

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARGARITA LÓPEZ TORRES, STEVEN BANKS, C. ALFRED
SANTILLO, JOHN J. MACRON, LILI ANN MOTTA, JOHN W.
CARROLL, PHILIP C. SEGAL, SUSAN LOEB, DAVID J. LANSNER,
AND COMMON CAUSE/NY,

Plaintiffs,

v.

Index No. CV 04-1129 (JG)

NEW YORK STATE BOARD OF ELECTIONS; NEIL W. KELLEHER,
CAROL BERMAN, HELENA MOSES DONOHUE, AND EVELYN J.
AQUILA, IN THEIR OFFICIAL CAPACITIES AS COMMISSIONERS OF
THE NEW YORK STATE BOARD OF ELECTIONS,

Defendants,

NEW YORK COUNTY DEMOCRATIC COMMITTEE, NEW YORK
REPUBLICAN STATE COMMITTEE, ASSOCIATION OF JUSTICES
OF THE SUPREME COURT OF THE STATE OF NEW YORK,
ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE
CITY OF NEW YORK, AND JUSTICE DAVID DEMAREST,
INDIVIDUALLY, AND AS PRESIDENT OF THE STATE
ASSOCIATION,

Defendant-Intervenors,

ATTORNEY GENERAL OF THE STATE OF NEW YORK,
Statutory Intervenor.

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**PLAINTIFFS' PROPOSED CONCLUSIONS OF LAW
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF**

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Introduction

These Proposed Conclusions of Law present Plaintiffs' legal arguments in an abbreviated form. We begin by laying out the basic principles controlling this preliminary injunction motion, including the standard of review. (¶¶ 1-4). Binding precedent establishes that the First and Fourteenth Amendment right to vote includes voters' right to effectively participate in their party's nomination process. (¶¶ 5-13). If state law places a severe burden on the ability of challenger candidates to compete for their party's nominations, the laws must be narrowly tailored to serve a compelling state interest. (¶¶ 14-15). Plaintiffs have established that the nominating convention creates a severe burden by showing several different indicia derived from the cases: the failure of any challengers to succeed provides strong evidence that the burdens are severe (¶¶ 16-19); the higher burdens faced by New York judicial candidates than by candidates in any other jurisdiction, including the insurmountable burdens involved in running competitive delegate slates across a judicial district, suggest that the burdens are severe (¶¶ 20-22); and direct comparisons with other burdens that courts in the Second Circuit have reviewed show that these burdens are severe (¶¶ 23-30). More generally, the cases demonstrate that a system that allows party leaders to block challenger candidates from effectively competing for their party's nomination poses a severe burden. (¶¶ 31-33). (Because the judicial nominating convention imposes a severe burden, Defendants must demonstrate that it passes strict scrutiny: it must be narrowly tailored to serve a compelling state interest. In accord with the Court's suggestion, Plaintiffs reserve our discussion of the interests purportedly served by the nominating convention system for our Reply, after Defendants have articulated the interests that they claim are served.) In

addition to the fundamental right to vote, the convention system runs afoul of equal protection principles by imposing a higher burden on Supreme Court candidates than on candidates for any other office including other judicial offices and by imposing greater burdens upon challenger candidates and their supporters than upon candidates backed by the party leadership. (¶¶ 34-36). Taken as a whole, these points make a “clear” or “substantial” showing of a likelihood of success on the merits. Irreparable harm, the other requirement for preliminary injunctive relief, is presumed in such First Amendment cases. (¶¶ 37-38).

Standard of Review and Basic Principles

1. To obtain preliminary injunctive relief that will alter, rather than maintain, the status quo, Plaintiffs must show they are likely to suffer irreparable harm absent such relief and must make a “clear” or “substantial” showing of a likelihood of success on the merits. *Brewer v. West Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744 (2d Cir. 2000) (internal citation omitted).

2. The First and Fourteenth Amendments protect the right to vote as a fundamental right. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“It is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’”) (citation omitted); *Kessler v. Grand Cent. Dist. Mgmt. Ass’n*, 158 F.3d 92, 118 (2d Cir. 1998) (“The power to vote is respected as a ‘fundamental right’ under the Fourteenth Amendment.”).

3. States are not required to elect their judges, but “[i]f the State chooses to tap the energy and the legitimizing power of the democratic process, it must accord the

participants in that process . . . the First Amendment rights that attach to their roles.”

Republican Party of Minnesota v. White, 536 U.S. 765, 788 (2002) (internal quotation marks omitted).

4. Courts apply strict scrutiny when a state law imposes a severe burden on the ability of candidates without the backing of the party leadership to compete for their party’s nomination. While courts rarely use the formal language of levels of scrutiny when discussing burdens to participation in the election process, severe burdens must be justified by being narrowly tailored to serve a compelling state interest—precisely the test of strict scrutiny. Because the burdens proved in this case are severe, the Defendants must show that the convention system is narrowly tailored to serve a compelling state interest. *See infra* ¶¶ 14-15.

Right to Compete for Nomination

5. The right to vote includes both party members’ right to have a meaningful choice among candidates for their party’s nomination and potential nominees’ commensurate right to put their names before party members. *See Lubin v. Panish*, 415 U.S. 709, 716 (1974); *cf. Bullock v. Carter*, 405 U.S. 134, 143 (1972) (“[T]he rights of voters and the rights of candidates do not lend themselves to neat separation.”).

6. While there is a separate but related right to petition onto the general election ballot as an independent candidate, the ability to petition onto the general election ballot does not eliminate the right to be able to compete for a party’s nomination. In *Bullock v. Carter*, 405 U.S. 134, 149 (1972), the Supreme Court unanimously struck down unreasonably burdensome filing fees to qualify for the primary ballot in Texas, despite the fact that candidates could petition directly onto the general election ballot as

an independent or member of another party without any filing fee at all. *Id.* at 137 n.5 and 146-47.

7. In *Bullock*, the Court held that:

Instead of arguing for the reasonableness of the exclusion of some candidates, appellants rely on the fact that the filing-fee requirement is applicable only to party primaries, and point out that a candidate can gain a place on the ballot in the general election without payment of fees by submitting a proper application accompanied by a voter petition. Apart from the fact that the primary election may be more crucial than the general election in certain parts of Texas, we can hardly accept as reasonable an alternative that requires candidates and voters to abandon their party affiliations in order to avoid the burdens of the filing fees imposed by state law.

Id. at 146-47 (footnotes omitted); *see also Brown v. North Carolina State Board of Elections*, 394 F. Supp. 359, 362 (W.D.N.C. 1975) (three-judge court)

8. *Bullock's* reasoning does not depend on whether the general elections are competitive. As a factual matter, however, more than three-quarters of general elections for Supreme Court justice are uncompetitive. *See* Findings of Fact ¶ 211. Similarly, the only known occasion on which a candidate nominated only by a minor party has won election to the New York State Supreme Court was the 1982 general election in the First Judicial District, when a filing error by the Democratic Party prevented any Democratic nominees from appearing on the ballot. *Id.* ¶ 213.

9. Courts within the Second Circuit have followed *Bullock* by analyzing whether a nomination process imposes an unconstitutional burden without considering the difficulty in petitioning onto the general election ballot as an independent. In *Rockefeller v. Powers*, 917 F. Supp. 155 (E.D.N.Y. 1996), *aff'd*, 78 F.3d 44 (2d Cir. 1996), for example, this Court struck down burdensome statutory rules restricting access of insurgent Republican candidates to the primary ballot, certain of which required

candidate Steve Forbes to obtain 1,250 signatures (or 5% of the registered Republicans) in each of 31 Congressional districts, for a total of approximately 37,000 signatures.

Rockefeller, 917 F. Supp. 155. The Court found these requirements to be unconstitutional notwithstanding the fact that Mr. Forbes could have petitioned onto the general election ballot simply by gathering 15,000 signatures statewide. N.Y. Elec. L. § 6-142. See also *Molinari v. Powers*, 82 F. Supp. 2d 57 (E.D.N.Y. 2000); *Campbell v. Bysiewicz*, 242 F. Supp. 2d 164 (D. Conn. 2003) (striking down convention system for access to major party primary ballots for Connecticut's Legislature notwithstanding that such candidates could have petitioned directly onto general election ballots by obtaining signatures from lesser of one percent of votes cast for that office at preceding election or 7,500).

10. The right to participate in the nomination process does not depend on whether the state chooses to establish primaries. Rather, the question is whether the state makes party nominations an "integral part of the election machinery." *United States v. Classic*, 313 U.S. 299, 318 (1941).

11. In *Morse v. Republican Party*, Justice Stevens announced the judgment of the Court and stated:

Virginia, like most States, has effectively divided its election into two stages, the first consisting of the selection of party candidates and the second being the general election itself. Exclusion from the earlier stage, as two appellants in this case experienced, does not merely curtail their voting power, but abridges their right to vote itself. To the excluded voter who cannot cast a vote for his or her candidate, it is all the same whether the party conducts its nomination by a primary or by a convention open to all party members except those kept out by the filing fee. Each is an "integral part of the election machinery."

517 U.S. 186, 207 (1996) (internal citations omitted), quoting *Classic*, 313 U.S. at 318. (The decision in *Morse* took place in the context of a Voting Rights Act claim, but the principles underlying the decision apply with equal force in the constitutional context.)

12. The right of voters to participate in their party's nomination process is particularly important where the party's nomination "effectively controls the choice," *Classic*, 313 U.S. at 318, or where it "may be more crucial than the general election." *Bullock*, 405 U.S. at 146-47.

13. While the state may choose between conventions and primaries for its nominating process, it must provide the voters an opportunity to participate effectively in the process. In *American Party of Texas v. White*, 415 U.S. 767, 781 (1974), the Supreme Court concluded that a state can "insist that intraparty competition be settled before the general election by primary election or by party convention." While a state may require parties to use a primary to select their nominees, that primary must conform to constitutional norms. *See, e.g., California Democratic Party v. Jones*, 530 U.S. 567, 586 (2000) (striking down California's primary law for depriving voters of the Democratic Party of their control over choice of party nominee); *Lerman v. Board of Elections*, 232 F.3d 135, 149 (2d Cir. 2000) (striking down primary ballot access rule for imposing severe burden without being narrowly tailored to compelling state interest); *Rockefeller* 917 F. Supp. at 159-164 (rules governing access to primary imposed severe burden and violated Constitution); *Molinari v. Powers*, 82 F. Supp. 2d 57 (E.D.N.Y. 2000) (same). Similarly, a convention system that prevents candidates from effectively soliciting the support of the voters of the party is unconstitutional. *Campbell*, 242 F. Supp. 2d 164.

Severe Burdens Must Be Narrowly Tailored to Serve Compelling State Interests

14. While party members' right to participate in the nomination process is distinct from the right of general election ballot access, ballot access cases establish the legal framework for resolving these claims. *See Bullock*, 405 U.S. at 143, 145 (relying upon *Williams v. Rhodes*, 393 U.S. 23, 25 (1968), and *Jenness v. Fortson*, 403 U.S. 431 (1971)); *see also Campbell* 242 F. Supp. 2d at 174 ("Although decided in a different context, *Storer* raises a pertinent question: 'could a reasonably diligent ... candidate be expected to satisfy the [statutory] requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot?'" (citation omitted)).

15. To determine whether New York's Supreme Court nomination process violates Plaintiffs' First and Fourteenth Amendment rights, the Court

must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff[s] seek[] to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden plaintiff[s'] rights.

Anderson v. Celebrezze, 460 U.S. 780, 789 (1983). Where "state election laws subject speech, association, or the right to vote to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance." *Lerman v. Bd. of Elections*, 232 F.3d 135, 145 (2d Cir. 2000) (internal quotation marks omitted). Where a state law or practice "imposes only reasonable, nondiscriminatory restrictions" upon those rights, then "the State's important regulatory interests are generally sufficient to justify the restrictions." *Id.* (internal quotation marks omitted).

Severe Burden When No Challengers Succeed

16. A voter's First Amendment "right to vote is 'heavily burdened' if that vote may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot." *Lubin*, 415 U.S. at 716 (quoting *Williams v. Rhodes*, 393 U.S. 23, 31 (1968)); accord *Anderson*, 460 U.S. at 787-88 ("The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens."); *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) ("By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences.").

17. Courts analyze the burdens faced by challenger or insurgent candidates, sometimes referred to as "independent" candidates, by answering an "inevitable question for judgment: could a reasonably diligent independent candidate be expected to satisfy the . . . requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot?" *Storer*, 415 U.S. 725, 742 (1974); see also *Molinari*, 82 F. Supp. 2d at 70-71 (quoting *Storer* and explaining that "independent" and "unaffiliated" mean independent of party leadership).

18. Evidence that challenger candidates have only rarely succeeded or even attempted to navigate challenged rules suggests that burdens are unconstitutionally severe. See, e.g., *Storer*, 415 U.S. at 742 (finding severe burden based on limited number of contested primary elections); *Molinari*, 82 F. Supp. 2d at 70-71 (noting that the paucity of candidates who had even attempted to compete in New York's Republican primary

demonstrated severe burden); *Rockefeller*, 917 Supp. at 157-59, 163 (same); *Campbell*, 242 F. Supp. 2d, at 173 (“The lack of actual primaries substantiates finding substantial impairment of the ability of prospective candidates to place themselves and their ideas before the voters for consideration.”); *see also Green v. Mortham*, 155 F.3d 1332, 1337 (11th Cir. 1998) (reviewing the number of candidates who obtained ballot status when assessing burden of challenged law); *Gjersten v. Bd. of Election Comm’rs*, 791 F.2d 472, 477 (7th Cir. 1986) (weighing statute’s effect in past elections in assessing constitutionality); *Smith v. Bd. of Election Comm’rs*, 587 F. Supp. 1136, 1148 (N.D. Ill. 1984) (dearth of candidates on primary ballot demonstrates injury to voters’ rights). *Storer* held that it would be unconstitutional if independent candidates could overcome ballot access hurdles “only rarely.” *Storer*, 415 U.S. at 726.

19. Here, the evidence shows that insurgent candidates never succeed in obtaining, and very rarely even attempt to compete for, their party’s convention nomination. *See Findings of Fact* ¶¶ 190 - 206.

Comparisons to Other Jurisdictions Can Establish Severe Burdens

20. An additional guidepost to assess the severity of ballot access laws is the relative burdens imposed in other states, and upon candidates for other offices within the state. *See, e.g., Norman v. Reed*, 502 U.S. 279, 294 (1992); *Storer*, 415 U.S. at 739; *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Campbell*, 242 F. Supp. 2d at 170 (in assessing Connecticut’s burdensome ballot access rules involving an indirect convention process, “it is relevant that 44 states and the District of Columbia provide a semblance of control and order by using direct primaries for which a small percentage of petitioning voters, usually 5%, plus filing fees, qualifies”); *Rockefeller*, 917 F. Supp. at 161; *see also*

Rockefeller, 78 F.3d at 45 (“With regard to justification for the substantial burdens on candidates, the district court noted that New York ballot access rules are far more burdensome than those adopted by virtually every other state.”)

21. The burdens on a challenger seeking nomination to New York Supreme Court are much more severe than those faced by candidates in any other state. *See* Findings of Fact ¶¶ 2-5; ¶¶ 276-277.

22. The burdens are more severe than those faced by candidates for any other office in New York State, including other judicial offices. *See* Findings of Fact ¶¶ 6-7; ¶¶ 260-275.

Comparisons with Other Burdens Held Severe

23. In *Campbell*, the District Court for the District of Connecticut struck down Connecticut’s statute governing party nominations for multi-town districts. Candidates for multi-district offices are nominated by conventions, although any candidate receiving support of at least 15% of the delegates can force a primary. 242 F. Supp. 2d at 167. In practice, primaries were very rare and almost unheard of against incumbents. *Id.* at 168-69. The court held that Connecticut’s law was “unduly burdensome.” *Id.* at 172, 174.

24. The statute considered in *Campbell* imposed a less severe burden on challengers seeking their party’s nomination than the burden imposed by the judicial convention system. *Campbell* addressed a nominating process where would-be candidates were only required to receive 15% of the delegates’ support to present their candidacies to the voters. The New York Supreme Court nomination requirements require an absolute majority at the conventions. Some challenger candidates, including Plaintiff López Torres, have received votes of at least 15% of the delegates at a

convention and yet still been unable to take their candidacy to the voters of their party. *See* Plaintiffs' Ex. 39C. Indeed, unlike the system struck down in *Campbell*, the Supreme Court selection system precludes *any* possibility of placing one's candidacy directly before the party's voters to compete for the nomination.

25. In *Molinari*, this Court struck down the New York statute governing Republican presidential primaries because that statute imposes an "undue burden" on First Amendment rights and does not serve a "compelling state interest." 82 F. Supp. 2d at 71. The statute at issue in *Molinari* required presidential candidates to collect 5,000 signatures from registered Republicans statewide and required delegate candidates pledged to support the presidential candidate to obtain signatures of 0.5% of the registered Republicans in the Congressional district the candidate sought to represent, requiring a total of about 15,500 signatures statewide to run delegates in every Congressional district. *Id.* at 59. A variety of technical rules governed the signature gathering process.

26. The burdens faced by a challenger candidate for Supreme Court are significantly more severe. When the delegate candidates appear on the primary ballot, no indication of which candidates for Supreme Court they will support is listed, requiring a much more intensive voter education effort. Furthermore, the number of signatures required to petition delegate slates onto the primary ballot can be roughly comparable, despite the fact that Supreme Court justices are elected from districts, not statewide. To petition delegate slates onto the Democratic primary ballot in every Assembly District in the Second Judicial District requires a statutory minimum of 12,000 signatures—almost

as many as the 15,500 signatures that the *Molinari* Court held too burdensome in a statewide primary campaign.

27. In *Rockefeller*, this Court invalidated a requirement that a slate of delegates for the presidential primary collect the signatures of the lesser of 5% or 1250 of the registered Republicans in the Congressional district. 917 F. Supp. at 160. The Court treated the statewide primary as a single election, refusing to treat each of the thirty-one districts as having a separate primary for delegates. *Id.* at 164. When delegates qualify for the ballot, the name of the presidential candidate to whom they are pledged also appears on the primary ballot. The Court concluded that these ballot access requirements “unduly” burdened challenger candidates’ rights, placing heavy reliance on the fact that New York’s rule was uniquely burdensome when compared with other states and on the “rarity of a candidate who is willing and able to target all or almost all of the districts.” *Id.* at 160-61, 163-64.

28. The same hallmarks of undue burden exist with regard to the Supreme Court judicial nominating process. New York’s Supreme Court nomination process is uniquely burdensome when compared to other states’ judicial nomination process. *See* Findings of Fact ¶¶ 2-5; ¶¶ 276-277. Challenger candidates never succeed at defeating the party-backed candidates, and no candidate has even tried to run delegates across a district to win nomination. *See* Findings of Fact ¶¶ 190 – 206; ¶¶ 240-94.

29. The Supreme Court held in *Bullock* that filing fees that ranged as high as \$8,900 imposed a heavy burden on candidates seeking nomination. 405 U.S. at 138 n.11, 139.

30. While there are no filing fees to seek a judicial nomination, the costs of running a successful insurgent campaign for New York Supreme Court in the Second Judicial District would dwarf the filing fees considered in *Bullock*. See Findings of Fact ¶ 292.

A Severe Burden Exists If Party Leaders Can Always Block Challenger Candidates

31. Taken as a whole, *Campbell*, *Molinari*, and *Rockefeller* stand for the proposition that candidates who lack the support of the party leadership must be allowed a reasonable opportunity to seek their party's nomination through popular support of the party's enrolled members. In each case, candidates who received the party leadership's backing essentially automatically received their party's nomination or presidential delegates. If a state's electoral law imposes a severe burden on candidates who seek their party's nomination despite the opposition of the party leadership, it must be narrowly tailored to serve a compelling state interest. Because the inquiry focuses on the rights of challenger candidates and their supporters, the operative question is whether candidates have a real opportunity to compete for their party's nomination *despite the opposition of the party leadership*, not whether the party leadership can always ensure the election of its first choice among the candidates.

32. It is not legally relevant whether the party leaders that can block challenger candidates consists solely of the county leaders or includes a larger group of leaders such as the county party executive committee. *Molinari* and *Rockefeller* addressed a situation where the challenger candidates were the candidates not backed by the state committee as a whole. *Molinari*, 82 F. Supp. 2d at 60-61; *Rockefeller*, 917 F. Supp. at 157-59. In *Campbell*, the party leaders who wielded the power to block

challenger candidates from competing for the party's nomination were the town committees, who generally control the selection of delegates to the convention. 242 F. Supp. 2d at 168. Similarly, whether the party leadership in a given district exercises relatively enlightened judgment in selecting judicial candidates by using a screening panel and consulting widely with party insiders such as district leaders is irrelevant. The relevant question is whether challenger candidates can overcome the opposition of party leaders and present their case to the voters of the party.

33. In this case, the evidence shows that candidates who are opposed by the party leadership can never win, or even meaningfully compete for, nomination as candidates for the Supreme Court. *See* Findings of Fact ¶¶ 190 - 206. The complete barrier to candidates opposed by party leadership must *a fortiori* be at least as grave a constitutional matter as severe burdens on competition. In order for the particular convention system New York uses to nominate Supreme Court candidates to be constitutional, Defendants must demonstrate that it survives strict scrutiny—that it is narrowly tailored to serve a compelling state interest.

Equal Protection

34. In *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185 (1979), the Supreme Court held that more signatures could not be required to qualify for the ballot in a Chicago municipal race than Illinois required for statewide offices. Because the “right of qualified voters . . . to cast their vote effectively” is “fundamental,” the city’s ballot restriction had to be narrowly tailored to its legitimate interest in restricting the ballot to “serious candidates with some prospects of public support.” *Id.* at 184-86. The Court concluded that the rules for Chicago’s offices were not the “least

restrictive means” to protect this interest because Illinois was satisfied that its own interest in that respect was satisfied by a less onerous burden on statewide candidates and their supporters. *Id.*

35. Because New York State places more restrictive burdens on candidates for Supreme Court than on candidates for statewide office, the judicial nominating process is unconstitutional.

36. State election law cannot devalue the political support of challenger candidates by raising higher burdens for challenger candidates than for candidates backed by the party organization. *See Anderson*, 460 U.S. at 793 (“Our ballot access cases . . . focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process.”) (internal citations and quotation marks omitted; alteration in original); *see also Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”); *Black v. McGuffage*, 209 F. Supp. 2d 889, 898 (D. Ill. 2002) (“Any voting system that arbitrarily and unnecessarily values some votes over others cannot be constitutional.”).

Irreparable Harm Presumed in First Amendment Cases

37. Courts in this circuit presume irreparable harm when a defendant threatens to violate a plaintiff’s constitutionally protected rights, particularly rights guaranteed by the First Amendment. *See, e.g., Brewer*, 212 F.3d at 744-45; *Bery v. City of New York*, 97 F.3d 689, 693-94 (2d Cir. 1996); *Beal v. Stern*, 184 F.3d 117, 123-24 (2d Cir. 1999); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996); *Green Party v. N.Y. State Board of Elections*, 267 F. Supp. 2d 342, 352 (E.D.N.Y. 2003).

38. This presumption is particularly appropriate in cases involving allegations of a threat to the right to vote. *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (finding irreparable harm because plaintiffs were denied ability to register to vote); *Montano v. Suffolk County Legislature*, 268 F. Supp. 2d. 243, 260 (E.D.N.Y. 2003) (“An abridgement or dilution of the right to vote constitutes irreparable harm.”). Infringement on the right to vote in the nominating phase of an election has long been held to cause irreparable harm of the sort necessitating injunctive relief. *See Gray v. Saunders*, 372 U.S. 368 (1963); *Rockefeller*, 917 F. Supp. at 166.