter, Andrew) (Entered: 09/08/2024)
09/09/2024	67	LETTER addressed to Judge Andrew L. Carter, Jr. from Seth Farber, Gary L. Donoyan, Paul A. Rossi, Jim Walden, and Jed Rubinfeld dated September 9, 2024 re: Joint Status Report. Document filed by Team Kennedy..(Walden, Jim) (Entered: 09/09/2024)
09/09/2024	68	LETTER addressed to Judge Andrew L. Carter, Jr. from Erin R. McAlister dated September 9, 2024 re: 9/8/24 Order re: residence disclosure requirements for established party nominees. Document filed by Essma Bagnuola, Henry T. Berger, Anthony J. Cassale, Letitia James, Peter S. Kosinski, Raymond J. Riley, III, Kristen Zebrowski Stavisky.. (McAlister, Erin) (Entered: 09/09/2024)
09/09/2024	69	LETTER addressed to Judge Andrew L. Carter, Jr. from Jim Walden dated September 9, 2024 re: 9/8/24 Order re: residence disclosure requirements for established party nominees. Document filed by Team Kennedy. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3).(Walden, Jim) (Entered: 09/09/2024)
09/09/2024	70	MOTION for Leave to File Second Amended Complaint . Document filed by Team Kennedy..(Walden, Jim) (Entered: 09/09/2024)
09/09/2024	71	MEMORANDUM OF LAW in Support re: 70 MOTION for Leave to File Second Amended Complaint . . Document filed by Team Kennedy..(Walden, Jim) (Entered: 09/09/2024)
09/09/2024	72	DECLARATION of Daniel Chirlin in Support re: 70 MOTION for Leave to File Second Amended Complaint .. Document filed by Team Kennedy. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2).(Walden, Jim) (Entered: 09/09/2024)
09/09/2024	73	Both parties indicated the ballot needs to be certified by Wednesday, September 11, 2024. Given the exigencies, to give the Parties an opportunity to prepare to exercise their remedies, the Court hereby informs the Parties that Plaintiffs motion for preliminary injuncton is denied. The Court intends to file a full written opinion tomorrow. (HEREBY

		ORDERED by Judge Andrew L. Carter, Jr) (Text Only Order) (Carter, Andrew) (Entered: 09/09/2024)
09/10/2024	74	Opinion and Order Denying Motion for a Preliminary Injunction (Carter, Andrew) (Entered: 09/10/2024)
09/11/2024	75	JOINT NOTICE OF INTERLOCUTORY APPEAL from 74 Order. Document filed by American Values 2024, Jeffrey Rose, Team Kennedy. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit..(Donoyan, Gary) (Entered: 09/11/2024)
09/11/2024		Appeal Fee Due: for 75 Notice of Interlocutory Appeal. Appeal fee due by 9/25/2024. (km) (Entered: 09/11/2024)
09/11/2024		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 75 Notice of Interlocutory Appeal. (km) (Entered: 09/11/2024)
09/11/2024		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 75 Notice of Interlocutory Appeal filed by Jeffrey Rose, American Values 2024, Team Kennedy were transmitted to the U.S. Court of Appeals. (km) (Entered: 09/11/2024)

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