No. 24-

In the Supreme Court of the United States

CARLANDA D. MEADORS, ET AL.,
PETITIONERS,
v.
ERIE COUNTY BOARD OF ELECTIONS, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A controversy is "capable of repetition, yet evading review," and therefore not moot, if (1) the challenged action is in its duration too short to be fully litigated before cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again. *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). The question presented is:

Whether the "capable of repetition, yet evading review" doctrine requires plaintiffs in election law cases to predict and articulate specific plans for their own future electoral participation, as four courts of appeals have held, or whether it is sufficient that the challenged law will continue to affect voters and candidates in future elections, as eight courts of appeals have held.

PARTIES TO THE PROCEEDING

Petitioners Carlanda D. Meadors, Leonard A. Matarese, Jomo D. Akono, Kim P. Nixon-Williams, and Florence E. Baugh were plaintiffs in the district court proceedings and appellants in the court of appeals proceedings.

Respondents Erie County Board of Elections, Ralph M. Mohr, and Jeremy J. Zellner were defendants in the district court proceedings and appellees in the court of appeals proceedings.

RELATED PROCEEDINGS

United States District Court (W.D.N.Y.):

Meadors v. Erie County Board of Elections, No. 1:21-cv-982, 2023 WL 4459601 (July 11, 2023).

United States Court of Appeals (2d Cir.):

Meadors v. Erie County Board of Elections, No. 23-01054, 2024 WL 3548720 (July 26, 2024).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

OTHER AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Petitioners Carlanda D. Meadors, Leonard A. Matarese, Jomo D. Akono, Kim P. Nixon-Williams, and Florence E. Baugh respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the Second Circuit is unpublished and is reproduced in the appendix to this petition at App. 2a–9a. The order of the district court addressing Defendants-Respondents' motion for summary judgment is unpublished and is reproduced at App. 10a–48a.

JURISDICTION

The Second Circuit issued its opinion and judgment on July 26, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1). Justice Sotomayor granted Petitioners' applications for extensions of time to file a petition for writ of certiorari, from October 24 to December 20, 2024.

CONSTITUTIONAL PROVISION INVOLVED

Article III, § 2, Clause 1 of the U.S. Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,

> and Treaties made, or which shall be made, under their Authority.

INTRODUCTION

This Court has long recognized that a case or controversy is not moot when it is "capable of repetition, yet evading review." *S. Pac. Terminal Co. v. Interstate Com. Comm'n*, 219 U.S. 498, 515 (1911). It has time and again applied that understanding "in the context of election cases," *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974), reasoning that such "cases fit comfortably within [that] established exception," *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007). After all, while the right to vote is "a fundamental political right that is preservative of all rights," *Williams v. Rhodes*, 393 U.S. 23, 38 (1968) (cleaned up), "the inherently brief duration of an election is almost invariably too short to enable full litigation on the merits," *Porter v. Jones*, 319 F.3d 483, 490 (9th Cir. 2003). The "capable of repetition, yet evading review" doctrine is therefore critical for ensuring that courts have jurisdiction to safeguard a fundamental right from unconstitutional state and federal legislation.

Although both this Court and the courts of appeals consistently recognize that election disputes "evade review," there is a deep and persistent split among the lower courts over what parties must show to establish that a dispute is "capable of repetition." Most courts of appeals embrace a flexible standard. Rather than examining what a particular plaintiff will do, they "focus[] instead upon the great likelihood that the issue will recur between the defendant and the other members of the

public at large," or presume the controversy shall apply again to the plaintiffs who brought suit. *Cath. Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 423 (5th Cir. 2014) (alteration omitted); *North Carolina Right to Life Committee Fund for Independent Political Expenditures v. Leake*, 524 F.3d 427, 435 (4th Cir. 2008). Other circuits, however, apply a far more "stringent" understanding of the "capable of repetition" requirement, demanding that the specific plaintiffs who bring a case show "a reasonable expectation that the *same* complaining party would encounter the challenged action in the future." *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001) (emphasis in original); *accord Graham v. Att'y Gen., Ga.*, 110 F.4th 1239, 1246 (11th Cir. 2024).

The difference between these approaches was dispositive in this case. Petitioners here are voters who sought to support an independent candidate for mayor of Buffalo, New York, during the 2021 election. App. 12a. In 2019, the New York State Legislature changed the law for independent candidates by advancing their nominating petition deadline by twelve weeks. App. 61a. Under that law, an independent candidate must gather significantly more supporting signatures for their nominating petition—25% more in this case—than a candidate who is affiliated with a political party. App. 36a. And to appear on the general election ballot, an independent candidate must submit their petition in May of an election year. App. 62a. That deadline is four weeks before the primary election for political party candidates. App. 36a. This deadline and its corresponding requirements prevented Petitioners' preferred candidate from appearing on the general election ballot and resulted in a costly and time-consuming write-in campaign. App. 5a; 24a.

Petitioners brought suit in September 2021, alleging that New York's filing deadline imposed an unconstitutional burden on their right to vote in the 2021 election. App. 63a. Although that election has now passed, New York's law remains on the books and will continue to be applied to independent candidates and voters who support such candidates, just as it was applied here to Petitioners.

These circumstances would have cleared the mootness bar in eight of the courts of appeals, since "the issues properly presented, and their effects . . . will persist as the restrictions are applied in future elections." *Kucinich v. Tex. Democratic Party*, 563 F.3d 161, 165 (5th Cir. 2009) (cleaned up). But in the Second Circuit and a minority of the other courts of appeals, the same circumstances necessitated dismissal, because Petitioners did not specifically "assert that they will again seek to vote for a late-arising independent candidate." App. 8a. By applying the Second Circuit's rule, the panel here did not reach the constitutionality of a state's independent candidate laws; had Petitioners brought the same case in eight other circuits, the court of appeals would have done so and might well have held such a law unconstitutional.

That is not a tenable result. The issue presented is recurring: Challenges to candidate filing deadlines and voter requirements are manifold, regularly appearing before the courts of appeals. *See, e.g.*, *Graveline v. Benson*, 992 F.3d 524, 533 (6th Cir. 2021); *Gill v. Linnabary*, 63 F.4th 609, 615 (7th Cir. 2023); *Benezet Consulting LLC v. Sec'y Commonwealth of Pennsylvania*, 26 F.4th 580, 585 (3d Cir. 2022). Such challenges are exceptionally important, given the central place of the right to vote within our political system. And

a wooden application of the "capable of repetition, yet evading review" doctrine in election law cases threatens to insulate potentially unconstitutional election laws from judicial scrutiny. This case, moreover, presents the Court with an ideal vehicle for resolving the split: Mootness was the sole basis behind the Second Circuit's decision, and the facts here starkly illustrate the differences between application of the flexible and rigid approaches. The Court should grant review.

STATEMENT OF THE CASE

A. Factual background.

The Erie County Board of Elections administers elections for the Mayor of the City of Buffalo, and Jeremy Zellner and Ralph Mohr are members of that Board (together, "Respondents"). App. 5a. As part of its duties and responsibilities, the Board is charged with enforcing New York's petition deadline for independent candidates. App. 60a.

Under New York law, candidates can appear on a general election ballot in two ways: (1) the party-primary process and (2) the independent-candidate process. *See* N.Y. Elec. Law §§ 6-110, 6-138. In the former case, the winner of the political party primary will, in turn, appear on the general election ballot. N.Y. Elec. Law §§ 6-110. In the latter scenario, independent candidates do not go through a primary; they must instead file with the Board a nominating petition, with a requisite number of supporting signatures. App. 36a.

New York first adopted a petition deadline for independent candidates in 1890, with independent candidates required to submit their petitions at least

twelve days before the general election. The deadline was moved up to four weeks in 1922, to eleven weeks in 1984, and to twenty-three weeks (or 161 days) in 2019. App. 61a. For the 2021 Buffalo mayoral election, that petition deadline fell on May 25, 2021. App. 62a.

Buffalo's incumbent mayor Byron W. Brown ran for re-election in 2021, seeking initially to be the nominee of the Democratic Party. App. 23a. He was defeated in the primary by a "far-left" candidate, "whose views were 'far out of step with the mainstream.'" App. 24a. Following this defeat, Brown's supporters promptly launched an effort to nominate him as an independent candidate by gathering signatures from eligible voters in Buffalo. App. 62a–63a.

Carlanda Meadors, Leonard Matarese, Jomo Akono, Kim Nixon-Williams, and Florence Baugh (together, "Petitioners") were among the Buffalo voters who signed Brown's independent nominating petition. App. 59a–60a. That petition contained more than the requisite number of signatures and was filed with the Board on August 17, 2021. App. 63a. The petition would have been timely under each of New York's petition deadlines from 1890 to 2019. App. 61a. Yet because of the change in state law in 2019, the Board rejected Brown's petition. App. 63a.

B. Proceedings below.

Petitioners filed suit in the Western District of New York after Brown's nominating petition was rejected. According to Petitioners, New York's filing deadline as applied to Brown violated their First and Fourteenth Amendment rights. App. 58a.

On September 3, 2021, the district court enjoined Respondents from enforcing the challenged statute against Brown and ordered the Board to place Brown on

the general election ballot as an independent candidate. App 56a. Respondents thereafter moved for an emergency stay of the district court's order, which the Second Circuit granted on September 16, 2021. App. 54a. As a result, Brown's name did not appear on the ballot, and Brown undertook a "write-in campaign," which was "far more expensive and difficult than a campaign with ballot access." App. 24a. According to Brown, the write-in campaign required 13,000 more work-hours from his team than "would have been needed for a normal campaign with ballot access," and cost "$1.5 million more than he would have spent had his name been on the general election ballot." *Id.* It took Brown a year to pay off the debts incurred from these additional expenses. *Id.* Brown ultimately prevailed in the general election, "winning with 59% of the votes cast." App. 20a; Carolyn Thompson, *Buffalo Mayor Who Lost Primary Reelected With Write-in Votes*, AP NEWS, https://tinyurl.com/mv9ttcpd (Nov. 19, 2021).

Following Brown's victory, the Second Circuit dismissed as moot the appeal of the district court's preliminary injunction order requiring Brown's name to appear on the 2021 general election ballot. App. 51a. The court of appeals "remanded the case back" to the district court, to consider the constitutionality of the independent nominating petition deadline. App. 21a. Following discovery, Respondents moved for summary judgment.

On July 11, 2023, the district court granted Respondents' motion. On the question of jurisdiction, the district court observed that "[t]he parties agreed, both during oral argument and in their supplemental submissions to the Court, . . . that the issues remaining in the case are not moot." App. 25a. It then noted that "[c]hallenges to election laws are one of the categories of

cases which courts will often find" are "capable of repetition, yet evading review." App. 29a. "As a result, many such cases are not deemed moot, and voters are permitted to challenge the relevant statutes, even where the election has already come and gone and the deadlines are no longer an issue." *Id.*

The district court held that "[t]he instant scenario easily" qualified as a controversy evading review, since the case's timeline "was too short to be fully litigated prior to when the election occurred." App. 30a. The district court also found there was a "reasonable expectation, as opposed to mere speculation, that plaintiffs would encounter the same challenge in future elections." App. 31a. That is because "there is reason to believe that the deadlines" prescribed by the New York Legislature "will continue to have an effect on plaintiffs' choice of independent candidates appearing on the general election ballot" and that "plaintiffs would again seek to vote for or support [such] a candidate." App. 31a–32a.

Having addressed mootness, the district court then ruled for Respondents on the merits, holding that "the petition deadline . . . does not impose a severe burden" and that "any burden imposed by the deadline is justified by New York's important regulatory interests." App. 34a–35a.

On appeal, neither side challenged the district court's conclusion that "this action was not moot." App. 5a. The Second Circuit, however, disagreed with that understanding.

The court noted that "the 'capable of repetition, yet evading review'" doctrine "applies only in exceptional situations." App. 6a. The panel underscored that, to show that a case is "capable of repetition," "there must be a

reasonable expectation that the *same* complaining party would encounter the challenged action in the future." App. 7a (quoting *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001) (emphasis in original)). "[M]ere speculation that the parties will be involved in a dispute over the same issue" was insufficient. *Id.* (quoting *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 396 (2d Cir. 2022)).

Between these two poles, the Second Circuit held that Petitioners' claim was "speculative" and "amount[ed] to a mere theoretical possibility that the controversy is capable of repetition." App. 8a (quoting *Van Wie*, 267 F.3d at 115). The Second Circuit acknowledged that "New York's challenged independent nominating petition filing deadline remains in effect in future elections and will exclude from the ballot candidates who, like Brown, decide to launch an independent candidacy only after losing a major-party primary." App. 7a. And it likewise acknowledged that, at oral argument, Petitioners' counsel had asserted that Petitioners were "'independent-minded voters,' with 'a reasonable expectation that they might want to vote for someone in a future election who decided to run after the early deadline.'" App. 8a. But the court viewed this assertion as "unsupported by facts in the record," because Petitioners had not specifically alleged that they "will again seek to vote for a late-arising independent candidate" or that the law will interfere with Petitioners' "ability to vote in future elections." *Id.* The Second Circuit therefore dismissed Petitioners' appeal as moot. The panel did not reach the merits of Petitioners' claims. App. 9a.

REASONS FOR GRANTING THE PETITION

I. COURTS ARE SPLIT ON HOW TO DETERMINE WHETHER AN ELECTION LAW CONTROVERSY IS "CAPABLE OF REPETITION."

In *Weinstein v. Bradford*, 423 U.S. 147 (1975), the Court articulated a two-prong test for analyzing whether a non-class action is "capable of repetition, yet evading review." On "evading review," "the challenged action [must] in its duration [be] too short to be fully litigated prior to its cessation or expiration." *Id.* at 149. And on "capable of repetition," there must be "a reasonable expectation that the same complaining party [will] be subjected to the same action again." *Id.*

The courts of appeals uniformly recognize that this two-part test applies to election law challenges brought by voters and candidates alike. *See, e.g.*, *Graveline v. Benson*, 992 F.3d 524, 528, 533 (6th Cir. 2021); *Majors v. Abell*, 317 F.3d 719, 723 (7th Cir. 2003); App. 8a. Where the circuits disagree, however, is over the interpretation and application of the second part of this test.

A. Eight courts of appeals embrace a flexible "capable-of-repetition" understanding in election law cases.

Most circuits embrace a flexible interpretation of *Weinstein*'s second prong, readily inferring a reasonable expectation that other similarly situated persons will be affected by an election law or, alternatively, that the complaining party may face the same action again. These courts do not require specific statements of intent by the plaintiff about how they will vote in the future or a specific candidate they will vote for.

1. The Fifth Circuit, for example, focuses on this Court's instruction that judges must only address "'whether the controversy was *capable* of repetition and not whether the claimant had demonstrated that a reoccurrence of the dispute was more probable than not.'" *Cath. Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 422 (5th Cir. 2014) (ellipsis omitted) (quoting *Honig v. Doe*, 484 U.S. 305, 318 n.6 (1988)). Put differently, "the Supreme Court has not always required that there be a likelihood that the same complaining party will be subject to the challenged action later." *Id.* at 423.

From these principles, the Fifth Circuit has held that "in election law cases," a case is not moot so long as "(1) the state plans on continuing to enforce the challenged provision, and (2) that provision will affect other members of the public." *Id.* at 424. The court has thus ruled that a dispute was not moot even though a candidate "could not state whether" he would "run [again] in the future," *Kucinich v. Tex. Democratic Party*, 563 F.3d 161, 165 (5th Cir. 2009); and when it was "doubtful" that a plaintiff "would again attempt to engage in election-related speech," *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006). Unlike "cases involving 'strictly personal' harm or cases where the plaintiffs fail to show that the challenged illegality will again occur," *Reisman*, 764 F.3d at 424 (citation omitted), election law challenges are not moot "because other individuals certainly will be affected by the continuing existence" of an election restriction, *Carmouche*, 449 F.3d at 662.

2. The Sixth Circuit is of a piece. In *Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir. 2005), the court considered facts that closely parallel the circumstances here. Plaintiffs there, comprising an independent candidate and a voter, challenged a state law "which

require[d] independent . . . candidates to file a statement of candidacy and nominating petition . . . before the primary election." *Id.* at 369–70. Defendants sought to dismiss the appeal as moot after the 2004 election, since there was "no evidence in the record addressing whether [the independent candidate] plans to run for office or [the voter plaintiff] plans to vote for an independent candidate in a future election." *Id.* at 371. *Lawrence* rejected this argument, outlining two bases behind its decision.

First, "an explicit statement from [a voter is not] necessary in order to reasonably expect that in a future election she will wish to vote for an independent candidate who did not decide to run until after the early filing deadline passed." *Id.* Second, "[e]ven if the court could not reasonably expect that the controversy would recur with respect to" the specific candidate and voter who brought the case, "the fact that the controversy almost invariably will recur with respect to some future potential candidate or voter" was "sufficient" to render the dispute capable of repetition. *Id.* at 372.

The Sixth Circuit recently reaffirmed *Lawrence* in *Graveline v. Benson*, 992 F.3d 524, 534 (6th Cir. 2021). In that case, it rejected a "same plaintiff same facts" requirement, instead noting that "our Circuit has continued to apply [a] 'somewhat relaxed' repetition standard in election cases." *Id.*

3. The Seventh Circuit embraces a similar understanding and, in *Majors v. Abell*, 317 F.3d 719 (7th Cir. 2003), Judge Posner offered a rationale behind the court's approach. There, a candidate challenged a state law regulating political advertising. *Id.* at 721. The district court held that this challenge was moot because that candidate did not run for office in the next election

and did not make any affirmative statements about running again. *Id.* at 722. The Seventh Circuit reversed, reasoning that a plaintiff has no "duty to run in every election in order to keep his suit alive." *Id.*

As Judge Posner acknowledged, "canonical statements of the exception to mootness for cases capable of repetition but evading review require that the dispute giving rise to the case be capable of repetition *by the same plaintiff*." *Id.* at 723 (emphasis in original). But "to avoid complicating lawsuits with incessant interruptions to assure the continued existence of a live controversy," courts "do not interpret the requirement literally, at least in abortion and election cases." *Id.* (first citing *Honig*, 484 U.S. at 335–36) (Scalia, J., dissenting); and then citing *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972)). A court would not, regarding the former, "conduct a hearing" to determine whether a woman would "want to become pregnant again." *Id.* And neither should a court "keep interrogating the plaintiff to assess the likely trajectory of his political career." *Id.*

The Seventh Circuit has charted the same course in more recent cases. For example, in a matter involving a ballot signature requirement, the court pointed to a plaintiff's "requests for a declaratory judgment"—a request that Petitioners also make here, App. 64a—as a ground for holding that the dispute "remain[ed] live" even after an election's passing. *Acevedo v. Cook Cnty. Officers Electoral Bd.*, 925 F.3d 944, 948 n.1 (7th Cir. 2019).

4. The Ninth Circuit mirrored much of the Seventh Circuit's reasoning in *Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000), a case involving candidate residency requirements. As in *Major*, the defendants in *Schaefer* sought to dismiss the case as moot because the candidate

had "demonstrated no likelihood of running for office in th[e] state in the future." *Id.* at 1033. The candidate, indeed, had "refuse[d] to disclose his intentions" and "argue[d] that his political aspirations are irrelevant in evaluating the mootness exception." *Id.*

The court agreed with the candidate. Citing Supreme Court and circuit case law, the court explained that a stringent application of the doctrine would mean that "many constitutionally suspect election laws could never reach appellate review." *Id.* (ellipsis omitted) (first quoting *Joyner v. Mofford*, 706 F.2d 1523,1527 (9th Cir. 1983); and then citing *Dunn*, 405 U.S. at 333 n.2). The "capable-of-repetition prong should not," given that consequence, "be construed as narrowly as [defendants] suggest[]." *Id.*

5. While the Fifth, Sixth, Seventh, and Ninth Circuits generally examine whether other members of the public might be affected by a law in the future, four other courts of appeals—the First, Third, Fourth, and Tenth—look at whether "there is a reasonable expectation that" a particular plaintiff or plaintiffs "will encounter the same barrier again." *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 n.12 (1st Cir. 1993). That is in theory a slightly different and somewhat narrower approach. The former looks at the effect a law will have on "other members of the public," *Reisman*, 764 F.3d at 424; while the latter focuses more on the circumstances of the specific plaintiffs at issue, *Barr v. Galvin*, 626 F.3d 99, 106 (1st Cir. 2010). But because the courts of appeals in this latter group still do not require specific allegations of intent, there is little if any daylight between the former and latter groups in practice.

6. *Merle v. United States*, 351 F.3d 92 (3d Cir. 2003), is instructive. There, the plaintiff sought to run for political office as a Green Party candidate. But as a federal government employee, he was barred from doing so under the Hatch Act. *Id.* at 94. By the time the case reached the Third Circuit, the government sought to have the plaintiff's claims declared moot because the election had passed, the plaintiff "has not alleged that he intends to run for election" in the future, and the Green Party "has not alleged that it wishes to nominate a candidate that would be subject to the Hatch Act." *Id.* at 95. The Third Circuit rejected that contention: "We disagree with the Government's assumption that such an allegation would be necessary." *Id.* Instead, the court held that it was "reasonable to expect that [the plaintiff] will wish to run for" office "at some future date." *Id.* Further, on appeal, the plaintiff had noted that "he and other governmental employees will be subject to the continuing stricture of the Hatch Act in other federal elections." *Id.* (internal quotation marks omitted). Such expressions, the court concluded, were sufficient to defeat mootness.

In a more recent case, *Benezet Consulting LLC v. Secretary of the Commonwealth of Pennsylvania*, 26 F.4th 580 (3d Cir. 2022), the Third Circuit reaffirmed this understanding. It held that a challenge to certain absentee ballot requirements was not moot "[b]ecause" the law at issue "remains in place," and it was "entirely likely" that the plaintiffs would be "subject to it in future election cycles, creating the same controversy that took place in the most recent election." *Id.* at 585.

7. The Fourth Circuit has applied a similar understanding. In *North Carolina Right to Life Committee Fund for Independent Political Expenditures*

v. Leake, 524 F.3d 427, 435 (4th Cir. 2008), the defendant argued that a candidate's suit was moot "because he has not alleged that he will become a candidate for judicial office again in the future" or "an intent to participate in future election cycles." *Id.* The Fourth Circuit rejected these arguments, reasoning instead that the plaintiffs' claims "'fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review.'" *Id.* (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007)). "[W]e reject" a requirement that an "ex-candidate specifically allege[] an intent to run again in a future election." *Id.* What matters is that a candidate "has run for office before and may well do so again." *Id.* at 436. "[T]he plaintiffs' claims," therefore, were "not moot." *Id.*

8. In *Parker v. Winter*, 645 F. App'x 632, 634 (10th Cir. 2016), a candidate challenged a New Mexico law requiring independent candidates to obtain more signatures on nominating petitions than minor political party candidates. As in *Merle* and *North Carolina Right to Life*, there was "no evidence in the record" that the plaintiff "intend[ed] to run for elected office again." *Id.* at 635. But, drawing on this Court's decisions in *Honig v. Doe*, 484 U.S. 305 (1988), and *Norman v. Reed*, 502 U.S. 279 (1992), the Tenth Circuit reasoned that the capable-of-repetition prong was "likely satisfied because 'he is certainly capable of doing so, and under the circumstances it is reasonable to expect that he will do so.'" *Id.*

B. Four courts of appeals apply a rigid "capable of repetition" rule in election law cases.

On the other side of the split, a minority of circuits apply a rigid understanding of *Weinstein*'s "capable of repetition" prong. These courts make no allowance for

the special context of election cases and, consistent with the panel below, require specific facts and allegations as to each plaintiff.

1. In *Van Wie v. Pataki*, 267 F.3d 109 (2d Cir. 2001), the plaintiffs were not permitted to vote in a primary election because they failed to satisfy certain political party enrollment conditions; the plaintiffs filed suit challenging the legality of these conditions.

In weighing whether the passing of the primary election rendered plaintiffs' suit moot, the Second Circuit began by acknowledging a "tension" in "cases applying the second prong of the *Weinstein* test in the elections context." *Id.* at 114. Some cases, the court observed, "have not applied the same complaining party requirement" in a "stringent manner." *Id.* Conversely, others have "required that the *same complaining party* have a reasonable expectation that they will face the same action again." *Id.* (emphasis in original). The Second Circuit "adopt[ed] the" more rigid of these two approaches, requiring that plaintiffs demonstrate "a reasonable expectation that the *same* complaining party would encounter the challenged action in the future." *Id.* (emphasis in original). Applying that approach, the court ruled that the plaintiffs' suit was now moot. To be sure, the *Van Wie* plaintiffs had stated, in supplemental briefing, that they would face the same legal harm "*if and when* they again attempt to enroll in a political party." *Id.* at 115 (emphasis in original). But that "assertion," the Second Circuit ruled, represented only "a mere theoretical possibility that the controversy is capable of repetition."

The panel here cited *Van Wie* and applied its rule as the basis for dismissing Petitioners' claims. App. 7a–8a.

2. The Eleventh Circuit has taken a substantially similar approach, and articulated its rule in a case decided a week after the panel's ruling here. In *Graham v. Attorney General, Georgia*, 110 F.4th 1239, 1240 (11th Cir. 2024), the Libertarian Party and its candidate for Lieutenant Governor in the 2022 election sought to challenge a Georgia campaign-finance law. That law gave preferential financing limits for the Governor, Lieutenant Governor, or a nominee for Governor or Lieutenant Governor from a recognized political party. *Id.* at 1241. The Libertarian Party was not, however, a recognized political party because it had not obtained the required number of votes in prior elections; accordingly, neither it nor its Lieutenant Governor candidate could benefit from these preferential financing limits. *Id.* at 1242.

With the passing of the 2022 election, the Eleventh Circuit dismissed the plaintiffs' appeal as moot. Much like *Van Wie*, the plaintiffs in *Graham* did offer several statements of future intent: The 2022 Lieutenant Governor candidate "alleged his intent to run again for statewide election as a nominee of the Libertarian Party," and the Party itself "ha[d] run a candidate for Governor, Lieutenant Governor, or both, in every election since 1990." *Id.* at 1246. But those statements were, like those in *Van Wie* and this case, deemed "purely theoretical," rather than "reasonable" and "non-speculative." *Id.*

3. Similarly, the Eighth Circuit dismissed an appeal after an independent candidate's campaign had ended and the election had passed. *See Whitfield v. Thurston*, 3 F.4th 1045 (8th Cir. 2021). The candidate, the court observed, "ha[d] not indicated whether he intends to run" in the future. *Id.* at 1047. The Eighth Circuit also rejected the candidate's contention "that election cases are 'different.'" *Id.* The court acknowledged that, in some

Supreme Court cases, "the Court applied the capable-of-repetition-yet-evading-review exception in election cases apparently without insisting on the same-complaining-party requirement." *Id.* at 1048. But the Eighth Circuit believed that the Supreme Court had "changed tack" in "its more recent decisions," therefore requiring lower courts to strictly "apply[] the same-complaining-party requirement in election cases." *Id.*

4. In *Holmes v. Federal Election Commission*, 823 F.3d 69 (D.C. Cir. 2016), the D.C. Circuit appeared to embrace a similar, albeit possibly less rigid, understanding of the "capable-of-repetition" requirement as that of the Second, Eighth, and Eleventh Circuits. Unlike many cases from those three circuits, the D.C. Circuit in *Holmes* held that the plaintiffs' case was not moot. *Id.* at 71 n.3. In making the ruling, the D.C. Circuit pointed to the plaintiffs' history of making campaign contributions and noted that, in a reply brief, the plaintiffs had stated "that they intend to make such contributions in the future." *Id.*; *accord Holmes v. Fed. Election Comm'n*, 99 F. Supp. 3d 123, 139 (D.D.C. 2015).

II. THE SECOND CIRCUIT'S DECISION IS INCORRECT.

Decisions applying a stringent and wooden approach to the "capable of repetition" standard in election law cases contravene governing precedent and needlessly prevent federals courts from safeguarding the fundamental right to vote.

A. The Second Circuit's decision misreads this Court's precedent.

1. To start, the Court has long embraced a flexible, pragmatic understanding of mootness in election cases, dating back at least to *Moore v. Ogilvie*, 394 U.S. 814 (1969). There, Justice Stewart argued that the matter was moot because the election was over and the plaintiffs had not "assert[ed] that the appellants inten[d] to participate as candidates in any future Illinois election." *Id.* at 819 (Stewart, J., dissenting). The Court rejected that contention: "[W]hile the 1968 election is over, the burden . . . allowed to be placed on the nomination of candidates . . . remains and controls future elections, as long as Illinois maintains her present system." *Id.* at 816. That, the Court reasoned, makes the problem "capable of repetition, yet evading review." *Id.* (quoting *S. Pac. Terminal Co. v. Interstate Com. Comm'n*, 219 U.S. 498, 515 (1911)). Three years later, the Court adopted the same understanding in *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972), recognizing that "the problem to voters posed" by an election law could repeat because the challenged law would continue to impose negative effects on other candidates and voters.

To be sure, *Dunn* was brought as a class action, a fact that the Second Circuit has pointed to in distinguishing *Dunn* from the rule it applies. *See Van Wie*, 267 F.3d at 114; App. 7a. But two years after *Dunn*, the Court made clear that courts should—just as it did in *Moore*—likewise apply a flexible understanding in election law cases for non-class actions.

In *Storer v. Brown*, 415 U.S. 724, 726 (1974), several candidates and their supporters challenged a California law requiring independent candidates to be politically

disaffiliated for at least one year before the primary election. Even though the relevant election was "long over" and "no effective relief [could] be provided to the candidates," the Court underscored that "this case is not moot, since the issues properly presented, and their effects on independent candidates, will persist as the California statutes are applied in future elections." *Id.* at 737 n.8. There was no specific allegation that either the candidates would run again or their voters would support them in future elections. But every Justice agreed, under these facts, that the case was not moot.[1]

Similarly, in *Richardson v. Ramirez*, 418 U.S. 24, 36 (1974), a case regarding felon disenfranchisement, the Court noted that "if the case were limited to the named parties alone, it could be persuasively argued that there was no present dispute." But, citing *Moore*, this Court held that the case was not moot. *Id.* at 35, 40.

The Term after *Storer* and *Richardson*, the Court decided *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975), where it stated that a plaintiff must demonstrate "a reasonable expectation that the same complaining party would be subjected to the same action again." But that statement did not cabin *Moore*, *Storer*, or *Richardson* sub silentio. To the contrary, the Court substantially reaffirmed the rule from those three pre-*Weinstein* cases in *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

The facts of *Anderson* closely mirror the circumstances here. A candidate and three voters challenged the early filing deadline for independent candidates. *Id.* at 783. After the district court held that

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[1] Justice Brennan, joined by Justices Douglas and Marshall, dissented as to the merits. *Storer*, 415 U.S. at 755 (Brennan, J., dissenting).

this deadline imposed an unconstitutional burden, the defendant appealed to and obtained a reversal from the Sixth Circuit. *Id.* at 784. The plaintiffs thereafter sought review from this Court, which did not hear the case until several years after the election in question. As to mootness, the Court held, citing *Storer*, that the case was "not moot" even though the relevant election had already taken place. *Id.* at 784 n.3. Again, like *Storer*, no Justice dissented on this jurisdictional point. On the substantive question, *Anderson* held (over a dissent) that the "nature of the burdens Ohio has placed on the voters[] . . . unquestionably outweigh[ed] the State's minimal interest in imposing [an early filing] deadline." *Id.* at 806 (internal quotation marks omitted).

In several other cases post-*Anderson*, this Court has inferred from a plaintiff's prior attempts to participate in an election that a plaintiff may do so again, without requiring any detailed or specific allegation or evidence to that effect. *See, e.g.*, *Int'l Org. of Masters, Mates & Pilots v. Brown*, 498 U.S. 466, 473 (1991) ("Respondent has run for office before and may well do so again."); *Norman*, 502 U.S. at 288 ("There would be every reason to expect . . . a similar, future controversy.").

Based on the foregoing decisions, Justice Scalia concluded, in *Honig v. Doe*, that the Court's "election law decisions . . . dispens[e] with the same-party requirement entirely, focusing instead upon the great likelihood that the issue will recur *between the defendant and the other members of the public at large*." 484 U.S. at 335–36 (Scalia, J., dissenting) (emphasis in original).

2. The circuits that take a rigid approach to the "capable of repetition" prong largely eschew this consistent line of decisions. Instead, these courts of

appeals point to this Court's rulings in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), and *Davis v. Federal Election Commission*, 554 U.S. 724 (2008), and argue that these more recent cases signal a "change[]" in "tack" by this Court. *Whitfield*, 3 F.4th at 1048; *see also, e.g.*, App. 7a (citing *Wisconsin Right to Life*); *Holmes v. Fed. Election Comm'n*, 99 F. Supp. 3d 123, 138–40 (D.D.C. 2015) (citing *Davis* and *Wisconsin Right to Life*).

But neither *Wisconsin Right to Life* nor *Davis* support such an understanding. True, in *Wisconsin Right to Life*, the plaintiff "credibly claimed that it planned on running materially similar future targeted broadcast ads." 551 U.S. at 463 (internal quotation marks omitted). And in *Davis*, the candidate "subsequently made a public statement expressing his intent" to run again. 554 U.S. at 736. The plaintiffs in these cases may have alleged more than the plaintiffs in *Moore*, *Storer*, and *Anderson*, but that does not mean *Wisconsin Right to Life* or *Davis* overruled these earlier precedents.

To the contrary, *Wisconsin Right to Life* cited and quoted *Storer* with approval, pointing to the decision as an example of how the "capable of repetition, yet evading review" doctrine should operate "in the context of election cases." 551 U.S. at 463 (citing 415 U.S. at 737 n.8). And *Davis* said that its facts "closely resemble[d]" those in *Wisconsin Right to Life*, leading the Court in both cases to hold that the disputes at issue "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *Wis. Right to Life*, 551 U.S. at 462; *Davis*, 554 U.S. at 735. That is why, contra the Second Circuit and the other circuits that have taken a stringent approach to *Weinstein*, most lower

courts do not understand *Wisconsin Right to Life* or *Davis* as ushering in a sea change to mootness law. *See, e.g.*, *Graveline*, 992 F.3d at 534 ("Defendants' argument that [prior Sixth Circuit precedent] is no longer good law after *Wisconsin Right to Life* is meritless.").

Moreover, even if a lower court perceives that "[a] tension has arisen in cases applying" the relevant test, it is not their job, *Van Wie*, 267 F.3d at 114—as the Second Circuit has done here—to treat *Storer* or *Anderson* as a dead letter. Instead, as this Court has time and again emphasized, it is axiomatic that "a lower court 'should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.'" *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)). "This is true even if the lower court thinks the precedent is in *tension* with 'some other line of decisions.'" *Id.* (emphasis added). *Mallory*, in short, speaks to the very situation at issue here. And it tells the courts of appeals to continue following past precedent, rather than trying to read the tea leaves to craft its own rule.

Lastly, even *if Wisconsin Right to Life* and *Davis* did cabin this Court's past precedents and even *if* the Second Circuit had license to embrace a different understanding of the "capable of repetition" standard, it has still misapplied that standard here. In *Wisconsin Right to Life*, for instance, the plaintiff planned to run "materially similar" ads in upcoming election cycles—but did not commit to running "ads in the future sharing all the characteristics that the district court deemed legally relevant." 551 U.S. at 463 (internal quotation marks omitted). In *Davis*, the candidate plaintiff expressed an

intent to run again in his merits reply brief before this Court. 554 U.S. at 736.

If that is the bar that *Wisconsin Right to Life* and *Davis* set, Petitioners more than clear it. As Petitioners' counsel pointed out at oral argument before the Second Circuit, Petitioners may "want to vote for someone in a future election who decide[s] to run after the early deadline" for independent candidates passes. App. 8a. That would, of course, put them in a "materially similar" position to where they are now, just like plaintiffs in *Wisconsin Right to Life*. 551 U.S. at 463. And Petitioners made that statement at oral argument before the Second Circuit, a far earlier stage of litigation than the *Davis* plaintiff's statement in his merits reply brief before the Supreme Court. 554 U.S. at 736.

B. The Second Circuit's decision prevents federal courts from safeguarding fundamental political rights.

The Second Circuit's approach also needlessly puts federal courts on the sidelines of important constitutional questions.

1. To see why, take the panel's response to Petitioners' statements from oral argument. Such statements, the panel asserts, are "speculative, unsupported by facts in the record, and . . . mere[ly] theoretical." App. 8a. But the panel's apparent solution would be for Petitioners to (1) commit at the outset to vote (2) for a future independent candidate, even though neither Petitioners nor anyone else knows (3) who will run in a future election, (4) who will seek to win the party primary, (5) what positions the independent or political party candidates might take, and (6) whether a candidate

that loses a party primary will then choose to become a "late-arising independent candidate." *Id.*

The panel does not explain why this latter scenario would be any less "speculative" than Petitioners simply stating, as in this case, that they may "vote for someone in a future election who decide[s] to run after the early deadline." *Id.* The straightforward answer is that they aren't—which is exactly why most circuits do "not require[]" plaintiffs to "forecast evidence" of their specific future intent. *Stop Reckless Econ. Instability Caused by Democrats v. Fed. Election Comm'n*, 814 F.3d 221, 232 (4th Cir. 2016); *accord Majors*, 317 F.3d at 723.

2. In the same vein, a flexible "capable of repetition" standard in election cases recognizes the practical reality that such cases often cannot be fully litigated before the election takes place. *See, e.g.*, *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 584 (6th Cir. 2006) ("Legal disputes involving election laws almost always take more time to resolve than the election cycle permits."); *Stop Reckless Econ. Instability*, 814 F.3d at 232 ("It is undisputed that the election cycle is too short in duration for election disputes to be fully litigated within a single cycle."). That timeframe is further compressed by the *Purcell* principle, which provides that "federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020); *see also Purcell v. Gonzalez*, 549 U.S. 1 (2006). If federal courts are unable to resolve election disputes once the election has passed, and should not resolve them close to an election, important and recurring constitutional issues may go undecided for an indefinite period.

A flexible application of the "capable of repetition" standard accounts for these constraints. As this Court has explained, "[t]he construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held." *Storer*, 415 U.S. at 737 n.8.

III. THIS CASE PRESENTS AN EXCELLENT VEHICLE FOR REVIEW.

This case offers the Court an ideal opportunity to resolve a significant split in the courts of appeals. That split is deep; as outlined, every circuit (except the Federal Circuit, which lacks jurisdiction over election law disputes) has addressed the issue. It is persistent and recurring, with the Second Circuit here and the Eleventh Circuit issuing decisions a week apart from one another this year, both holding the dispute moot for nearly identical reasons. *See* App. 9a; *Graham*, 110 F.4th at 1245–46. In contrast, the Sixth and Third Circuits have reached the opposite conclusion in published decisions within the past two election cycles. *See, e.g.*, *Benezet Consulting*, 26 F.4th at 581–82; *Graveline*, 992 F.3d at 534.

The split has been acknowledged by courts and commentators alike. *See, e.g., Hall v. Sec'y, Ala.*, 902 F.3d 1294, 1311 (11th Cir. 2018) (Pryor, J., dissenting) ("By requiring evidence of intent to run in a future election from a plaintiff in Hall's position, the majority creates a circuit split."); *Stop Reckless Econ. Instability*, 814 F.3d at 230 ("[C]ourts have taken different views."); *Circuit*

Approaches to Mootness in the Associational-Standing Context, 136 HARV. L. REV. 1434, 1444 (2023) ("[C]ircuits have split on the application of the same-complaining-party rule in the election-law context."). Finally, the case concerns an issue of unquestionable importance: As this Court has repeatedly underscored, the right to vote is "a 'fundamental political right' that is 'preservative of all rights.'" *Williams v. Rhodes*, 393 U.S. 23, 38 (1968) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). And, as to the specific questions at issue, the Court has similarly emphasized that "[t]he impact of candidate eligibility requirements on voters implicates basic constitutional rights." *Anderson*, 460 U.S. at 786.

This case is particularly well-suited for review because the question is cleanly presented. The split formed the sole basis for the panel's decision. The Second Circuit, following *Van Wie* and applying its understanding of *Wisconsin Right to Life*, ruled this case moot because Petitioners could not "rely solely on the assertion that New York will continue to enforce its filing deadline against [other] independent candidates." App. 8a. But in courts like the Fifth and Sixth Circuits, Petitioners could have done exactly that. There, it would have been enough that the effect of New York's law "will persist . . . in future elections," *Kucinich*, 563 F.3d at 165, and invariably impact "some future potential candidate or voter," *Lawrence*, 430 F.3d at 372.

Even Petitioners' attempt at a middle ground—by stating that they themselves might well vote for an independent candidate again—failed here. App. 8a. But again, in the Third Circuit and several others, Petitioners could have done exactly that and obtained a ruling on the merits of their claims. *See Merle*, 351 F.3d at 94–95;

Schaefer, 215 F.3d at 1033 (holding that case was not moot "without examining the future political intentions of the challengers"); *N.C. Right to Life*, 524 F.3d at 435–36.

To be sure, the panel here observed in a footnote that it was "not decid[ing] whether plaintiffs' challenge" would "evade[] review," the other half of the "capable of repetition, yet evading review" doctrine. App. 9a n.1. But that point does not weigh against review. It is well-established that election law disputes satisfy the "evading review" requirement. *Wis. Right to Life*, 551 U.S. at 462. Indeed, they are often considered "one of the quintessential categories of [such] cases" because "litigation has only a few months before the remedy sought is rendered impossible by the occurrence of the relevant election." *Lawrence*, 430 F.3d at 371; *see also Barr*, 626 F.3d at 106 ("Disputes concerning ballot access procedures are often time-sensitive, and the temporal parameters are sometimes too short to allow the issues to be fully litigated within a single election cycle.").

Consistent with that understanding, the district court here held that this case "easily passes" the evading review "prong of the analysis," a holding that no party has challenged throughout this litigation. App. 30a. The panel's citation to *Freedom Party of New York v. New York State Board of Elections*, 77 F.3d 660 (2d Cir. 1996), is inapt. "The dispute between the parties in *Freedom Party*," as courts within the Second Circuit have recognized, "was limited to an injunction that related only to a single special election; the preliminary injunction did not affect future elections." *Credico v. N.Y. State Bd. of Elections*, 2013 WL 3990784, at *13 (E.D.N.Y. Aug. 5, 2013). There was, in other words, no review to evade since the dispute was limited to one election. On the other hand,

a "challenge [to] an election law that sets forth a . . . rule applicable to all future elections"—exactly the case here—presents a far different set of circumstances. *Id.*; *accord Lawrence*, 430 F.3d at 371–72.

Indeed, resolving the question presented here in Petitioners' favor could well lead to a different substantive result and a corresponding change in New York law. Had the Second Circuit reached the merits of this dispute, it may well have joined this Court and several of the courts of appeals in holding early filing deadlines for independent candidates unconstitutional. *See, e.g.*, *Anderson*, 460 U.S. at 805–06 (holding that an Ohio law requiring nominating petitions to be filed 75 days before primary election was unconstitutional); *Populist Party v. Herschler*, 746 F.2d 656, 661 (10th Cir. 1984) ("The June 1 deadline . . . . appears to run counter to the views in *Anderson*."); *Nader v. Brewer*, 531 F.3d 1028, 1038–40 (9th Cir. 2008) (Arizona law); *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 884 (3d Cir. 1997) (New Jersey law); *Cromer v. South Carolina*, 917 F.2d 819, 826 (4th Cir. 1990) (South Carolina law). But because the panel dismissed this case as moot, it never reached the constitutionality of New York's filing deadline and its burden on Petitioners' "basic constitutional rights." *Anderson*, 460 U.S. at 786.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 20, 2024

APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

23-1054
Meadors v. Erie County Board of Elections

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of July, two thousand twenty-four.

PRESENT: REENA RAGGI,
DENNY CHIN,
STEVEN J. MENASHI,
Circuit Judges.

CARLANDA D. MEADORS, an individual, LEONARD A. MATARESE, an individual, JOMO D. AKONO, an individual, KIM P. NIXON-WILLIAMS, FLORENCE E. BAUGH,

Plaintiffs-Appellants,

v. No. 23-1054-cv

ERIE COUNTY BOARD OF ELECTIONS, RALPH M. MOHR, JEREMY J. ZELLNER,

Defendants-Appellees.*

APPEARING FOR APPELLANTS:	BRYAN L. SELLS, The Law Office of Bryan L. Sells, LLC, Atlanta, GA.
APPEARING FOR APPELLEES:	CHARLES GERSTEIN, Gerstein Harrow LLP, Washington, DC (Jason Harrow, Gerstein Harrow LLP, Los Angeles, CA, Jeremy Toth, Erie County Attorney, Erie County Department of Law, Buffalo, NY, *on the brief*).

* The Clerk of Court is respectfully directed to amend the caption as set forth above.

Appeal from a judgment of the United States District Court for the Western District of New York (Michael J. Roemer, *Magistrate Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the appeal is DISMISSED, the judgment entered on July 11, 2023, is VACATED, and the case is REMANDED with instructions to dismiss the case as moot.

Plaintiffs Carlanda D. Meadors, Leonard A. Matarese, Jomo D. Akono, Kim P. Nixon-Williams, and Florence E. Baugh appeal from an award of summary judgment in favor of defendants Erie County Board of Elections, Ralph M. Mohr, and Jeremy J. Zellner on their 42 U.S.C. § 1983 claim asserting an as-applied challenge to New York's filing deadline for independent nominating petitions. *See* N.Y. Elec. L. § 6-158(9). Plaintiffs, five Buffalo voters, allege that their First and Fourteenth Amendment rights were violated when their preferred mayoral candidate, Byron Brown, was excluded from the 2021 general election ballot because his independent nominating petition was filed only after he lost the Democratic primary election, well past New York's filing deadline. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, which we discuss only as necessary to explain our mootness determination.

Although the district court concluded that this action was not moot, and defendants do not argue otherwise, "[w]e have an independent obligation to satisfy ourselves of the jurisdiction of this court and the court below." *Stafford v. Int'l Bus. Machs. Corp.*, 78 F.4th 62, 68 (2d Cir. 2023) (internal quotation marks omitted). We review the question of mootness *de novo*. *See County of Suffolk v. Sebelius*, 605 F.3d 135, 139 (2d Cir. 2010). A case becomes

"moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Tann v. Bennett*, 807 F.3d 51, 52 (2d Cir. 2015) (internal quotation marks omitted). "[W]henever mootness occurs, the court . . . loses jurisdiction over the suit, which therefore must be dismissed." *Hassoun v. Searls*, 976 F.3d 121, 127 (2d Cir. 2020) (internal quotation marks omitted).

As plaintiffs conceded at oral argument, their as-applied challenge to New York's independent nominating petition filing deadline with respect to the 2021 general election is moot because the election has been conducted, and Brown was reelected by write-in votes without appearing on the ballot. Thus, there is no effective relief that this court can grant as to *that* election. *See Westchester v. U.S. Dep't of Hous. & Urb. Dev.*, 778 F.3d 412, 416–17 (2d Cir. 2015) ("An action not moot at its inception can become moot on appeal if an event occurs during the course of the proceedings or on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party." (internal quotation marks omitted)). Plaintiffs nevertheless argue, and the district court concluded, that a live controversy remains because the injury to their associational and voting rights caused by the filing deadline is capable of repetition yet likely to evade review. *See Freedom Party of N.Y. v. N.Y. State Bd. of Elections*, 77 F.3d 660, 662 (2d Cir. 1996) (stating that "passage of an election does not necessarily render an election-related case moot" where case falls within the "capable of repetition, yet evading review" exception to mootness doctrine); *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974). The "capable of repetition, yet evading review" exception, however, "applies only in exceptional situations, where (1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or

expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016) (internal quotation marks omitted); *accord Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 395–96 (2d Cir. 2022) ("This facet of the mootness doctrine . . . is applicable only in exceptional situations." (internal quotation marks omitted)). Plaintiffs bear the burden of demonstrating that the exception applies. *See Video Tutorial Servs., Inc. v. MCI Telecomms. Corp.*, 79 F.3d 3, 6 (2d Cir. 1996). They have failed to carry that burden here.

"[I]n the absence of a class action"—which this case is not—"there must be a reasonable expectation that the *same* complaining party would encounter the challenged action in the future." *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001) (emphasis in original); *see Federal Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (stating plaintiff must establish "reasonable expectation that it will again be subjected to the alleged illegality" in the future (internal quotation marks omitted)). "[M]ere speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation or demonstrated probability of recurrence." *Exxon Mobil Corp. v. Healey*, 28 F.4th at 396 (internal quotation marks omitted).

Although New York's challenged independent nominating petition filing deadline remains in effect in future elections and will exclude from the ballot candidates who, like Brown, decide to launch an independent candidacy only after losing a major-party primary, plaintiffs have not demonstrated a reasonable expectation that they will encounter the same issue in the future because plaintiffs have presented no reason to think that

they will, in the future, favor a candidate who chooses to run as an independent after losing a primary. Contrary to the district court's conclusion, plaintiffs cannot rely solely on the assertion that New York will continue to enforce its filing deadline against independent candidates without presenting a credible claim that plaintiffs will be affected by the deadline in future elections. Plaintiffs did not, either in the district court or on appeal, make any claims about their ability to vote in future elections, nor did they assert that they will again seek to vote for a late-arising independent candidate or even any independent candidate at all.

Counsel's oral argument statement that plaintiffs are "independent-minded voters," with "a reasonable expectation that they might want to vote for someone in a future election who decided to run after the early deadline," May 14, 2024 Oral Argument at 4:30–45, is speculative, unsupported by facts in the record, and, in any event, "amounts to a mere theoretical possibility that the controversy is capable of repetition with respect to [plaintiffs]." *Van Wie v. Pataki*, 267 F.3d at 115 (holding challenge to New York's party enrollment deadline mooted by passage of primary election because plaintiffs "ha[d] not adequately demonstrated that they will again try to enroll in a political party (or change enrollment) for purposes of voting in a primary election," but "merely" claimed that "they will face precisely the same dilemma *if and when* they again attempt to enroll in a political party for the purpose of engaging as active participants in the [primary] process" (emphasis in original)).

In sum, because plaintiffs fail to "establish 'a reasonable expectation' that they will again be subjected to the same dispute," this case is moot and must be

dismissed. *Id.*[1] In so holding, we express no view on the merits of plaintiffs' challenge to New York's independent nominating petition filing deadline. Accordingly, the appeal is DISMISSED as moot, the judgment of the district court is VACATED, and the case is REMANDED to the district court with instructions to dismiss the case as moot.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE,
Clerk of Court

United States
Second Circuit
Court of Appeals
/s/ Catherine O'Hagan Wolfe

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit
/s/ Catherine O'Hagan Wolfe

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[1] We need not decide whether plaintiffs' challenge to New York's independent nominating petition filing deadline "evades review." We note only that it is by no means clear that the exclusion from the ballot of a candidate who chooses to run as an independent after losing a major-party primary is "too short to be fully litigated" prior to the general election. *Freedom Party of N.Y. v. N.Y. State Bd. of Elections*, 77 F.3d at 663 (internal quotation marks omitted). After filing this lawsuit on August 30, 2021, plaintiffs obtained a preliminary injunction in the district court on September 3, 2021, ordering defendants to place Brown's name on the 2021 general election ballot. This court granted a stay of the preliminary injunction order on September 16, 2021, and plaintiffs did not seek further review in this court before the November 2, 2021 general election. The lawsuit was revived when, following Brown's victory in the general election, we vacated the preliminary injunction order and remanded the case to the district court for further proceedings.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARLANDA D. MEADORS, *et al.*,	1:21-CV-982 MJR
Plaintiffs,	DECISION AND ORDER
v.	
ERIE COUNTY BOARD OF ELECTIONS, *et al.*,	
Defendants.	

INTRODUCTION

The parties have consented to have the undersigned enter a final judgment in this case as to defendants' motion for summary judgment. For the following reasons, defendants' motion for summary judgment (Dkt. No. 66) is granted.

FACTS AND PROCEDURAL BACKGROUND[1]

The Complaint

[1] The information and facts set forth in this section have been taken from the complaint; the parties' statements of facts, memoranda of law and supplementary briefs submitted with respect to the motion for summary judgment; relevant sections of the New York State Election Law; other pleadings as well as prior orders and decisions issued in this case and in a related New York state case; and representations made by the parties during oral argument.

Plaintiffs Carlanda D. Meadors, Leonard A. Matarese, Jomo D. Akono, Kim P. Nixon-Williams, and Florence E. Baugh are registered voters and residents of the City of Buffalo, New York. Dkt. No. 25, ¶¶ 7-11. Plaintiffs are supporters of Byron Brown, the current Mayor of the City of Buffalo. *Id.*; Dkt. No. 66-2, ¶ 16; 68-2, ¶ 4, ¶ 21. Brown has served as Mayor of Buffalo continuously since 2006, and was most recently re-elected to office following a successful independent write-in campaign in 2021. *Id.*

Plaintiffs' lawsuit raises an as-applied constitutional challenge to Section 6-158.9 of the New York State Election Law ("Section 6-158.9"). Dkt. No. 25, ¶ 1. Section 6-158.9 provides that candidates who seek to appear on the general election ballot by way of an independent nominating petition must file such petition no later than 23 weeks before the general election. *See* N.Y. Elec. Law § 6-158.9; Dkt. No. 25, ¶ 1, ¶ 20. Plaintiffs have filed suit pursuant to Section 1983 of Chapter 42 of the United States Code, claiming that the nominating petition deadline in Section 6-158.9 violates their rights under the First and Fourteenth Amendments of the United States Constitution. *Id.* at ¶ 2, ¶ 31. Plaintiffs seek declaratory and injunctive relief prohibiting the Erie County Board of Elections; Jeremy J. Zellner, Commissioner of the Erie County Board of Elections; and Ralph M. Mohr, Commissioner of the Erie County Board of Elections (collectively referred to as "defendants") from continuing to enforce the nominating petition deadline as set forth in Section 6-158.9.[2] *Id.*

[2] Plaintiffs filed this lawsuit on August 30, 2021, a couple of months prior to the November 2021 general election. Dkt. No. 1. At that time, plaintiffs also sought an injunction requiring defendants to place Byron Brown's name on the 2021 general election ballot, as candidate

Legislative History of New York's Petition Deadline for Independent Candidates

There are two avenues by which a candidate for state or local office in New York may have their name appear on the ballot in the general election. *See* N.Y. Elec. Law § 6-134, § 6-138. There is the party-primary process, where potential candidates file a designating petition signed by a fixed number of registered voters belonging to their political party. *Id.* at § 6-110, § 6-118, § 6-134; Dkt. No. 66-3, pgs. 18-19. If more than one party designating petition is filed by a potential candidate, a party nominee is selected via a primary election. *Id.* There is also a process for independent nomination, wherein a candidate may bypass the party primary process and instead seek direct access to the general election ballot by filing an independent nominating petition signed by a fixed number of registered voters. *See* N.Y. Elec. Law § 6-138; Dkt. No. 66-3, pg. 19. Candidates pursuing the independent nominating process may designate an "independent body" to make the nomination, provided the name of the independent body is not confusingly similar to that of an established political party. *Id.* at § 6-138.3. In New York, candidates for office are permitted to both compete in the party primary process as well as to seek one or more independent nominations. *Id.;* Dkt. No. 66-2, ¶¶ 1-2. This system provides candidates an opportunity for their name to appear on the general election ballot as a nominee on multiple ballot lines. Dkt. No. 66-2, ¶¶ 1-2. For example, in 2013, Byron Brown appeared on the general election ballot as a candidate for Mayor of the City of Buffalo as a nominee of the Democratic Party, the Working Families

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for Mayor of the City of Buffalo. *(Id.)* As explained in further detail herein, this portion of plaintiffs' request for relief is now moot.

Party, the Independent Party, and the Conservative Party. *Id.* In 2017, he appeared on the general election ballot as a nominee of the Democratic Party, the Working Families Party, the Independence Party, and the Women's Equality Party. *Id.*

On January 10, 2019, the New York State Assembly (the "Assembly") proposed a bill containing amendments to the Election Law. Dkt. No. 66-2, ¶ 3; Dkt. 66-3, pgs. 9-13. These amendments consisted of a general overhaul of election dates and deadlines intended to bring state law into compliance with the federal Military and Overseas Voter Empowerment ("MOVE") Act and to facilitate, *inter alia*, the timely transmission of ballots to military voters stationed overseas. *Id.* The proposed amendments moved the date for New York state and local primaries from September to the fourth Tuesday in June, to be held at the same time as the federal non-presidential primaries.[3] Dkt. No. 66-2, ¶ 4; Dkt. No. 66-3, pg. 16. The Assembly identified the following benefits with respect to the new, merged primary date: (1) to ensure that military personnel and New Yorkers living abroad would have an opportunity to vote; (2) to eliminate barriers to voter turn-out by reducing the number of primaries, in a given year, that New Yorkers would be asked to participate in; and

[3] In 2012, New York was sued by the federal government because its election timelines did not provide for the transmitting of general election ballots 45 days before the election, as was required for elections for federal office. Dkt. No. 66-2, ¶ 4. An injunction resulting from this lawsuit meant that, beginning in 2012, and until the new amendments were introduced in 2019, New York held two different primaries: a federal non-presidential primary in June and a state and local primary in September. *Id.* The 2019 amendments merged the dates of these primaries to the fourth Tuesday in June, to provide a uniform date for non-presidential federal, state, and local primaries in New York. Dkt. No. 66-3, pg. 16.

(3) to incur a collective cost savings of approximately $25,000,000 for county boards of elections by reducing the number of primary days. Dkt. No. 66-2, ¶ 5; Dkt. No. 66-3, pg. 13.

The proposed amendments also included a change to the deadlines in Section 6-158.9, to provide that independent nominating petitions must be filed no later than 23 weeks before the general election.[4] Dkt. No. 66-3, pg. 11. Thus, the proposed amendment to Section 6-158.9 required candidates for state or local office in New York to file their independent nominating petitions in or around the end of May, at least 28 days before the new, merged primary date of the fourth Tuesday in June. *Id.;* Dkt. No. 25, ¶ 20.

The bill containing the 2019 amendments to the Election Law, including the change to Section 6-158.9 requiring the earlier submission of independent nominating petitions, passed the New York State Assembly by a vote of 120-42 on January 14, 2019, and passed the New York State Senate by a vote of 53-8 the next day. Dkt. No. 66-3, pg. 4; Dkt. No. 66-2, ¶ 6. On January 16, 2019, three members of the New York State Board of Elections, including the Co-Chair, Commissioner, and Co-Executive Director, authored a memorandum recommending that then-Governor of New York State Andrew Cuomo adopt the proposed amendments to the Election Law. Dkt. No. 66-3, pgs. 16-26. The members explained, *inter alia,* that the deadline for filing an independent nominating petition was changed

[4] Prior to this time, Section 6-158.9 required independent nominating petitions to be filed 11 weeks prior to a general election. *See* N.Y. Elec. Law§ 6-158 [former (9)]; N.Y. Elec. Laws 2019, Chap. 5; Dkt. No. 66-3, pg. 56.

in order to "fairly effectuate MOVE Act compliance and enact early voting." *Id.* at pg. 18.

The Board of Elections members further explained that the earlier petition deadline in Section 6-158.9 would provide "political stability" since it would "prevent sore loser candidacies in which an individual loses in a party primary, but then chooses to seek to run in the same election as an independent candidate." *Id.* at pg. 19. The members also explained that requiring independent nominating petitions to be filed before the party primary may, to some extent, discourage party candidates from using the independent nominating process only to seek an extra ballot position. *Id.* Thus, it was the members' belief that the new, earlier petition deadline would "encourage[] independent nominations to be about independent ballot access and not about party candidate sore losers getting on the ballot or [a] party candidate seeking an extra ballot position." *Id.* Moreover, New York is one of only five states which does not have a law prohibiting candidates who have lost in a primary from appearing on the ballot for another party in the general election, commonly referred to as a "sore-loser law." Dkt. No. 66-2, ¶ 18.

The Board of Elections members also noted that an earlier petition deadline would promote a fairer electoral process, since allowing independent candidates to file their petitions at a significantly later date after the major parties' primaries could provide an unfair advantage to independent candidates. Dkt. No. 66-3, pg. 19. Further, the earlier deadline would allow voters to know all ballot candidates around the same time and would avoid giving major party candidates the advantage of campaigning for two months before the nomination of independent candidates. *Id.* The members further advised that the earlier deadline would serve the workflow needs of the

Board of Elections and would promote the Board of Elections' interest in a timely and orderly construction of ballots by helping to ensure that any litigation over the validity of the petitions was settled early. *Id.* at 20. Last, the members remarked that the burdens on independent candidates to file their nominating petitions pursuant to the new deadline would be minimal, in light of: "(1) the proximity to the party candidate petition process; (2) [the] six-week period to collect independent nominating signatures from a larger population of voters than party candidates have available; and (3) the relatively low signature requirement for independent ballot access." *Id.* On January 24, 2019, then-Govenor [sic] Cuomo signed the bill into law. Dkt. No. 66-2, ¶ 11.

Brown's 2021 Mayoral Campaign

In accordance with the 2019 amendments to the New York Election Law, a primary election for various state and local offices, including the office of Mayor of Buffalo, was held on June 22, 2021. Dkt. No. 66-2, ¶ 12. Also in accordance with the 2019 amendments, independent nominating petitions were due by May 25, 2021, pursuant to the revised Section 6-158.9. *Id*. at ¶ 14.

Byron Brown ran in the June 22, 2021 primary, seeking the Democratic Party nomination for the office of Mayor of the City of Buffalo.[5] *Id.* at ¶ 12; Dkt. No. 68-2, ¶ 6. Brown was defeated in the primary election by India B. Walton.[6] *Id.* On June 28, 2021, Brown announced his write-in candidacy for Mayor of the City of Buffalo. Dkt. No. 66-2,

[5] As noted previously, Brown was the current Mayor of the City of Buffalo at the time of the June 22, 2021 primary and was the incumbent candidate.

[6] Walton was previously granted intervenor status in this lawsuit but has since been dismissed from the case. Dkt. Nos. 16, 58.

¶ 20; Dkt. No. 68-2, ¶¶ 6-7. On August 17, 2021, almost two months after losing the primary election, Brown filed an independent nominating petition with the Erie County Board of Elections, seeking to appear on the general election ballot as an independent candidate for Mayor of the City of Buffalo. Dkt. No. 66-2, ¶ 13; Dkt. No. 68-2, ¶¶ 8-9. Plaintiffs, among others, signed Brown's independent nominating petition and wanted Brown's name to appear general election ballot. Dkt. No. 25, ¶¶ 7-11. However, because Brown's independent nominating petition was filed 84 days after the new petition deadline of May 25, 2021, it was deemed untimely pursuant to Section 6-158.9 and the Board of Elections rejected Brown's petition. Dkt. No. 66-2, ¶ 14; Dkt. No. 68-2, ¶ 11.

State and Federal Injunction Requests

Plaintiffs filed the instant lawsuit on August 30, 2021. Dkt. No. 1. They also moved for a temporary restraining order prohibiting defendants from enforcing Section 6-158.9 and requiring defendants to place Brown's name on the general election ballot as an independent candidate for Mayor of the City of Buffalo. Dkt. No. 2. District Judge John L. Sinatra, Jr. held a hearing on September 3, 2021, at which time he (1) granted plaintiffs' request for a temporary restraining order; (2) converted the order to a preliminary injunction at the request of the parties; and (3) enjoined defendants from refusing to place Brown's name on the 2021 general election ballot. Dkt. Nos. 26, 28. Defendants then appealed Judge Sinatra's granting of the preliminary injunction to the Second Circuit Court of Appeals. Dkt. No. 32.

Around this same time, Byron Brown filed a petition in New York State Supreme Court, Erie County, against the Erie County Board of Elections and others, seeking to

validate his independent nominating petition and asserting that Section 6-158.9 was unconstitutional. *See Matter of Brown v. Erie County Bd. of Elections*, 197 A.D.3d 1503, 1504 (4th Dept. 2021) (discussing prior history). On September 7, 2021, New York State Supreme Court Judge Paul Wojtaszek granted Brown's petition and declared that Section 6-158.9 was unconstitutional in that the "deadline to file independent nominating petitions was excessively early." *Id.* Judge Wojtaszek further ordered that Brown's name was to appear on the general election ballot of November 2, 2021, as an independent candidate for Mayor of the City of Buffalo. *Id.* Defendants in the state lawsuit appealed Judge Wojtaszek's ruling to the New York State Appellate Division, Fourth Department. *Id.*

Rulings on Appeal by the Second Circuit and Fourth Department

On September 16, 2021, the Second Circuit Court of Appeals issued a stay pending appeal of Judge Sinatra's preliminary injunction requiring Brown's name be placed on the general election ballot. Dkt. No. 45. The Second Circuit did not address the constitutionality of the independent nominating petition deadline imposed by Section 6-158.9 at the time it issued the stay of the preliminary injunction, nor did the Second Circuit otherwise discuss the merits of plaintiffs' lawsuit. *Id.*

Also on September 16, 2021, the Fourth Department issued a decision vacating the New York State Supreme Court's order requiring the Erie County Board of Elections to place Brown's name on the general election ballot. *Brown*, 197 A.D.3d at 1504. The Fourth Department concluded that Section 6-158.9, as applied to Brown's candidacy and petition, was constitutional, since a "reasonably diligent candidate" could be expected to meet

the petition deadline and the deadline did not unfairly discriminate against independent candidates. *Id.* at 1506. The Fourth Department also noted that the constitutional challenge arose in the context of a local election which did not implicate national interests and that Brown was "far from the archetypal independent candidate" whose interests needed the protection sought in the lawsuit. *Id.* To that end, the Fourth Department noted that Brown "has been in elective office for the last 25 years, has served four terms as Mayor of the City of Buffalo, and first choose to participate in the Democratic primary in lieu of filing a timely independent nominating petition." *Id.* The Fourth Department reasoned that "states are constitutionally permitted to preclude candidates who lose one primary election from subsequently running on another ballot line." *Id.* Finally, the Fourth Department noted that several legitimate state interests were justified by the earlier deadline in Section 6-158.9, including ensuring the integrity and reliability of the electoral process; promoting political stability; and upholding the state's duty to meet federal deadlines with respect to the mailing of overseas and military ballots. *Id.* at 1507.

No appeal was filed from either the Second Circuit's order staying the preliminary injunction or the Fourth Department's dismissal of Brown's petition and lawsuit. Brown's name did not appear on the ballot in the November 2, 2021 general election. Dkt. No. 66- 2, ¶ 15.

Brown Wins Re-Election

On November 2, 2021, following a successful campaign as a write-in candidate, Brown won the general election and was re-elected to the office of Mayor of the City of Buffalo. Dkt. No. 66-2, ¶ 16. He is currently serving his fifth term as Mayor of Buffalo. Dkt. No. 68-2, ¶ 2.

Continuation of the Present Lawsuit and Motion for Summary Judgment

As a result of Brown's victory in the general election, defendants' appeal of the District Court's preliminary injunction requiring Brown's name to appear on the general election ballot was rendered moot. Dkt. No. 53. Thus, the Second Circuit vacated its order staying Judge Sinatra's preliminary injunction and remanded the case back to this Court. *Id.* Presently, the only remaining claim in this lawsuit is plaintiffs' challenge to the constitutionality of the independent nominating petition deadline in Section 6-158.9. Dkt. No. 25.

On April 20, 2022, the District Court referred the case to the undersigned for the handling of all pre-trial matters and to hear and report on dispositive motions. Dkt. Nos. 63, 69. This Court entered a Case Management Order which included deadlines for conducting discovery and filing dispositive motions. Dkt. No. 65. On December 1, 2022, defendants filed the instant motion for summary judgment. Dkt. No. 66. After the filing of responses and replies, the parties consented to have the undersigned render a final judgment on the motion. Dkt. Nos. 68, 70, 71. The Court heard oral argument on January 31, 2023, at the conclusion of which it requested additional briefing, including on the issues of standing and mootness. Dkt. No. 72. Additional responses and replies were submitted by both parties. Dkt. Nos. 76-79.

Winger Expert Report

In support of their motion, plaintiffs have produced an expert report by Richard Winger, an advocate for ballot access for independent and minor party candidates. Dkt. No. 66-3, pgs. 39-40, 53-74. Winger opposed the portion of the 2019 amendments to the New York Election Law

which included the earlier independent nominating petition deadline in Section 6-158.9. *Id.* Winger has a B.A. in political science; has conducted research on ballot access laws in all 50 states; and has testified as an expert in state and federal courts regarding ballot access issues. *Id.* at pgs. 54-55. Winger also publishes a monthly newsletter, *Ballot Access News*, which covers "the legal, legislative, and political developments of interest to third party and independent candidates." *Id.*

Winger submits that he has analyzed the independent nominating petition deadline in Section 6-158.9 and has concluded that: (1) it is discriminatory because it "weighs more heavily" on independent candidates as well as the voters who support them; (2) it imposes a severe burden on independent candidates and the voters who support them because it prevents candidacies that arise from genuine dissatisfaction with major party candidates and the positions of the major political parties; and (3) it imposes a severe burden on independent candidates and the voters who support them because "it requires them to gather signatures at a time when the populace is not politically engaged and the opportunities for public interaction are fewer." *Id.*

Winger provides a legislative history of New York's petition deadline for independent candidates and how that deadline has changed over the years, culminating in the 2019 amendment to Section 6-158.9 that requires independent nominating petitions to be filed in late May. *Id.* at 55-57. Winger submits that because the current petition deadline is now 28 days before the state, local and non-presidential primary date in New York, it precludes new candidates from arising in response to "late-emerging issues, shifts in the positions supported by the major parties, or major party nominees whose views lie outside

the political mainstream." *Id.* at pg. 61. Winger also opines that the early deadline makes it more difficult for independent candidates to gather signatures, since they are "forced to organize their petitioning efforts in the winter or very early spring, when the general election is quite remote and interest is low." *Id.* at 68.

Winger's expert report does not explain or discuss any specific burden the earlier petition deadline imposed on Brown, plaintiffs, or any other Brown supporters with respect to the 2021 mayoral election. Dkt. No. 66-3, pgs. 53-74. During Wingers' deposition, he was asked what information he used to analyze the scope of the burdens discussed in his expert report. Dkt. No. 66-3, pgs. 98-99. Winger replied that he relied on his knowledge of the history of the minor parties and independent candidacies. *Id.* Winger admitted that, in opining about the general burdens of the petition deadline in Section 6-158.9, he did not research the specific burdens imposed on either Brown supporters in 2021 or the plaintiffs in this case. *Id.*

Brown Affidavit

In response to defendants' motion for summary judgment, plaintiffs submitted an affidavit by Byron Brown. Dkt. No. 68-2, pgs. 4-8. Therein, Brown states that he is the current Mayor of the City of the Buffalo and that he has served in this position since 2006. *Id.* at ¶ 2. Brown also served as the chair of the New York Democratic Party from May 2016 through January 2019. *Id.* at ¶ 4. Brown states that he sought re-election as the Democratic Party nominee for mayor in 2021, but was defeated in the primary. *Id.* at ¶ 6. Brown explains that after his defeat, he launched a write-in campaign and his supporters gathered signatures of eligible voters in an effort to nominate him as an independent candidate for mayor. *Id.* at ¶¶ 8-9. Brown states that his nominating petition was filed with

the Erie County Board of Elections on August 17, 2021, but was rejected as untimely because it had not been filed by the May 25, 2021 deadline pursuant to Section 6-158.9. *Id.* at ¶¶ 9-11.

Brown contends that the petition deadline imposed a severe burden on him and his supporters. *Id.* at ¶ 12. Brown states that he was defeated by a "little known far-left candidate" in the primary, whose views were "far out of step with the mainstream." *Id.* at ¶ 14. Moreover, because the early petition deadline prevented any independent candidates from entering the mayoral race after the primary results were known, Brown and his supporters were going to be "left with no other choices on the general election ballot." *Id.* Brown states that it was then, at the urging of his supporters, that he pursued a write-in campaign. *Id.* Brown states that a write-in campaign is far more expensive and difficult than a campaign with ballot access. *Id.* at ¶¶ 16-21. Brown estimates that his 2021 write-in campaign cost him $1.5 million more than he would have spent had his name been on the general election ballot and that it took him a year to pay off the debt he incurred for these additional expenses. *Id.* Brown indicates that the write-in candidacy took approximately 13,000 more volunteer hours than would have been needed for a normal campaign with ballot access. *Id.* at ¶¶ 19-20. Brown avers that he was able to win in light of incumbency, name recognition, experience, and a memorable campaign slogan. *Id.* at ¶ 21. He states that any other candidate would have been unlikely to accomplish this same feat. *Id.*[7]

[7] The Court notes that Brown's affidavit is dated December 16, 2022, and therefore it was obtained well after the November 1, 2022 deadline for the close of fact discovery. Dkt. Nos. 65, 68-2. Plaintiffs argue that the affidavit should be considered timely because

DISCUSSION

The Court's Jurisdiction

During oral argument, the Court raised the issues of standing and mootness. Specifically, the Court questioned whether, in light of the fact that the 2021 general election has already taken place and plaintiffs were able to vote for Brown by writing-in his name on the ballot, plaintiffs have standing to bring the instant lawsuit. The Court also questioned whether the claims raised in the complaint are now moot, since Brown won the 2021 general election and is currently the Mayor of the City of Buffalo. The parties agreed, both during oral argument and in their supplemental submissions to the Court, that plaintiffs have standing to continue to pursue this lawsuit and that the issues remaining in the case are not moot.

Despite the fact that standing and mootness are not disputed by the litigants, this Court has an independent and continuing obligation to examine its own jurisdiction. *See* Fed. R. Civ. P. 12(h)(3); *Fox v. Bd. of Trustees of the State Univ. of New York*, 42 F.3d 135, 140 (2d Cir. 1994). Thus, before turning to the merits of the controversy, the

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defendants "chose not to depose Brown even though he was identified as a witness in their initial disclosures." Dkt. No. 68, pgs. 8-9. Plaintiffs' argument is without merit. It is not defendants' burden to obtain evidence in opposition to their own summary judgment motion. Moreover, if plaintiffs believed that Brown had evidence or personal knowledge that either supported their position or created a genuine issue of material fact, it was their responsibility to depose him or obtain his affidavit during the discovery period. Thus, Brown's declaration is untimely. However, defendants do not object to the Court's consideration of the affidavit. Because there is no objection by defendants, and because the information contained in the affidavit does not change the outcome of the Court's decision in this case, the Court has considered Brown's affidavit despite its untimeliness.

Court will consider the threshold issues of standing and mootness.

Standing

In order to establish standing, "a plaintiff must show (1) [he or she] has suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOG), Inc.*, 528 U.S. 167 (2000). The Supreme Court has further explained that standing need not be maintained throughout all stages of a lawsuit, and is instead assessed under the facts existing when the complaint is filed. *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 69 (1987); *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 569 (1992). *See Smith v. Sperling,* 354 U.S. 91, 93 n. 1 (1957) ("[J]urisdiction is tested by the facts as they existed when the action [was] brought" and "cannot be ousted by subsequent events.").

Courts have held that registered voters suffer a cognizable injury sufficient to confer standing when ballot access laws operate to deny them the opportunity to vote for their candidate of choice. For example, in *Graveline v. Benson,* plaintiff voters submitted evidence that Michigan's election laws governing ballot access for independent candidates had the effect of excluding their preferred candidate from the ballot, and therefore prevented them from voting for their candidate of choice. 992 F.3d 524 (6th Cir. 2021). The Sixth Circuit rejected the argument that since a preliminary injunction had been granted requiring their preferred candidate's name to appear on the ballot, plaintiffs could not show an actual or

imminent injury. *Id.* at 531-32. The Sixth Circuit instead concluded that plaintiffs had standing to maintain the lawsuit since, at the time the complaint was filed, they "plainly allege[d] a concrete injury in fact that they traced back to Michigan's ballot access laws for independent candidates." *Id. See also Anderson v. Celebrezze,* 460 U.S. 780 (1983) (permitting voters to challenge Ohio election law where early deadline for independent nominations restricted their preferred candidate's access to the ballot); *McLain v. Meier,* 851 F.2d 1045 (8th Cir. 1988) (plaintiff sufficiently alleged an injury as a voter where challenged ballot access laws would "restrict his ability to vote for the candidate of his choice or dilute the effect of his vote if his chosen candidate were not fairly presented to the voting public"); *Kelly v. McCulloch,* 405 Fed. Appx. 218, 219 (9th Cir. 2010) ("Candidate eligibility requirements implicate basic constitutional rights of voters as well as those of candidates.").

Courts in this Circuit had reached similar conclusions. In *Lerman v. Board of Elections,* the Second Circuit held that a plaintiff had standing to challenge a requirement that all witnesses to ballot access petitions be residents of the political subdivision where the election was to take place, since "[t]he injury-in-fact [plaintiff] alleges concerns the very process of engaging in political activity in support of [her preferred candidate's] candidacy, and that injury is sufficient to confer standing under Article III." 232 F.3d 135 (2d Cir. 2000). *See also Gottlieb v. Lamont,* 3:20-CV-00623, 2022 U.S. Dist. LEXIS 22063 (D. Conn. Feb. 8, 2022) (plaintiffs had standing to challenge the constitutionality of certain ballot access provisions in New York where "all three plaintiffs have alleged injuries from their inability to vote for their preferred candidate"); *Yang v. Kellner,* 458 F. Supp. 3d 199 (S.D.N.Y. 2020) (denying

voters an opportunity to cast ballots for an individual who represented their political views constituted an "actual, concrete and particularized injury.").

Here, at the time the complaint was filed, plaintiffs sufficiently alleged an injury-in-fact traceable to the petition deadline in Section 6-185.9. Specifically, plaintiffs alleged that they are registered voters living in the City of Buffalo and that they were prevented from having Brown, their candidate of choice, appear on the 2021 general election ballot for mayoral office.[8] Also, when the complaint was filed in August 2021, the alleged injury would have been redressed by having the petition deadline declared unconstitutional, such that Brown's independent nominating petition would have been accepted by the Erie County Board of Elections and Brown's name would have appeared on the general election ballot in November 2021. Thus, plaintiffs have standing to claim that Section 6-158.9 unjustly denied them and other voters the right to cast a ballot for Brown in the 2021 general election.

Mootness

The mootness doctrine is derived from Article III of the Constitution, which provides that federal courts may decide only live cases or controversies. *See Irish Lesbian and Gay Org. v. Giuliani,* 143 F.3d 638, 647 (2d Cir. 1998). Unlike standing, which a plaintiff does not have to maintain throughout the entire litigation, a case may be rendered moot at any stage of the litigation. *See Libertarian Party of Ohio v. Blackwell,* 462 F.3d 579, 584

[8] While it is true that plaintiffs were able to vote for Brown in the 2021 election through write-in votes, the Supreme Court has clarified that a write-in procedure is not an adequate substitute for having a candidate's name printed on the ballot. *See Anderson,* 460 U.S. at 780, n. 26.

(6th Cir. 2006). *See also Thompson v. Carter,* 284 F.3d 411, 415 (2d Cir. 2002) (a live or actual controversy must exist throughout the case, not just at the time a complaint is filed). "A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Freedom Party of New York v. New York State Board of Elections,* 77 F.3d 660, 662 (2d Cir. 1996); *quoting New York City Employees' Retirement Sys. v. Dole Food Co.*, 969 F.2d 1430, 1433 (2d Cir. 1992).

The mootness doctrine is subject to an exception, however, if the underlying dispute is "capable of repetition, yet evading review." *See Irish Lesbian and Gay Org.,* 143 F.3d at 647. Challenges to election laws are one of the categories of cases which courts will often find fit into this exception to the mootness doctrine. Indeed, the Supreme Court has categorized voter challenges to the constitutionality of state candidate eligibility statues as issues "capable of repetition, yet evading review." *Ostrom v. O'Hare,* 160 F. Supp. 2d 486, 492 (E.D.N.Y. 2001); *Storer v. Brown,* 415 U.S. 724, 737 n.8 (1974) (noting that the "capable of repetition, yet evading review" doctrine, in the context of election cases, is appropriate when there are "as applied" challenges as well as in the more typical case involving only facial attacks). As a result, many such cases are not deemed moot, and voters are permitted to challenge the relevant statutes, even where the election has already come and gone and the deadlines are no longer an issue. *Ostrom,* 160 F. Supp. 2d at 492. *See also Anderson,* 460 U.S. at 784 n. 3 (1983) (reviewing constitutionality of Ohio deadlines for registration of independent candidates over two years after the election). A challenge to an election law is capable of repetition, yet evading review, where the following two criteria are met: "(1) the challenged action [is] in its duration too short to be

fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again." *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975).

The instant scenario easily passes the first prong of the analysis. Plaintiffs' objection to the rejection of Brown's independent nominating petition as a result of the deadline in Section 6-158.9 was too short to be fully litigated prior to when the election occurred and the controversy over whether Brown's name was to appear on the general election ballot expired. Indeed, the complaint was filed on August 30, 2021, less than three months before the general election was scheduled to take place. *See Lawrence v. Blackwell*, 430 F.3d 368, 371 (6th Cir. 2005) ("Challenges to election laws are one of the quintessential categories of cases which usually fit this prong because litigation has only a few months before the remedy sought is rendered impossible by the outcome of the relevant election."); *Credico v. New York State Board of Election*, 10 CV 4555, 2013 U.S. Dist. LEXIS 109737 (E.D.N.Y. June 19, 2013) (finding that "[l]egal disputes involving election laws almost always take more time to resolve than the election cycle permits") (internal citations omitted).

The second prong of analysis requires more detailed consideration. *Lerman v. Board of Elections in the City of New York* involved a challenge to New York's election law requirement that witnesses to designating petitions must be residents of the political subdivision in which the election was to be held. 232 F.3d 135, 141 (2d Cir. 2000). Plaintiffs, consisting of the candidate effected [sic] by the requirements and individuals both inside and outside the relevant district who witnessed the petitions, argued that the law's residency requirement violated their First Amendment rights. *Id.* Prior to addressing the merits of

the constitutional challenge, the Second Circuit dismissed defendants' argument that the case was moot since the primary election was over, having taken place without the candidate-in-question's name on the ballot. *Id.* The Second Circuit found that "there [was] a reasonable expectation that the same complaining parties would be subject to that same action in the future" and therefore plaintiffs' claims fell within the exception to the mootness doctrine for issues capable of repetition, yet evading review. *Id.* at 141. Likewise, in *Van Wie v. Pataki,* the Second Circuit reaffirmed that, in order for the second prong of the exception to the mootness doctrine to apply in election cases, "there must be a reasonable expectation that the *same* complaining party would encounter the challenged action in the future." 267 F.3d 109, 114 (2d Cir. 2001). The *Van Wie* Court further cautioned, however, that "mere speculation that the parties will be involved in the same dispute over the same issues does not rise to the level of a reasonable expectation of demonstrated probability of reoccurrence." *Id.*

Here, the Court finds that the facts alleged in the complaint provide a reasonable expectation, as opposed to mere speculation, that plaintiffs would encounter the same challenge in future elections. Plaintiffs are registered voters who claim that the petition deadline in Section 6-158.9 prevented them having their preferred candidate appear on the 2021 general election ballot. There is a reasonable expectation that, at some point in the future, plaintiffs would again seek to vote for or support a candidate who either (1) loses in the primary election and then attempts to file an independent nominating petition in order to appear on the ballot; or (2) decides to seek an independent nomination to appear on the ballot after the primary election has already taken place. As long as the

present petition deadline remains in effect, which requires independent nominating petitions to be filed 28 days before the state and local primary, these types of candidates will be precluded from appearing on the general election ballot. Thus, plaintiff voters will continue to be subject to Section 6-158.9 and there is reason to believe that the deadlines contained therein will continue to have an effect on plaintiffs' choice of independent candidates appearing on the general election ballot. *See Moore v. Ogilvie,* 394 U.S. 814, 816 (1969) (finding the controversy not moot, even though the election was over, because the burden imposed by the challenged election law, which required a certain number of petition signatures from a certain number of counties in each state, "remains [in effect] and controls future elections."); *Credico,* 2013 U.S. Dist. LEXIS 109737 (because the New York State Election Law requiring certain candidates for office nominated by more than one independent body to list their name on the ballot only once would continue to be enforced in future elections, there was "every reason to expect the same parties to generate a similar, future controversy subject to identical time constraints") (internal citations omitted); *Parish v. Kosinski,* 5-17-CV-344, 2017 U.S. Dist. LEXIS 232844 (N.D.N.Y. May 2, 2017) (Where a reasonable expectation existed that plaintiffs will "again find themselves faced with the prospect of wishing to engage in petition circulation activity in the Villages of North Syracuse and Liverpool, but [would be] chilled from doing so in view of the witness residence requirement," their challenge to the section of the election law governing party designating petitions was capable of repetition yet evading review.).

For these reasons, the Court finds that the controversy here is not moot because it is capable of repetition yet evading review.

Merits of the Dispute

Applicable Legal Standards

A party moving for summary judgment has the burden of establishing that no genuine issue of material fact is in dispute and that the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.,*477 U.S. 242, 256 (1986); *New York Marine & Gen. Ins. Co. v. Lafarge N. Am., Inc.,* 599 F.3d 102, 114 (2d Cir. 2010). Further, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion for summary judgment. *Wachovia Bank, Nat. Ass'n v. VCG Special Opportunities Master Fund., Ltd.,* 661 F.3d 164, 171 (2d Cir. 2011). Once the moving party discharges its burden of proof, the party opposing summary judgment has the burden of setting forth "specific facts showing that there is a genuine issue for trial," wherein "a reasonable jury could return a verdict for the non-moving party." *Liberty Lobby, Inc.,* 477 U.S. at 248. A party opposing a properly supported motion for summary judgment "may not rest upon the mere allegations or denials of his pleading." *Id.* Indeed, "the mere existence of some alleged factual dispute between the parties" alone will not defeat a properly supported motion for summary judgment. *Id.* at 247-48.

States retain the power to regulate their own elections. *Burdick v. Takushi,* 504 U.S. 428, 433 (1992). To that end, states are permitted to "enact reasonable regulations of the parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons v. Twin Cities*

Area New Party, 520 U.S. 351, 358 (1997). The Supreme Court has recognized that unduly restrictive state election laws may "so impinge upon freedom of association as to run afoul of the First and Fourteenth Amendments." *Gottlieb v. Lamont,* 465 F. Supp. 3d 41, 47 (Dist. Conn. 2020); *accord Kusper v. Pontikes,* 414 U.S. 51, 57 (1973). However, "the mere fact that a State's system creates barriers tending to limit the field of candidates from which voters might choose does not itself compel close scrutiny." *Burdick,* 504 U.S. at 433. Thus, federal courts have eschewed applying a uniform strict scrutiny analysis in every constitutional challenge to a voting regulation or candidate-qualification requirement. *Sam Party of N.Y. v. Kosinski,* 987 F.3d 267, 274 (2d Cir. 2021). Instead, the degree of scrutiny used to analyze the constitutionally [sic] of a state election regulation depends on the severity of the regulation's burden on the constitutional rights of candidates and their supporters. *Id.; Anderson,* 460 U.S. at 789. If the burden is severe, then strict scrutiny applies and the law "must be narrowly drawn to advance state interest of compelling importance." *Burdick,* 504 U.S. at 434, *Kosinski,* 987 F.3d at 274. A provision imposing "only reasonable, nondiscretionary restrictions," however, can be justified by a state's "important regulatory interests" and is subject to review that is "quite deferential" and requires "no elaborate, empirical verification." *Burdick,* 504 U.S. at 434; *Kosinski,* 987 F.3d 267. "State statutes, like federal ones, are entitled to the presumption of constitutionality." *Davies v. Warehouse Co. v. Bowles,* 321 U.S. 144, 153 (1944). Thus, plaintiffs here have the burden to prove that the state election law they challenge violates the well-recognized "presumption of constitutionality." *Id.*

For the following reasons, the Court finds that the material, undisputed facts in the record prove: (1) the

petition deadline in Section 6-158.9 does not impose a severe burden and (2) any burden imposed by the deadline is justified by New York's important regulatory interests.

The petition deadline does not impose a severe burden.

"[T]he hallmark of a severe burden is exclusion or virtual exclusion from the ballot." *Libertarian Party of Connecticut v. Lamont,* 977 F.3d 173, 177 (6th Cir. 2020). The crux of this inquiry is whether a "reasonably diligent candidate could be expected to be able to meet the requirements to gain a place on the ballot." *Id.* at 178. Courts consider the "burden imposed by the challenged regulation... not... in isolation, but within the context of the state's overall scheme of election regulations." Lerman, 232 F.3d at 145.

The petition deadline in Section 6-158.9 neither excludes, nor virtually excludes, independent candidates from having access to the general election ballot. Instead, candidates seeking an independent nomination for state or local office in 2021 could have obtained ballot access by collecting the requisite number of signatures starting on April 13, 2021, and by filing their nominating petition no later than May 25, 2021. *See* N.Y. Election Law §§ 6-138, 6-158.9; *Brown*, 197 A.D.3d 1505.

Contrary to plaintiffs' position here, the deadline for submitting an independent nominating petition does not impose a discriminatory burden that weighs more heavily on independent candidates. Major party candidates are required to declare their involvement in the party primary process, by filing their own designating petitions, approximately two months before independent candidates must declare their intent to run by filing an independent nominating petition. *See* N.Y. Election Law §§ 6-158.1, 8-100.1(a); *Brown*, 197 A.D.3d 1504. "Indeed, major party

candidates have the additional burden of declaring their candidacies sixty days before independent and minor party candidates must file their signature petitions...and [sic] independent and major party candidates thus are in roughly comparable positions." *See Swanson v. Worley*, 490 F.3d 894 (11th Cir. 2007). Further, independent candidates in New York are given six weeks to collect the necessary signatures, while major party candidates are afforded only three weeks. *Brown*, 197 A.D.3d at 1505-06. Finally, independent candidates have the ability to collect signatures from a larger population of voters than major party candidates have available. *Id.* (explaining that an independent nominating petition for office of Mayor of Buffalo must include 750 signatures from registered voters of any party affiliation, while a candidate for a party designation for that office must collect 600 signatures specifically from the enrolled voters of that party).

Plaintiffs contend that the May petition deadline is burdensome because it forces independent candidates to gather signatures at a time when the voting public is less engaged, and before the summer months when the opportunity for public interaction is higher. However, the independent nominating petition deadline occurs in close proximity to the major party candidate designation process, 28 days before the primary election, and in the spring. Thus, it is likely that the voting public would be relatively engaged and interested during the period of time that independent candidates are seeking petition signatures for state or local office in New York. The Court therefore finds, in light of New York's Election Law scheme as a whole, that a reasonably diligent candidate could be expected to meet Section 6-158.9's requirement

for independent candidates to file timely a nominating petition. *See Brown,* 197 A.D.3d at 1505-07.[9]

Richard Winger, plaintiffs' expert, opines that a petition deadline of 28 days before the party primary imposes a severe burden because it prevents independent candidacies from arising in response to late-emerging issues, shifts in the positions of major parties, or dissatisfaction with major party nominees. Plaintiffs therefore argue that the petition deadline "effectively cuts off the opportunity for [independent] candidacies to develop at a time that pre-dates the period during which the reasons for their emergence are most likely to occur." Dkt. No. 79, pg. 3. The Court disagrees. As explained above, independent candidates are not required to file their nominating petitions until two months after those individuals seeking major party nominations have filed their designating petitions. Thus, independent candidates have an opportunity to decide whether to enter a race after they learn who is competing in the party primaries. At that time, potential independent candidates would presumably have an understanding as to the field of likely major party nominees and their positions, even though the primary

[9] The Court recognizes that it is not bound by the Fourth Department's decision in *Brown* declaring that Section 6-158.9 is constitutional. However, the Court does find the Fourth's Department decision in *Brown* to be logical, well-supported by case law, and well-reasoned, and the Court has considered it as persuasive authority here. *See Industrial Consultants, Inc. v. H.S. Equities,* 646 F.2d 746, 749 (2d Cir. 1981) (recognizing that district courts are "not bound to adopt the [state] court's interpretation of federal constitutional principles, even as applied to [state] statutes," but that state court decisions on these issues are persuasive authority).

election would not have occurred, and could base their decision to run accordingly.[10]

Furthermore, independent candidates are not entitled to know for certain the identities of major party nominees or their positions before declaring their own intent to run for office. To that end, federal courts have upheld a number of ballot access laws which, like the petition deadline at issue here, required independent candidates to file their nominating petitions before the nominees of the major parties were known or selected. For example, in *Lawrence v. Blackwell*, the Sixth Circuit upheld an Ohio law which required an individual interested in becoming an independent congressional candidate in the general election to file both a statement of candidacy and a nominating petition by 4:00 p.m. on the day before the primary election. 430 F.3d 368 (6th Cir. 2005). The Sixth Circuit rejected plaintiffs' argument that the early filing deadline imposed a severe burden on the constitutional rights of independent candidates since "independents often do not decide to run until after the deadline has passed." *Id.* The *Lawrence* Court recognized that "[t]hough an earlier deadline does impose more of a burden than a later deadline, the Supreme Court has held

[10] The Court also notes that failure to file a nominating petition in accordance with Section 6-158.9 does not bar an independent candidate from running for office. Indeed, an independent candidate or minor party candidate who decides to run for office after learning the results of a major party primary may still pursue a write-in campaign. Admittedly, a write-in campaign is more difficult and likely has less chance of success than a campaign with ballot access. However, it cannot be said that such a strategy is impossible. In fact, it is exactly what happened here, when Brown ran a successful write-in campaign in 2021 for Mayor of the City of Buffalo, after he and his supporters were dissatisfied with the results of the Democratic Party primary.

that little weight is given to 'the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status'." *Id.; quoting Storer v. Brown,* 415 U.S. 724, 736 (1974). The Sixth Circuit also held, and the Court finds especially applicable here, that "there is nothing in the case law which suggests that a state is required to give independent candidates the advantage of jumping into a race in response to late-breaking events which impact the political landscape when major parties do not have the same flexibility." *Lawrence,* 430 F.3d at 374.

Other federal courts have reached similar conclusions based on the same reasoning. *See e.g., Swanson,* 490 F.3d 894 (upholding constitutionality of Alabama election law which required independent candidates seeking ballot access to submit a petition by the first primary election date); *Wood v. Meadows,* 207 F.3d 708 (4th Cir. 2000) (rejecting independent candidate's argument that Virginia's petition deadline, which was the same day as the primary election, was unconstitutional because it limited the ability of independent candidates to react to events after the primary elections); *Council of Alternative Political Parties v. Hooks,* 179 F.3d 64 (3d Cir. 1999) (upholding constitutionality of New Jersey law that required independent nominating petitions to be filed the same day as the primary and "reject[ing] the plaintiffs' claim that they are constitutionally entitled to file their nominating petitions after the major party candidates are chosen so that they can recruit and nominate candidates who capitalize on disaffection with the major political parties' nominees.").[11] For these reasons, the Court finds

[11] Other courts have upheld petition deadlines for independent candidates that were even earlier than the deadline at issue here. In *McLain v. Meier,* the Eighth Circuit upheld a North Dakota statute

that Winger's expert report fails to create a triable issue of fact as to the severity of the burden imposed by Section 6-158.9's petition deadline.

Plaintiffs fare no better with their argument that the petition deadline in Section 6-158.9 imposed a severe burden on Brown and his supporters, with respect to Brown's ability to appear on the 2021 general election ballot as an independent candidate for Mayor of the City of Buffalo. Brown's affidavit reflects that he did not attempt to run as an independent candidate until *after* losing in the Democratic Party primary election. In fact, Brown's independent nominating petition was not filed until August 17, 2021, approximately two months after his primary loss and almost three months after the petition deadline had expired. Thus, the record shows that Brown and his supporters never even tried to timely comply with the petition deadline. In fact, Brown admits as much when he states that he did not launch a write-in campaign or pursue an independent route to the ballot until after he lost in the primary and his supporters were dissatisfied with the party nominee. Indeed, Brown offers no reason as

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which required third parties to submit nominating signatures at least fifty-five days before the primary election. 851 F. 2d 1045 [sic] (8th Cir. 1988). The *McLain* Court determined that the deadline advanced important state interests including, like here, the rescheduling of the state primary election from September to June. *Id.* at 1049. *See also Libertarian Party of Washington v. Munro,* 31 F.3d 759 (9th Cir. 1994) (upholding a Washington state election procedure that effectively required minor party candidates to announce their candidacies four to five weeks earlier than major party candidates and finding that collecting a relatively small number of signatures just four to five weeks before the selection of major-party candidates was not particularly difficult); *Stevenson v. State Bd. of Elections,* 638 F. Supp. 547 (N.D. Ill. 1986); *aff'd* 794 F.2d 1176 (7th Cir. 1986) (filing deadline of between 92 and 99 days prior to the date of the primary elections for independent candidates was not unconstitutional).

to why his timely compliance with the independent nominating petition deadline would have been unduly burdensome, had he timely sought an independent nomination rather than electing only to run in the primary as a major party candidate.[12]

Brown's affidavit goes on to describe the various logistical and financial challenges he faced in running a write-in campaign. But these alleged burdens have nothing to do with Brown's ability to comply with the petition deadline in Section 6-158.9. Brown seems to claim that he was burdened because after losing in the primary, the deadlines in Section 6-158.9 prevented him from then appearing on the ballot as an independent candidate. But this scenario neither infringes on Brown's constitutional rights nor proves that Section 6-158.9 imposes an undue burden on independent candidates by requiring them to file nominating petitions before knowing the results of a party primary. In fact, the Supreme Court has made clear that states are permitted to enact "sore-loser" laws in order to expressly prohibit a candidate, like Brown, who loses in the primary, from then seeking to run in the same election as an independent or minor party candidate. *See Storer*, 415 U.S. at 735-36 (upholding the constitutionality of sore-loser laws); *Backus v. Spears*, 677 F.2d 397, 399-400 (4th Cir. 1982) ("South Carolina certainly has the power, as a permissible adjunct to promoting orderly

[12] As explained previously, New York Election Law would not have precluded Brown, in 2021, from both running in the party primary and, at the same time, obtaining the requisite number of signatures to timely file an independent nominating petition under Section 6-158.9. In fact, Brown had proceeded on such dual tracks in previous elections, where he appeared on the ballot both as the Democratic Party nominee for mayor and as the nominee of various independent groups. However, Brown chose not to pursue any independent nominations in 2021, prior to running in a major party primary.

primary elections, to forbid petition candidacies by persons who have been defeated in party primaries."). In sum, Brown's affidavit offers no evidentiary support for plaintiffs' position that the petition deadline in Section 6-158.9 imposed a discriminatory or undue burden on independent candidates and their supporters in general, or that it is imposed an undue burden on Brown and plaintiffs specifically.

Plaintiffs also rely heavily on *Anderson v. Celebrezze,* where the Supreme Court invalidated an Ohio statute that required independent candidates seeking a place on the November general election ballot to file a nominating petition 75 days before the primary election. 460 U.S. 780 (1983). However, the Court finds that *Anderson* is materially different from the facts presented here. First, *Anderson* involved a presidential election, and the Supreme Court specifically noted that "the State has a less important interest in regulating Presidential elections than statewide or local elections[.]" *Id.* at 795. This lawsuit arises in the context of a local mayoral election. *See Council of Alternative Political Parties,* 179 F.3d at 73 (noting that a court "cannot mechanically adopt the outcome" from *Anderson* because "the State's interest is appreciably greater" in regulating "state and local elections, rather than the national presidential election.").

Second, the *Anderson* Court found that Ohio's early filing deadline placed independent candidates at a distinct disadvantage by forcing them to file a nominating petition by March, or be excluded from the ballot, while major party candidates were not chosen until party conventions at the end of summer, and could appear on the ballot even if they had not filed a designating petition or participated in a primary. *Id.* at 790-94. Thus, major party candidates had many more months to obtain access to the ballot, than

was afforded to independent candidates. Differently here, the New York Election Law requires all candidates, both major party and independent, to gather signatures and file nominating or designating petitions prior to the primary. In addition, independent candidates in New York do not have to file their nominating petitions until approximately two months after the major party candidates file their designations. Thus, the regulation at issue here does not burden independent candidates in the same manner that the Ohio statute burdened independent candidates in *Anderson.*

Plaintiffs in this case essentially seek a petition deadline substantially later than the date of primary. They seek a deadline that would allow candidates such as Brown enough time to both decide to run as an independent and gather enough signatures for a nominating petition, after either having lost an election bid for a major party nomination or after having the benefit of knowing the results of the major primary primaries. Accordingly, "what [plaintiffs] are seeking cannot be termed equal treatment [but instead] they are asserting a constitutional right to preferential treatment." *See Council of Alternative Political Parties,* 179 F.3d at 74. The denial of such preferential treatment does not impose an undue burden on plaintiffs' constitutional rights.[13]

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[13] Plaintiffs also cite cases where courts struck down early filing deadlines that fell more than a single day before a major parties' primary. The Court finds these cases to be inapposite. First, the deadlines in most of the cases cited by plaintiffs were notably earlier than the deadline here, which is only 28 days before the primary. *See e.g., Nader v. Brewer,* 531 F. 3d 1028, 1039 (9th Cir. 2008) (deadline 90 days before primary, in context of national election); *Cromer v. South Carolina,* 917 F.2d 819, 822 (4th Cir. 1990) (deadline 70 days before primary); *New Alliance Party of Ala. v. Hand,* 933 F.2d 1568 (11th Cir. 1991) (deadline 60 days before primary); *Council of Alternative*

For all of these reasons, the Court finds that plaintiffs have failed to raise a genuine issue of material fact as to whether the independent nominating petition deadline in Section 6-158.9 imposes a severe burden on their constitutional rights. Because the Court finds that any burdens imposed by Section 6-158.9 are reasonable and non-discriminatory, strict scrutiny does not apply here.

The petition deadline is justified by important state interests.

The lesser scrutiny to be applied here 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[s] 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 plaintiffs rights.'" *Id.* at 108-09; *quoting Burdick,* 504 U.S. at 434. In conducting this analysis, "a state's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Gottlieb v. Lamont,* 22-449, 2023 U.S. App. LEXIS 8542 (2d Cir. 2023). Otherwise, courts would "hamper the ability of States to run efficient and equitable elections, and compel

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Political Parties, 121 F.3d 876 (3d Cir. 1997) (deadline 54 days before primary). Other cases cited by plaintiffs are distinguishable in that they involved candidates attempting to run for president in a national election. *See Populist Party v. Herscher,* 746 F.2d 656, 661 (10th Cir. 1984); *Nader 2000 Primary Cmte., Inc. v. Hazeltine,* 110 F. Supp. 2d 1201, 1208 (D.S.D. 2000). Also, in contrast to these cases, where courts found a severe burden based on the specific facts presented, plaintiffs here have failed to raise any triable issue of fact showing that the deadline in Section 6-158.9, considered in totality with New York's Election Law scheme, placed an undue burden on plaintiffs themselves or on independent candidates and their supporters in general.

federal courts to rewrite state electoral codes." *Clingman v. Beaver*, 544 U.S. 581, 598 (2005).

Here, defendants assert that the petition deadline in Section 6-158.9 effectuates the following important state regulatory interests: (1) ensuring the integrity and reliability of the electoral process; (2) promoting political stability at the expense of factionalism; and (3) upholding the state's administrative duty to meet federal deadlines for the mailing of overseas and military ballots. Under the deferential standard of review just explained, these proffered interests are sufficient to justify the filing deadline at issue here. *Kosinski*, 987 F.3d at 277-78. Moreover, the Court finds no evidence in the record upon which a reasonable jury could conclude that the state's interest in promulgating the petition deadline does not outweigh any reasonable and nondiscriminatory burdens imposed on plaintiffs.[14]

The record before the Court reflects that the independent nominating petition deadline in Section 6-158.9 was enacted as part of a general overhaul of election dates and deadlines, all designed to, *inter alia*, ensure state law compliance with the federal MOVE Act and to

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[14] Plaintiffs argue that the state's justifications for the deadline are "disputed as a matter of fact." Plaintiffs point to their expert declaration wherein Winger argues as to the validity of the state interests cited by defendants and the extent to which the petition deadline actually effectuates those interests. (Dkt. No. 66-3, ¶¶ 55-78) In light of the evidence put forth by defendants as to the legislative history and intent of the 2019 amendments to the New York Election Law, as well as the case law discussed herein acknowledging the validity of the state interests cited by defendants, the Court finds that Winger's declaration fails to raise a factual dispute. Stated another way, plaintiffs' contention that defendants' reasons for the amendment to the petition deadline are not good ones does not create an issue of material fact sufficient to defeat summary judgment.

facilitate the timely transmission of ballots to military voters stationed overseas. These changes also facilitated the merging of New York state, local, and non-presidential primaries to a single date in June. During the legislative process, members of the Erie County Board of Elections specifically represented that the deadline for filing an independent nominating petition was changed in order to "fairly effectuate MOVE Act compliance and enact early voting." The Court finds these reasons consistent with a state's right to "enact reasonable regulations of parties, elections and ballots" and to reduce campaign-related disorder. *Timmons,* 520 U.S. at 358. *See also Council of Alternative Political Parties,* 179 F.3d at 79 (states have a legitimate interest in maintaining a stable and efficient election process).

During discovery in this case, a representative from the Erie County Board of Elections testified that, in the course of administering an election, the Board has "38 different items that go to 851 election districts that all need to be sorted and put together." Dkt. No. 66-3, pg. 160. Moreover, with respect to the 2021 general election, New York Law required that ballots be mailed to overseas voters by September 17, 2021. *See* N.Y. Elec. Law § 10-108(1), § 11-204(4). The Board representative testified that if an independent nominating petition was accepted on August 17, 2021, it "would just create pure chaos at the Board" and would "make it almost impossible to comply with federal military absentee laws." *Id.* Thus, the Court finds that the filing deadline in Section 6-158.9 supported the important state interest of allowing election officials to timely process independent petitions in light of the new, merged June primary date and MOVE Act requirements governing the transmission of overseas ballots. *See Lawrence,* 430 F.3d at 375 (finding that the early filing

deadline for independent petitions meets Ohio's "administrative interest of being able to process independent candidates' petitions and verify signatures in the midst of completing a host of other tasks necessary to conduct a fair election."). The earlier deadline also promotes the state's interest in a timely and orderly construction of ballots by helping ensure that any litigation related to the petitions is settled early.

In addition, by requiring independent candidates to file their nominating petitions before the results of the primary are available, the petition deadline at issue here serves the state's important interest in both preventing sore-loser candidacies and potentially discouraging party candidates from using the independent nominating process to seek an extra ballot position. Indeed, it is well-established that states have an important interest in ensuring "the stability of their political systems" and avoiding "party splintering and excessive factionalism." *Timmons,* 520 U.S. at 366-67. *See also Council of Alternative Political Parties,* 179 F.3d at 78 (New Jersey's interest in preventing "sore-loser" candidacies rises to the level of a legitimate and important state interest); *Swanson,* 490 F.3d at 910 ("By placing reasonable restrictions on ballot access for independent and minor party candidates, Alabama's election scheme discourages party-splintering and factionalism that could destabilize the political system.").

Moreover, defendants have demonstrated that moving the petition deadline from August to May served the legitimate state interest of promoting a fairer electoral process. First, the earlier deadline for independent nominating petitions ensures that voters will have knowledge of all ballot candidates around the same time, and also avoids giving major party candidates the

advantage of campaigning for two additional months before independent candidates are nominated. *Council of Alternative Political Parties*, 179 F.3d at 78 ("The State also has a legitimate interest in voter education."). Also, allowing independent candidates to continue to file their petitions in August, when the major party candidates are now selected in June, could provide an unfair advantage to independent candidates. *Id.* ("Allowing minor parties to file on a later date - after the major party's primary - would give them a significant advantage, and it is entirely reasonable for New Jersey to regard any such advantage as unfair.").

The record here demonstrates that New York has important state regulatory interests which are sufficient to justify the reasonable and nondiscriminatory burdens imposed by the filing deadline. Accordingly, after considering all of the material and undisputed facts in the record, the Court finds, as a matter of law, that the independent nominating petition deadline in Section 6-158.9 of the New York State Election Law does not violate plaintiffs' constitutional rights, and that defendants are entitled to judgment as a matter of law.

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is granted and plaintiffs' complaint is dismissed. (Dkt. No. 66) The Clerk of the Court shall take all necessary steps to close the case.

SO ORDERED.

Dated: July 10, 2023
Buffalo, New York

/s/ Michael J. Roemer
MICHAEL J. ROEMER
United States Magistrate Judge

APPENDIX C

W.D.N.Y.
21-cv-982
Sinatra, J.

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 8th day of March, two thousand twenty-two.

Present:
Raymond J. Lohier, Jr.,
Joseph F. Bianco,
Beth Robinson,
Circuit Judges.

Carlanda D. Meadors, an individual, et al.,

Plaintiffs-Appellees,

v.

Erie County Board of Elections,

Defendant-Appellant,

Jeremy Zellner, Ralph M. Mohr,

Defendants,

v.

India B. Walton,

Intervenor-Appellant.

21-2137 (L)
21-2145 (Con)

Appellants India B. Walton and the Erie County Board of Elections move to dismiss their appeals as moot. Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the consolidated appeals are DISMISSED. The general election that was the subject of the preliminary injunction has passed, and this Court can no longer order any effective relief. *See Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992); *In re Flanagan*, 503 F.3d 171, 178 (2d Cir. 2007).

Walton also moves to vacate the district court's preliminary injunction. Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the injunction is VACATED. *See Hassoun v. Searls*, 976 F.3d 121, 130 (2d Cir. 2020); *Haley v. Pataki*, 60 F.3d 137, 142 (2d Cir. 1995).

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of Court

United States
Second Circuit
Court of Appeals
/s/ Catherine O'Hagan Wolfe

APPENDIX D

W.D.N.Y.
21-cv-982
Sinatra, J.

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 16th day of September, two thousand twenty-one.

Present:
Debra Ann Livingston,
Chief Judge,
Denny Chin,
William J. Nardini,
Circuit Judges.

Carlanda D. Meadors, an individual, et al.,
Plaintiffs-Appellees,
v.
Erie County Board of Elections,
Defendant-Appellant,
Jeremy Zellner, Ralph M. Mohr,
Defendants,
v.
India B. Walton,
Intervenor-Appellant,
Election Commissioners' Association for the State of New York,
Movant.

21-2137 (L)
21-2145 (Con)

Appellants move for a stay of the district court's order granting a preliminary injunction pending appeal. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. *See Nken v. Holder*, 556 U.S. 418, 434–35 (2009). It is further ORDERED that the motion of the Election Commissioners' Association for the State of New York for leave to file an amicus brief is GRANTED.

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of Court

United States
Second Circuit
Court of Appeals
/s/ Catherine O'Hagan Wolfe

APPENDIX E

Meadors v. Erie County Board of Elections, No. 1:21-cv-00982 (W.D.N.Y. Aug 30, 2021)

Docket Entry #28

Filed & Entered: 09/03/2021

Order on Motion for TRO

Docket Text: **INJUNCTION IS VACATED, SEE [53] MANDATE of USCA** TEXT ORDER: Upon consideration of the briefing and arguments of counsel, and for good cause shown, it is ordered that the motion for preliminary injunction (Dkt. #2) is GRANTED. Accordingly, the Erie County Board of Elections, along with its officers, agents, servants, employees, attorneys, and all those in active concert with them, are hereby enjoined from enforcing Section 6-158(9) of the New York Election Law against candidate Byron W. Brown and from failing to put his name on the 2021 general election ballot as an independent candidate for the Mayor of Buffalo. The Board of Elections is ordered to place Byron W. Brown on the 2021 Election Ballot as an independent candidate for Mayor of Buffalo. IT IS SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 9/3/2021. (KLH) Modified on 3/9/2022 (SG).

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION

Carlanda D. Meadors, an individual, et al., Plaintiffs, vs. **Erie County Board of Elections**, et al., Defendants.	Case No. 1:21-cv-982-JLS **First Amended Complaint**

The plaintiffs hereby amend their complaint under Rule 15(a)(1) of the Federal Rules of Civil Procedure. This amendment adds plaintiffs and defendants and makes no other substantive changes.

Nature of the Case

1. This is an as-applied constitutional challenge to New York's petition deadline for independent candidates. The law at issue is Section 6-158.9 of the New York Election Code, which requires independent candidates to file their nominating petition at least 23 weeks before a general election—a date that fell this year in late May.

2. The plaintiffs are three individual supporters of an independent candidate for Mayor of Buffalo. They allege that New York's early deadline, as applied to the would-be candidate, violates their rights under the First and Fourteenth Amendments to the United States Constitution. They seek declaratory and injunctive relief prohibiting Erie County election officials from enforcing

that deadline and requiring them to place the candidate's name on the 2021 general-election ballot.

Jurisdiction and Venue

3. This Court has original jurisdiction over this case under Article III of the U.S. Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3).

4. This suit is authorized by 42 U.S.C. § 1983.

5. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in the Western District of New York under 28 U.S.C. § 1391(b) and 28 U.S.C. § 112(d).

Parties

7. Carlanda D. Meadors is a resident of the City of Buffalo. She is a registered voter and a supporter of Brown's independent candidacy for Mayor of the City of Buffalo in 2021. She signed Brown's independent nominating petition and wants to vote for Brown on the general-election ballot.

8. Leonard A. Matarese is a resident of the City of Buffalo. He is a registered voter and a supporter of Byron W. Brown's independent candidacy for Mayor of the City of Buffalo in 2021. He signed Brown's independent nominating petition and wants to vote for Brown on the general-election ballot.

9. Jomo D. Akono is a resident of the City of Buffalo. He is a registered voter and a supporter of Brown's independent candidacy for Mayor of the City of Buffalo in 2021. He signed Brown's independent nominating petition and wants to vote for Brown on the general-election ballot.

10. Kim P. Nixon-Williams is a resident of the City of Buffalo. She is a registered voter and a supporter of Brown's independent candidacy for Mayor of the City of Buffalo in 2021. She signed Brown's independent nominating petition and wants to vote for Brown on the general-election ballot.

11. Florence E. Baugh is a resident of the City of Buffalo. She is a registered voter and a supporter of Brown's independent candidacy for Mayor of the City of Buffalo in 2021. She signed Brown's independent nominating petition and wants to vote for Brown on the general-election ballot.

12. Defendant Erie County Board of Elections administers elections for Mayor of the City of Buffalo and is charged by law with enforcing New York's petition deadline for independent candidates in the 2021 mayoral election. The Board exercises its authority under color of state law within the meaning of 42 U.S.C. § 1983.

13. Defendant Jeremy J. Zellner is a member of the Erie County Board of Elections. As a Commissioner, he exercises his authority under color of state law within the meaning of 42 U.S.C. § 1983. He is sued in his official capacity only.

14. Defendant Ralph M. Mohr is a member of the Erie County Board of Elections. As a Commissioner, he exercises his authority under color of state law within the meaning of 42 U.S.C. § 1983. He is sued in his official capacity only.

Background

I. New York's Petition Deadline for Independent Candidates

15. The State of New York first adopted a petition deadline for independent candidates in 1890. The law provided that independent candidates for local offices could appear on the general-election ballot by filing a petition containing the requisite number of signatures at least 12 days before the election. Act of May 2, 1890, ch. 262, § 8, 1890 N.Y. Laws 482, 484. c. 262 Sec. 8, p. 482, 484.

16. In 1892, the Legislature moved the deadline to 15 days before the general election. The Election Law, ch. 680, § 59, 1892 N.Y. Laws 1602, 1622.

17. In 1922, the deadline moved to four weeks before the general election. The Election Law, ch. 588, § 140, 1922 N.Y. Laws 1326, 1401-02.

18. In 1976, the Legislature changed the deadline to seven weeks before the general election, a date that fell in late September. Act of June 1, 1976, ch. 233, § 1, 1976 N.Y. Laws 1, 90-91.

19. In 1984, the deadline moved once again to 11 weeks before the general election, a date that fell in late August, and it stayed there until 2019. Act of July 19, 1984, ch. 433, § 8, 1984 N.Y. Laws 2592, 2594.

20. In 2019, the Legislature changed the deadline to "not later than twenty-three weeks preceding" a general election. Act of January 24, 2019, ch. 5, § 13, 2019 N.Y. Laws 9, 14 (codified at N.Y. Elec. Law § 6-158.9). That date falls in late May, 161 days before the general election; 28 days before the non-presidential primary election, which is held on the fourth Tuesday in June, N.Y. Elec. Law § 8-100(a); and 107 days before the deadline—54 days before the general election—by which county boards of election are required to determine the candidates who will appear on the ballot, N.Y. Elec. Law § 4-114.

21. In 2020, because of the COVID-19 virus, Executive Order 202.46 (June 30, 2020) changed the deadline to July 30, 2020.

22. In 2020, incumbent Democratic Assemblywoman Rebecca Seawright, who had represented Manhattan's Upper East Side since 2015, missed the deadline to qualify for the June primary election. Because she faced no intra-party opposition, that left the Democratic line open and only a Republican on the general-election ballot in the heavily-Democratic district. But because of Executive Order 202.46, she was able to qualify for the general-election ballot as an independent candidate, and she won re-election by almost 20 percentage points.

23. In 2021, the general election is scheduled for November 2. N.Y. Elec. Law § 8-100(c). The petition deadline for independent candidates therefore fell on May 25, 2021. The non-presidential primary election was held on June 22. And the deadline for county boards of election to determine the candidates who will appear on the general-election ballot is September 9.

II. Erie County Rejects Brown's Independent Petition

24. Bryon W. Brown is the current mayor of the City of Buffalo, New York.

25. Brown sought re-election as the nominee of the Democratic Party but was defeated in the primary election.

26. Brown then launched a write-in campaign.

27. Brown's supporters also launched an effort to nominate him as an independent candidate for mayor in the general election.

28. Brown's supporters gathered signatures of eligible voters in the City of Buffalo and filed their nominating petition containing more than the requisite number of signatures with the Erie County Board of Elections on August 17, 2021.

29. The petition would have entitled Brown to a place on the ballot if it had been filed on or before May 25, 2021, and it would have been timely under all of New York's petition deadlines in force before 2019.

30. The Erie County Board of Elections rejected the nominating petition on Friday, August 27, 2021, because the petition had not been filed by the deadline set out in Section 6-158.9 of the New York Election Code.

Claim One

31. New York's petition deadline for independent candidates, as applied here to the candidacy of Byron W. Brown for Mayor of the City of Buffalo, violates rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983.

Relief

32. A real and actual controversy exists between the parties.

33. The plaintiffs have no adequate remedy at law other than this action for declaratory and equitable relief.

34. The plaintiffs are suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, the plaintiffs respectfully pray that this Court:

(1) assume original jurisdiction over this case;

(2) enter a declaratory judgment that New York's petition deadline for independent candidates, as applied here to the candidacy of Byron W. Brown for Mayor of the City of Buffalo, violates rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983;

(3) enjoin the Erie County Board of Elections from enforcing New York's petition deadline for independent candidates against Brown's candidacy and from failing to place his name on the 2021 general-election ballot as an independent candidate for Mayor of the City of Buffalo;

(4) award the plaintiffs the costs of this action together with their reasonable attorneys' fees under 42 U.S.C. § 1988; and

(6) [sic] retain jurisdiction of this action and grant the plaintiffs any further relief which may in the discretion of the Court be necessary and proper.

Respectfully submitted this 3rd day of September, 2021.

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