

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GREEN PARTY OF NEW YORK
STATE, a political party duly organized under
the laws of New York State; MARK DUNLEA,
Chairperson of the Green Party of New York
State; RACHEL TREICHLER and JAMES
LANE, each as a duly enrolled member of the
Green Party of New York State; SHANNON M.
HOULIHAN, JOHN N. WARREN, and LISA
CHACÓN,

Plaintiffs,

v.

NEW YORK STATE BOARD OF ELECTIONS;
CAROL BERMAN, NEIL W. KELLEHER,
HELENA MOSES DONOHUE, and EVELYN J.
AQUILA, in their official capacities as
Commissioners of the New York State Board of
Elections; NEW YORK CITY BOARD OF
ELECTIONS; NANCY MOTTOLA
SCHACHER, WEYMAN A. CAREY,
MICHAEL J. CILMI, MARK B. HERMAN,
NERO GRAHAM, JR., VINCENT J. VELELLA,
DOUGLAS A. KELLNER, FREDERIC M.
UMANE, TERRENCE C. O'CONNOR, and
STEPHEN H. WEINER, in their official
capacities as Commissioners of the New York
City Board of Elections, and as representatives of
all commissioners of county boards of elections
in New York State,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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Plaintiffs, by their attorneys, the Brennan Center for Justice at New York
University School of Law, as and for their complaint against Defendants, allege as
follows:

INTRODUCTION

1. Plaintiffs, the Green Party of New York State and several of its members and supporters, challenge Section 5-302.1 of New York State's Election Law. That provision requires that local boards of election expunge from their computerized lists of registered voters the voter's stated choice of party affiliation if and when the party chosen by the voter fails to maintain its status as a "party" under state law. Under state law, a "party" must obtain at least 50,000 votes for its gubernatorial nominee in the preceding election to maintain its status. Once a party has lost its status, the challenged provision means that, regardless of their political preferences, voters who register no longer have the option to enroll as a member of the party. In other words, this provision threatens to strip established parties like the Green Party, and the voters of New York, of their primary means of enrolling, identifying, organizing, communicating, and associating with party members about political issues and party activities.

2. On December 13, 2002, Defendant New York State Board of Elections will certify the November election results and, if the Green Party did not obtain 50,000 votes as is expected, effectively withdraw the State's recognition of the Green Party and several other parties that failed to obtain sufficient gubernatorial votes. On or around that date, unless the Court intervenes as Plaintiffs request, local boards of elections will comply with Section 5-302.1 by removing party enrollment information from voter records and preventing new voters from enrolling in the Green Party. Because this provision severely burdens the voters' and the Green Party's rights to communicate and associate as a political party, and does so unequally and without reasonable justification, it violates the First and Fourteenth Amendments to the United States

Constitution and 42 U.S.C. § 1983.

JURISDICTION AND VENUE

3. The Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 2201.

4. Venue of this action is properly in this district, pursuant to 28 U.S.C. § 1391(b), on the grounds that a defendant may be found and resides in this district, and a substantial part of the events or omissions giving rise to the claims alleged herein occurred, and threaten to occur, in this district.

PARTIES

5. Plaintiff Green Party of New York State (the “Green Party” or the “Greens”) is the New York State chapter of the Green Party of the United States, a national political organization in which 33 states are represented, with other states’ memberships pending. The Green Party was officially organized as the Green Party of New York State in 1990. As of November 1, 2002, the Green Party had 29,528 enrolled voters in New York State, and ran candidates for national, statewide, and local offices. Since 1998, when the Greens obtained official party status under New York law by obtaining over 50,000 votes in the gubernatorial election, Green Party officials have used voter lists from local boards of election to identify, organize, petition, solicit, and communicate with Green Party voters.

6. Plaintiff Mark Dunlea is an attorney and current Chairperson of the Green Party of New York State. He resides in Poestenkill, New York. As Chairperson of the Green Party, he is heavily involved in party organizing, fundraising, petitioning, get-out-the-vote operations, and campaigns for Green Party nominees -- all of which

activities use voter lists identifying Green Party enrollees. If Plaintiffs are denied the relief they seek, Mr. Dunlea will lose his Green Party enrollment status and his ability to conduct Green Party activities will be seriously impaired.

7. Plaintiff Rachel Treichler is an attorney and a former member of the Executive and State Committees of the Green Party of New York State. She resided in Brooklyn for over 20 years, and organized the Park Slope Greens, the local chapter of the Green Party. Since May of 2002, she has lived in Hammondsport in Steuben County, New York. Using lists of registered Green Party voters from the local board of elections, she has worked to organize Green Party voters in Steuben and other counties Upstate. Ms. Treichler is duly enrolled as a Green Party member in New York State. If Plaintiffs are denied the relief they seek, Ms. Treichler will lose her Green Party enrollment status and her ability to conduct Green Party activities will be seriously impaired.

8. Plaintiff James C. Lane is duly enrolled as a Green Party member in New York State. He registered for the first time as a voter in 2000, after the Greens obtained official recognition as a party under state law. He resides in Brooklyn, and is active in the local Green Party organization as a volunteer, organizer, and web designer. If it were not for the ability to enroll as a Green Party member on the voter registration form and Ralph Nader's presidential campaign in 2000, Mr. Lane would not have registered to vote at all, or become involved in the Green Party's activities. If Plaintiffs are denied the relief they seek, Mr. Lane will lose his Green Party enrollment status and his ability to express his political views through enrollment in the party.

9. Plaintiff Shannon M. Houlihan resides in Chestertown, in Warren County, New York. She is a Green Party supporter and Chair of the Adirondack Greens,

a local Green Party group. She is enrolled as a Democratic Party voter, but would like to register to vote as a Green Party member in New York because she no longer feels that the Democratic Party reflects her goals and beliefs as a voter. Nevertheless, she has not attempted to switch her party enrollment because if the Green Party loses its official status as a party under state law on December 13, and Plaintiffs do not obtain the relief they seek in this case, then her voter enrollment will be changed by local officials from “Green Party” to “blank.” This would mean that she could not vote as a member of the Green Party, and would lose her affiliation with a party.

10. Plaintiff John N. Warren resides in Chestertown, in Warren County, New York. He is enrolled as a Democratic Party voter, but would like to register to vote as a Green Party member in New York because he no longer feels that the Democratic Party reflects his goals and beliefs as a voter. Nevertheless, he has not attempted to switch his party enrollment because if the Green Party loses its official status as a party under state law on December 13, and Plaintiffs do not obtain the relief they seek in this case, then his voter enrollment will be changed by local officials from “Green Party” to “blank.” This would mean that he could not vote as a member of the Green Party, and would lose his affiliation with a party.

11. Plaintiff Lisa Chacón resides in Corning, in Steuben County, New York. She is a member of the Steuben Greens, a local Green Party group, attends regular meetings, volunteers for Green Party candidates, and has organized Green Party members to participate in a peace rally. She is enrolled as a Democratic Party voter, but would like to register to vote as a Green Party member in New York because she no longer feels that the Democratic Party reflects her goals and beliefs as a voter. Nevertheless, she has not

attempted to switch her party enrollment because if the Green Party loses its official status as a party under state law on December 13, and Plaintiffs do not obtain the relief they seek in this case, then her voter enrollment will be changed by local officials from “Green Party” to “blank.” This would mean that she could not vote as a member of the Green Party, and would lose her affiliation with a party.

12. Defendant New York State Board of Elections has “jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures.” N.Y. Elec. L. § 3-104(1). The New York State Board of elections acts pursuant to and under color of state law to ensure that local boards of elections across the State comply with and implement the election laws of the State of New York, including Section 5-302.1, which is challenged in this case. In addition, the Board is responsible for certifying the results of the November general election, triggering the requirements of Section 5-302.1. It is also responsible for promulgating the voter registration forms used by local boards of elections to register voters, the proper contents of which are directly at issue in this case.

13. Defendant Carol Berman is a Commissioner of the New York State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures.” N.Y. Elec. L. § 3-104(1).

14. Defendant Neil W. Kelleher is a Commissioner of the New York State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures.” N.Y. Elec. L. § 3-104(1).

15. Defendant Helena Moses Donohue is a Commissioner of the New York State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures.” N.Y. Elec. L. § 3-104(1).

16. Defendant Evelyn J. Aquila is a Commissioner of the New York State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures.” N.Y. Elec. L. § 3-104(1).

17. Defendant New York City Board of Elections is responsible for implementing voter registration procedures in New York City and maintaining lists of registered voters within that jurisdiction. The New York City Board of Elections has its offices at 32 Broadway, New York, New York, and in each county of New York City. The Kings County office is at 345 Adams Street, Brooklyn, New York. As a local board of elections, the New York City Board must implement Section 5-302.1 of the New York State Election Law, under the supervision and guidance of the New York State Board of Elections.

18. Defendant Nancy Mottola Schacher is a Commissioner of the New York City Board of Elections for Kings County.

19. Defendant Weyman A. Carey is a Commissioner of the New York City Board of Elections for Kings County.

20. Defendant Michael J. Cilmi is a Commissioner of the New York City Board of Elections for Richmond County.

21. Defendant Mark B. Herman is a Commissioner of the New York

City Board of Elections for Richmond County.

22. Defendant Nero Graham, Jr., is a Commissioner of the New York City Board of Elections for Bronx County.

23. Defendant Vincent J. Velella is a Commissioner of the New York City Board of Elections for Bronx County.

24. Defendant Douglas Kellner is a Commissioner of the New York City Board of Elections for New York County.

25. Defendant Frederic M. Umane is a Commissioner of the New York City Board of Elections for New York County.

26. Defendant Terrence C. O'Connor is a Commissioner of the New York City Board of Elections for Queens County.

27. Defendant Stephen H. Weiner is a Commissioner of the New York City Board of Elections for Queens County.

28. Defendants Commissioners of the New York City Board of Elections are being sued in their official capacities as defendants in their own right, and as representative parties on behalf of all commissioners of county boards of elections in New York State. The class of commissioners of county boards of elections is so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class, the defenses of the New York City Board of Elections Commissioners are typical of the defenses of the class, and the New York City Board of Elections Commissioners will fairly and adequately protect the interests of the class.

THE CHALLENGED PROVISION OF LAW

29. Under New York State law, persons who register to vote in New York may choose to indicate a party affiliation on their registration form. N.Y. Elec. L. § 5-210.5(k)(vi); see also Exhibit A attached to this Complaint. However, they may choose only from those parties that have obtained official “party” status as defined by state law, i.e., those parties that received at least 50,000 votes for their gubernatorial candidate in the preceding election. If a voter does not choose a party affiliation, the local board of elections deems that portion of the voter’s computerized record blank.

30. The provision challenged by Plaintiffs, Section 5-302.1 of New York Election Law, governs the process by which local boards of elections record (and erase) a registered voter’s party affiliation preference:

Before placing the registration poll record in the poll ledger, the board shall enter in the space provided therefore on the back of such registration poll record the name of the party designated by the voter on his application form, provided such party continues to be a party as defined in this law. If such party ceases to be a party at any time, either before or after such enrollment is so entered, the enrollment of such voter shall be deemed to be blank and shall be entered as such until such voter files an application for change of enrollment pursuant to the provisions of this chapter. . . .

N.Y. Elec. L. § 5-302.1 (emphasis added).

31. This provision requires that the voter lists prepared by the local boards of elections include each voter’s party enrollment. See also N.Y. Elec. L. § 5-302.4. If the party chosen by the voter loses its official party status, however, that information is stripped from the voter’s record, and from the lists, and deemed blank. In addition, from that moment onward, registering voters are no longer offered the option of associating themselves with that party through enrollment.

FACTS

The History of the Green Party under New York Law

32. The Green Party has been active in New York State and local politics since the mid-1980s, and was organized officially as the Green Party of New York State in 1990. The party has an extensive platform that addresses virtually every policy area, and like its national and international affiliates, emphasizes an aggressive program of environmental protection and protection of civil rights.

33. The Green Party's distinctive political viewpoint and principled stands on issues such as environmental protection, efforts to avoid unnecessary wars, racism, and universal health care attract thousands of voters, many of whom have never been politically active or motivated to vote by the two major parties. The Green Party has a particularly powerful appeal to young voters on college campuses and is often responsible for their first forays into political activism. Approximately one third of the Greens' voters are under the age of 24. In short, the ability to enroll in the Green Party allows and encourages these voters to join the political process.

34. The Green Party of the United States is a national political organization in which 33 states are represented, with other states' memberships pending. The Green Party in New York City led early efforts to institute recycling programs in the City, and their efforts to improve transportation led to the creation of an influential policy organization known as Transportation Alternatives, Inc. The party initially focused principally on environmental protection, but has since addressed the full gamut of issues with a unique political viewpoint.

35. In 1996, Ralph Nader ran for President of the United States as a Green Party candidate. As a result of the success of that campaign in garnering support and party membership, the Green Party of the United States as well as the Green Party of New York State received official recognition as parties by the Federal Election Commission.

36. Under New York State law, a “party” is defined as “any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor.” N.Y. Elec. L. § 1-104.3. Any political party that nominates candidates for election but has not reached this specific statutory threshold is termed an “independent body” under state law. *Id.* at § 1-104.12. In 1998, the Green Party received over 50,000 votes for its gubernatorial candidate, Al Lewis. Accordingly, the party obtained official “party” status under state law for the first time.

37. As required by state election law of officially recognized parties, the Green Party created its state committee structure in the two years following the 1998 general election. The party has extensive by-laws and party rules, and a statewide structure codified therein. In September 2000, the party held its first elections for State Committee representatives and repeated this process in September of 2002.

38. In 2000, the Green Party received 244,030 votes for its presidential candidate in New York State. In 2001, the party ran over 150 candidates for political offices in New York State – a national record for state Green parties.

39. In 2002, the national Green Party continued to grow and improve its electoral success by electing 70 new local and state officials across the country. In New York State, the Green Party nominated Stanley Aronowitz as its candidate for

governor. Upon information and belief, on November 5, as of the most recent unofficial tally, Mr. Aronowitz received less than 42,000 votes, short of the 50,000 vote threshold necessary to maintain the Green Party's official party status under New York law. Upon information and belief, the Green Party candidates for State Comptroller and Attorney General received approximately 46,000 and 48,800 votes, respectively.

40. Accordingly, the Green Party stands to lose its official "party" status on December 13.

The Parties' Use of Voter Lists and Party Enrollment Information

41. Under state law, the local boards of elections are required to provide the lists of registered voters within their jurisdiction to officials of those parties recognized as such under state law. See N.Y. Elec. L. §§ 5-602, 5-604. As discussed below, these voter lists form the starting point for virtually all party organizing activities and fundraising efforts.

42. Upon information and belief, all of the local boards of elections in New York State now have computerized databases in which local officials enter and store the information regarding voters registered within the jurisdiction. It is from these computerized files that the voter lists are drawn.

43. Upon information and belief, all of the parties that have obtained recognition as parties under state law by receiving 50,000 votes for a gubernatorial nominee rely heavily upon the voter lists provided by local boards of elections for their continued organizational strength and communications with supporters. The lists are used in at least four areas by parties: organizing, issues advocacy and education, fundraising, and "get out the vote" or "GOTV" operations. Each area will be discussed

in turn.

(a) Party Organizing

44. Green Party officials have used the party affiliation information in the voter lists as the starting point for virtually all of their organizing activities:

- to identify supporters in specific communities across the State;
- to mail organizational meeting notices and/or contact members via telephone;
- to mail (and receive) volunteer forms from interested party members;
- to recruit petitioners for party candidates;
- to urge absentee voters to obtain absentee ballots to support the party; and
- to determine the demographic profile of party members (through date of birth data included in the lists) in order to design party literature, adopt position platforms, and develop advertising to appeal to current and potential members.

These organizational activities depend squarely upon voters having the opportunity to register as party members, and the parties having access to this voter affiliation information from local boards of election. In other words, it is not just the voters' ability to register as Green Party voters that is critical to building the party, but also the panoply of organizational activities that hinge upon such registration. This is particularly true because many Green Party voters are young and more mobile than older voters, and thus more difficult to find and target without current voter registration information.

45. By preventing past and future voters from enrolling in the Green Party, the present law operates to ensure that once a party loses state recognition, it will be severely hampered in trying to regain that recognition.

46. Upon information and belief, officials in the Democratic and Republican parties routinely use the party affiliation information obtained from voter lists in their party-building activities and campaigns.

47. Without the ability to use voter lists that include party affiliation information, a party is severely disadvantaged in its efforts to organize and build support. While a substantial minority of states does not allow party affiliation for any party to occur at registration, those states do not discriminate against minor parties as a result. By contrast, New York's scheme allows such registration, but does so only for recognized parties, even if a party has previously obtained such recognition. This has the effect of burdening the minor parties while effectively subsidizing the major parties, as well as helping to ensure that if a recognized party loses its status in a single election, as the Greens have, it will not have the benefit of voter lists with party enrollment information in its efforts to regain recognition.

(b) Education and Advocacy on Issues

48. The ability of voters to enroll in a party, and the party's access to that voter enrollment information in the voter lists, facilitate issue-based communications between voters, and between voters and party officials.

49. The Green Party has used voter lists from local boards to educate Green Party voters about the threat posed by the Indian Point nuclear power plant in Westchester County, and the political campaign to close that plant; universal health care; problems with genetic engineering; the impact of the Rockefeller drug laws and the need for reform; New York State tax policies; global warming; land preservation; and agricultural policy, among other issues.

50. The Ontario County Green Party has used the voter lists to organize a peace rally to address the international issues posed by terrorism and the situation in Iraq.

51. Targeted mailings on these and other issues have educated voters while, at the same time, reaffirming the recipient's affiliation with and ideological connection to the Green Party.

52. The party meetings of registered Green Party voters (identified and scheduled with the voter lists) provide the political debate that sustains the party and builds party support. Green Party organizers from counties across the State have used the voter lists with party affiliation information to call registered Green Party voters to organize local party chapters through regular meetings, and to recruit petitioners to assist in gathering signatures for Green Party candidates, among other objectives. At these local party meetings, the Green Party platform as well as local and state issues that require attention are discussed and debated by party members and new recruits.

53. Greens have also used the voter lists to recruit members to attend public hearings, lobby elected representatives, and participate in demonstrations in New York State and in Washington.

54. Through these interactions, the voter lists have facilitated the expression of the Green Party members' views on the issues of our day, both in writing and orally.

(c) Fundraising

55. The Green Party uses the voter lists to solicit campaign and party contributions from voters who have enrolled in the party. Party officials also place donors identified through such solicitations on additional lists of prime fundraising sources for the party in future campaigns. Upon information and belief, the Democratic and Republican Parties use the voter lists of enrolled members in the same manner to

build support and raise funds for their respective parties.

56. Funds raised through such solicitations not only support further outreach, but also help party candidates compete and prevail in elections, a necessary step in building a party. The voter lists – and particularly the party affiliation information therein – lie at the heart of critical fundraising activities that maintain and build a party over time.

(d) Get Out the Vote (“GOTV”) Operations

57. Party affiliation means little without a solid turnout among party voters on election day. Upon information and belief, the Green Party and the other recognized political parties in New York use voter lists with party enrollment information to contact voters via telephone and mail shortly before election day to encourage them to vote for their candidates.

58. The Green Party has used phone banks on the evening before election day to call voters. In addition, individual campaigns run GOTV operations using voter lists to ensure a high turnout among party voters. Upon information and belief, the Democratic and Republican Parties use the voter lists of enrolled members in the same manner to get out the vote.

59. Without information about voters’ party enrollment, the Green Party will be unable to target new registrants for any purpose, including GOTV operations to increase turnout. The success of Green Party candidates will thus be further undermined on election day, an effect that will only increase with each passing year as the lists of currently registered Green Party voters grow increasingly outdated and unusable.

The Importance of Party Enrollment to Voters' Political Association and Expression

60. In addition to the importance of party enrollment information to political parties, the ability to register and indicate such affiliation is a central part of voters' political participation and expression.

61. The voters' expression of a party affiliation preference provides the primary means they can use to exercise their right to associate within a party and express their views through political party activities.

62. In addition, the act of enrolling in a party is itself an expression of political viewpoint and power. Without the ability to choose a party, or have her prior choice of party honored, the voter is robbed of this significant avenue for expression.

63. In New York State, voters may enroll only in recognized parties on the registration forms. The local boards of elections record and accumulate this information in the voter lists, and provide these lists to party officials.

64. By enrolling in a party, voters ensure that they will receive from party officials calls or notices regarding meetings to be held, party literature, and opportunities to support the party through petitioning, fundraising, demonstrations, lobbying, voting, or other advocacy.

65. Without those points of contact derived from the voter lists, many voters would not have these opportunities to congregate, debate, and advocate with fellow party members.

New York's Heavy Burden on Voters' Right to Associate Through Party Enrollment

66. New York's voter registration scheme places a particularly significant burden on voters' right to enroll in their party of choice. At present, 29 states

(including New York) and the District of Columbia inquire as to party affiliation in their registration forms. Two additional states, Illinois and Ohio, maintain records of voters' party affiliation not through registration forms, but based upon the voters' choice of party candidate in a primary election.

67. Significantly, in the 21 states that do not allow party affiliation at registration, there are open primaries in which voters may choose to vote for a party without prior affiliation.

68. In 26 of the 29 states that allow party affiliation at registration, voters are provided a blank line on which to write in the name of a party with which they wish to be affiliated, even if the party is not recognized as a qualified party under state law.

69. Among the 29 states that record party affiliation upon registration, New York is one of only three that do not provide a blank line for voters to use to identify an unlisted party at registration and thus do not allow a voter to enroll in an unrecognized party. The other two states are Iowa and Kansas.

70. New York is one of only 11 states in which state law makes it impossible for an organization to become a qualified party during a current election year without having to poll a specified amount of votes in the preceding election. This means that New York is one of only two states in the nation that allows a voter to enroll only in a recognized party *and* makes it impossible for a party to become recognized without meeting a statutory polling threshold in a preceding election. Together, these requirements impose a significant limitation on the ability of New York voters to affiliate themselves with parties, whether at registration or by voting in an open primary for a

party. These limitations greatly limit voters' expression of their political beliefs.

The Imminent Removal of Voters' Party Enrollment Information on December 13, 2002

71. Defendant State Board of Elections is required to meet on or before December 15 to canvass the certified results of the November general election from the county boards. N.Y. Elec. L. § 9-216.2.

72. Upon information and belief, this year, because December 15 falls on a Sunday, the Board is scheduled to meet on Friday, December 13.

73. Upon information and belief, the Board will effectively withdraw the State's recognition of the Green Party, as well as the Liberal and Right To Life Parties, because these parties failed to obtain the 50,000 votes for their respective gubernatorial candidates as required by the definition of "party" under state law.

74. Upon information and belief, in accordance with Section 5-302.1, on or about December 13 the local boards of elections will deem the party enrollment of registered voters who chose to enroll in any of these parties "to be blank" and will, in addition, begin to use new registration forms that preclude all future registrants from enrolling in these parties. Through this process, the voter lists will be purged of any indications that voters wish to affiliate themselves with the Green Party, or with any other party that has failed to obtain 50,000 votes in the November gubernatorial general election.

The Burden on State and Local Boards of Elections Imposed by Section 5-302.1

75. Upon information and belief, Section 5-302.1's requirement that local boards expunge the party enrollment information for those voters who have chosen the Green Party (or the other threatened parties) will impose an administrative burden

upon these boards.

76. In addition, Defendant New York State Board of Elections will be required to print and distribute to localities new voter registration forms that do not include as enrollment options any party that has ceased to be a “party” as a result of failing to obtain at least 50,000 votes in the November gubernatorial election. Further, the local boards will be forced to substitute the voter registration forms they currently use with these new forms.

77. By contrast, an order by this Court to refrain from expunging such information or revising and substituting the registration forms would in fact reduce the future workload faced by the local and State boards.

CLAIMS FOR RELIEF

(COUNT ONE)

First and Fourteenth Amendments – Burdens on Rights of Association and Speech

78. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-76 as if set forth herein at length.

79. On or around December 13, 2002, Defendant New York State Board of Elections will canvass votes cast in the November general election and Plaintiff Green Party, and any other party that has failed to obtain 50,000 votes for its gubernatorial candidate, will cease to be considered a “party” under State law.

80. On or around December 13, 2002, Section 5-302.1 of New York’s Election Law will require local boards of elections, under the supervision of Defendant New York State Board of Elections, to deem the party enrollment of registered voters who chose to enroll in any of these parties “to be blank” and will, in addition, preclude all future registrants from enrolling in these parties on their registration forms. Through this

process, the voter lists will be purged of any indications that voters wish to affiliate themselves with the Green Party, or with any other party that has failed to obtain 50,000 votes in the November gubernatorial general election.

81. Because of Section 5-302.1, voters will be deprived of the opportunity to enroll in the Green Party when they register despite its substantial history, significant political voice, and present status as a recognized party. At the same time, the Green Party will be deprived of the voters' party affiliation information, which allows the party to organize, petition, raise funds, communicate with and between members, and get out the vote on election days. If its enforcement is not enjoined, therefore, Section 5-302.1 will impose a severe burden on the rights of association and speech, of both the Green Party and its present and future members.

82. By reason of the foregoing, Defendants, acting under color of state law, have deprived and will deprive Plaintiffs of the rights, privileges, and immunities secured to them under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 to associate and form political parties and to express their political viewpoint through party activities and affiliation.

83. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

(COUNT TWO)

First and Fourteenth Amendments – Equal Protection

84. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-82 as if set forth herein at length.

85. Section 5-302.1 of New York Election Law unequally and unfairly burdens the rights of minor parties that lose official status as a “party” and their

supporters by expunging and precluding the choice of party enrollment by these parties' voters, while preserving and granting that choice of party to the supporters of major parties that retain their status as a "party." This disparate treatment of similarly situated voters, based solely on whether the party they would choose has obtained a specified number of gubernatorial votes in the preceding election, deprives Plaintiffs of the equal protection of the laws guaranteed under the Fourteenth Amendment.

86. The State has no compelling interest or even reasonable justification to support this unequal burden upon Plaintiffs' fundamental rights.

87. Under color of state law, Defendants have denied and continue to deny Plaintiffs the rights, privileges, and immunities secured by the Constitution and laws of the United States, and in particular the First Amendment to the Constitution, all in violation of the Equal Protection Clause of the United States Constitution and 42 U.S.C. § 1983.

88. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully ask this Court:

(1) To enter a judgment declaring and determining that New York's election law governing voter enrollment in political parties, N.Y. Elec. L. § 5-302.1, is in violation of the United States Constitution, specifically the First and Fourteenth Amendments, both facially and as applied to Plaintiffs,

(2) To grant the appropriate equitable relief including preliminarily and permanently enjoining Defendants from implementing and enforcing New York's

election law governing voter enrollment in political parties, N.Y. Elec. L. § 5-302.1, and any relevant policy guidance or rules intended to implement and enforce this provision, and continuing to allow voters to enroll in parties that have obtained 50,000 votes for a gubernatorial candidate in a prior general election but fail to do so in a subsequent general election, including the Green Party, and continuing to require local boards of elections to enter and maintain any and all information regarding voters' party enrollment in such parties, including the Green Party,

(3) To award Plaintiffs their costs and disbursements associated with the filing and maintenance of this action, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

(4) To award such other equitable and further relief as the Court deems just and proper.

Dated: December 9, 2002

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* Application for admission to the Eastern District of New York pending.