

DOCKET NO. HHD-CV22-6156703-S

MUAD HREZI, ET AL.

v.

DENISE MERRILL, SECRETARY OF
THE STATE, ET AL.

SUPERIOR COURT

JUDICIAL DISTRICT OF
HARTFORD

AT HARTFORD

August 2, 2022

HARTFORD J.D.

AUG - 2 2022

FILED

**MEMORANDUM OF DECISION RE: THE PLAINTIFFS' MOTION FOR INJUNCTIVE
RELIEF #100.31**

Before this court is the motion of the plaintiffs, Maud Hrezi, Muneeka Munir, John Fussell, and Bazila Munir, for injunctive relief to restrain the defendants¹, Secretary of the State Denise Merrill (Secretary), Governor of the State of Connecticut Ned Lamont, the Democratic State Central Committee, Sue Larsen and Angelo Sevarino, the Democratic Registrar of Voters of the Town of South Windsor (South Windsor) and the Town of East Windsor (East Windsor), respectively, from applying the ballot access requirements to qualify for a primary for United States Representative in the 2022 election in such a way that would disqualify Hrezi's campaign from access to the primary ballot and issue an order that a primary be held for the office of United States House Representatives for the First Congressional District (First District) to include Hrezi. For the reasons described herein, the motion is denied.

The plaintiffs commenced the present action on June 14, 2022. They allege in their complaint that Hrezi is a candidate for the First District. He failed to secure the majority of votes at the party convention, which the record reveals was held on May 9, 2022, at which Larson was

¹ John Larson and Larson for Congress (the "intervening defendants") moved to intervene in this matter and the court granted their motion to intervene on July 17, 2022. The intervening defendant filed a memorandum in opposition to the plaintiffs' motion for injunctive relief on June 21, 2022.

endorsed as the democratic party's candidate for the First District. The plaintiffs allege that because of the burdens imposed by Connecticut law as applied to Hrezi's campaign during the COVID-19 pandemic, the campaign failed to secure the requisite number of valid petition signatures (3,833) to qualify for a primary. Hrezi and his campaign were, given the implications of the pandemic, allegedly severely burdened by the strict enforcement of Connecticut's ballot access requirements to qualify for the primary in violation of the plaintiffs' rights to petition, speech, and free association protected by the first and fourteenth amendments to the United States constitution (first count) and article first, §§ 2, 4, 14 and 20 of the constitution of Connecticut (second count). The third count of the complaint is brought pursuant to General Statutes § 9-329a and in it, the plaintiffs claim aggrievement by the illegal rulings by the Secretary in (1) delaying the release of petitions for nomination of Hrezi for two days and (2) disallowing the acceptance of signatures by East Windsor and South Windsor. The plaintiffs' complaint sought an ex parte injunction as well as a temporary and permanent injunction seeking inter alia, an order that the Secretary be directed to hold a primary for the office of United States Representative for the First District to include Hrezi as a candidate.

A status conference was held on June 17, 2022, at which time the court scheduled a hearing for June 22, 2022, and ordered briefing on both substantive issues and the court's obligation to hold an expedited hearing on either the constitutional or statutory claims. Section 9-329a (b) obliges the court to "order a hearing to be held . . . not more than five nor less than three days after the making of such order" On June 21, 2022, the court issued an order pursuant to its case management authority that only the § 9-329a claim advanced by the third count proceed as scheduled.² The court issued a decision on June 24, 2022, denying Hrezi's § 9-

² "[C]ase management authority is an inherent power necessarily vested in trial courts to manage their own affairs in order to achieve the expeditious disposition of cases. . . . The ability of trial judges to manage cases is essential to

329a claims. *Hrezi v. Merrill*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV22-6156703-S, 2022 WL 2751731 (June 24, 2022, *Noble, J.*).

At the hearing regarding the § 9-329a claims, the parties stipulated to the following facts relevant to this decision. On May 10, 2022, the Secretary received a certificate of endorsement from John Larson certifying that on May 9, 2022, he had been endorsed as the democratic party's candidate for the First District and that he authorized his name to appear on the ballot, thus securing a place on the primary ballot should one be held. The Secretary was required to begin processing requests for petitions and issuing petition forms to candidates for state and district office, including the First District, on April 26, 2022. General Statutes § 9-404a. On Tuesday, April 26, 2022, at 10:29 a.m., the Secretary stamped receipt of a hand-delivered application for Hrezi to petition to be placed on the democratic primary ballot for the First District. On April 28, 2022, at approximately 3:20 p.m., an election official employed by the Secretary received a phone call from Hrezi requesting that the petition pages be emailed to him. The election official immediately emailed the petition forms to Hrezi while he remained on the phone. Along with Hrezi's petitioning forms, the Secretary sent a set of instructions for petitioning in multi-town district offices, which included the deadline to submit the petition forms.

The parties further stipulated that in order to qualify for the democratic primary ballot in the First District, Hrezi would need to submit 3,833 valid signatures, which is 2% of enrolled democratic party members in the First District. See General Statutes § 9-400 (b). The statutory deadline by which major party candidates seeking the office of Representative in Congress were

judicial economy and justice.” (Internal quotation marks omitted). *Barnes v. Connecticut Podiatry Group, P.C.*, 195 Conn. App. 212, 225, 224 A.3d 916 (2020) (citing *Krevis v. Bridgeport*, 262 Conn. 813, 819, 817 A.2d 628 (2003)). The court was obliged by § 9-329a (b) to proceed on the statutory claims of the plaintiffs within five days but no such obligation was articulated by counsel, and none was found by the court, relative to the constitutional claims. The bifurcated hearing was ordered to provide the defendants with the opportunity to conduct limited discovery on the constitutional claims.

required to submit primary petition forms to municipal registrars of voters was June 7, 2022, at 4:00 p.m. General Statutes § 9-400 (b). The Hrezi campaign submitted petition pages containing signatures of purported electors with the Democratic Registrar of Voters for South Windsor at or after 4:09 p.m. on June 7, 2022. The Democratic Registrar of Voters for South Windsor rejected the 92 signatures submitted because they were received after 4:00 p.m. The Hrezi campaign attempted to file petition signature pages with the Democratic Registrar of Voters for East Windsor at or after 4:15 p.m. on June 7, 2022. The Democratic Registrar of Voters for East Windsor also rejected the 18 signatures submitted because they were received after 4:00 p.m. Although the campaign submitted 4,950 total signatures, at least 1,683 signatures were rejected. All municipalities within the First District are holding both democratic and republican primary elections on August 9, 2022.

The court received testimony from Hrezi; the manager of his campaign, Bazila Munir; Attorney Theodore Bromley, a staff attorney with the Secretary whose duties include director of elections; Heather Augeri, an employee of the Secretary; Lori Magora, an election officer with the Secretary, and Andrew Gottlieb, a current candidate for the Connecticut 98th State House District. A number of exhibits were accepted as evidence during the hearing. After careful review of the testimony³ and exhibits, the court makes the following findings of fact - in addition to those stipulated to by the parties - as having been found by the preponderance of the evidence.

The policy of the Secretary in April of 2022 was to make available petition signature pages to applicants who desired to seek placement on a primary in three ways. The petitioner

³ As the trier of fact, the court must weigh the evidence and determine the credibility of witnesses. *Connecticut Light & Power Co. v. Proctor*, 324 Conn. 245, 259, 152 A.3d 470 (2016). “[I]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness’ testimony.” (Emphasis omitted.) *Palkimas v. Fernandez*, 159 Conn. App. 129, 133, 122 A.3d 704 (2015) (quoting *Stein v. Tong*, 117 Conn. App. 19, 24, 979 A.2d 494 (2009)).

would be permitted to wait for the petition signature pages to be processed on the day of submittal of the application, the petition signature pages could be emailed to the applicant or they would be mailed to the applicant. The Secretary recently adopted a policy of requesting an applicant's email address be written on the application. Hrezi appeared at the Secretary's office at approximately 10:20 and submitted his application for primary petitions and was told by Augeri - who accepted the application that was later processed by Magora – that it would take approximately two hours. While Hrezi testified that he was told by Augeri that the petition signature pages would be emailed to him, the court makes a finding of fact that he was asked to put his email address on the application and only presumed that they would be emailed to him. Hrezi testified that he delayed calling the Secretary to inquire as to the status of his receipt of the forms until April 28, 2022, because he did not want to be a nuisance. The court credits this testimony. Magora mailed to Hrezi the petition forms on April 26, 2022.

Hrezi provided an affidavit in support of his initial for injunctive relief in which he claims that because one of his staffers was delayed at the Bloomfield registrar of voters his campaign was delayed in delivering the petition forms to South Windsor and East Windsor causing the forms to be submitted after 4:00 p.m. Although the plaintiffs alleged in their complaint that despite the difficulties occasioned due to the pandemic, “by the end of the petitioning period, Mr. Hrezi’s campaign was collecting approximately 200 valid signatures per day.” Hrezi and Munir testified, that the largest daily collection of raw signatures collected by the campaign was approximately 500. The court credits the above testimony.

The court further finds that the plaintiffs untimely submitted 92 total petition signatures to the registrar of voters for the South Windsor and 18 total petition signatures to the registrar of voters for the East Windsor. These were rejected by the two registrars of voters as having been

submitted later than 4:00 p.m. The Hrezi campaign submitted a total of 4,950 signatures of which 1,683 were rejected, inclusive of the 110 votes from East and South Windsor. The number of valid votes was thus 3,253, or 580 less than the required 3,833 votes. The Secretary declined to schedule a primary for the democratic candidate to the general election.

The plaintiffs argue that the Connecticut ballot access laws are severely restrictive, especially in light of the rise in COVID-19 cases in April and May of 2022. The plaintiffs assert that the COVID-19 pandemic exacerbated the burdens on Hrezi's campaign because several of his campaign petitioners were infected with COVID-19 during the petitioning process. Specifically, the plaintiffs argue in their complaint that they lost petitioning time because three of Hrezi's petitioners were infected with COVID-19 and many other petitioners could not collect signatures because they were exposed to the individuals who were infected. The COVID-19 pandemic also made people less inclined to volunteer and sign petitions. Additionally, the plaintiffs allege that many people would not answer their doors because they felt uncomfortable being in close contact with campaign volunteers. Further, the plaintiffs assert that there were fewer large group events, more security restrictions on canvassing in apartment buildings, and generally fewer opportunities to ask people to sign petitions. The plaintiffs contend that despite the uptick in COVID-19 in April and May, Governor Lamont implemented no relief to candidates and their campaigns that were attempting to collect petition signatures.

The plaintiffs aver that the Connecticut ballot access laws requiring Hrezi to gather 3,833 signatures, especially in light of the uptick in COVID-19 cases in April and May of 2022, are not narrowly tailored to achieve Connecticut's interests in ensuring that candidates have a sufficient modicum of support before being placed on a primary ballot. The plaintiffs further argue that if 3,833 signatures would be sufficient to show a modicum of support without the COVID-19

circumstances, surely some lower number would reflect a comparable level of support during an election cycle when public gatherings have been shut down, citizens have been told to stay six feet apart from one another, and much of campaigning is now virtual. Further, the plaintiffs contend that unlike in 2020, Hrezi's campaign, supporters, and voters had no relief from requirements that have become dramatically more difficult because of the pandemic. Therefore, Connecticut's ballot access laws should fail strict scrutiny because the state has failed to narrowly tailor its regulations considering the pandemic's continuing conditions.

The defendants and the intervening defendants argue that the uptick in COVID-19 cases in April and May did not impose the same burdens as the early stages of the COVID-19 pandemic when Governor Lamont issued Executive Order 7LL, which decreased the number of signatures required to get on a primary ballot, allowed digital signatures, permitted scanned signed petition forms, and extended deadlines to submit petitions. The defendants and the intervening defendants argue that the state of the pandemic in 2022 is quite different than the state of the pandemic in 2020. Specifically, there are now vaccines, there are effective COVID-19 treatments, and there are no restrictions on gatherings or other activities that were in place in 2020. The defendants argue that although COVID-19 in 2022 did impose some burdens on Hrezi's campaign, it did not impose a severe burden. The defendants also argue that Hrezi's failed attempt at gaining access to the ballot does not evidence an undue burden from COVID-19, but rather a lack of organization of the campaign and public support. Additionally, the circumstances under which Governor Lamont imposed his executive order lightening the requirements to get on the ballot are no longer present in 2022.

The defendants and the intervening defendants assert that Connecticut has a compelling state interest in conducting orderly, fair, and transparent elections. In aid of this interest, the state

may craft regulations to maintain electoral integrity, minimize voter confusion at the ballot box, maintain the integrity of the petition circulation, maintain the stability of its political parties, discourage party splintering and factionalism, discourage party raiding and manipulation, and ensure electoral finality. The defendants argue that to further these interests, the states may demand a minimum degree of support for a candidate to access a primary ballot. The Connecticut ballot laws ensure that the candidates have a minimal degree of support within their party. The defendants argue that the state's interest in promulgating its primary ballot access regulations outweighs the reasonable and nondiscriminatory burdens they impose on Hrezi as a candidate or the plaintiffs as voters.

The defendants also argue that the equities heavily outweigh ordering another primary. The defendants assert that the primary election has already commenced even though the actual election is not until August 9, 2022, because information must be sent to the towns concerning which races will require primaries so that they can print ballots. Additionally, absentee ballots must be issued to electors upon applications starting on July 19, 2022, and the clerk must begin preparing them as soon as possible so that the public has an opportunity to inspect them before they are printed. Therefore, if this court orders that a primary be held between Hrezi and Larson on August 9th, it may delay the timely issuance of absentee ballots. The defendants argue that requiring the towns to conduct primaries on two separate dates, regardless of whether the separate date is only used for a single race or multiple races, might require towns to recruit and train additional election officials if the individuals slated to serve as election officials on August 9th are unavailable on the new primary date. The defendants also argue that two different elections would impose additional expenses on towns and require them to develop new plans for the new election location. The towns also do not have enough voting machines to conduct two

separate primary elections back-to-back without violating the statutory requirement that tabulators and ballot boxes must remain locked for 14 days following the election. Further, the defendants assert that voting machines must be programmed before an election and the state does not have enough memory cards to allow the machines to be reprogrammed quickly enough for back-to-back elections. Moreover, the defendants contend delaying any primary until after August 23rd would start to raise concerns regarding deadlines for steps in the general election. The defendants and intervening defendants argue that a separate primary date just for the First District will likely lead to voter confusion as to the date of the primaries that voters are eligible to vote, the location of the separate primary, and the time of the separate primary. The defendants aver that moving the primary will also result in hardship to the candidate whose party's primary is delayed because the opposing party's candidate can begin campaigning for the general election as soon as their primary is completed, while the candidate for the delayed primary must wait until his primary is completed to do so.

STANDARD

"The standard for granting a temporary injunction is well settled. In general, a court may, in its discretion, exercise its equitable power to order a temporary injunction pending final determination of the order, upon a proper showing by the movant that if the injunction is not granted he or she will suffer irreparable harm for which there is no adequate remedy at law. . . . A party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor. . . . The plaintiff seeking injunctive relief bears the burden of proving facts which will establish irreparable harm as a result of that violation. . . . Moreover, [t]he extraordinary nature of

injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted. Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm.” (Citations omitted; internal quotation marks omitted.) *Agleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 97-98, 10 A.3d 498 (2010). Connecticut courts apply this standard for temporary injunctions in the context of election cases. See e.g., *Fritz v. Uricchio*, Superior Court, judicial district of Middlesex, Docket No. CV-15-6014480-S, 2015 WL 9242213, at *1 (November 20, 2015, *Domnarski, J.*) (61 Conn. L. Rptr. 307); *Jarjura for Comptroller v. State Elections Enforcement Commission*, 51 Conn. Supp. 483, 496, 4 A.3d 356 (2010); *Osorio Fuentes v. Smith*, Superior Court, judicial district of New Haven, Docket No. CV-04-0486751-S, 2004 WL 944513, at *4 (April 12, 2004, *Arnold, J.*). “More stringent standards, however, govern the issuance of mandatory injunctions. Unlike a prohibitory injunction—an order of the court that merely maintains the status quo by restraining a party from the commission of some act—a mandatory injunction is a court order that commands a party to perform some affirmative act. . . . Relief by way of mandatory injunction is an extraordinary remedy granted in the sound discretion of the court [but] only under compelling circumstances.” (Citation omitted; internal quotation marks omitted.) *Kent Literary Club of Wesleyan University at Middletown v. Wesleyan University*, 338 Conn. 189, 238-39, 257 A.3d 874 (2021).

STATUTORY SCHEME

The following statutory scheme informs this decision. There are three avenues available for candidates to appear on the ballot for party primaries. Candidates for the First District may be endorsed by the relevant party at the party convention. General Statutes § 9-382. If there are no other candidates qualifying for a primary ballot, the endorsed candidate simply appears on the

ballot for the November general election. Failing receipt of the party endorsement, a candidate may appear on a primary ballot if they obtain 15% of the votes of convention delegates in any roll call vote on endorsement of a candidate for the office. General Statutes § 9-400. The third avenue is available following the convention and requires the circulation of petitions and, relevant to the plaintiffs' campaign, obtaining the signatures of 2% of the enrolled members of the party in the district. General Statutes § 9-400 (b). The commencement of the petitioning period is governed by § 9-404a which also requires that on the day specified for commencement of the petitioning period the petition forms "shall be available from the Secretary of the State" The first day to seek petition forms in 2022 was April 26, 2022. Section 9-400 prescribes the day and time by which signed petitions must be submitted to the registrar of voters of the towns in which the respective petition pages were circulated. In 2022, the candidates had until June 7, 2022, at 4:00 p.m., to secure signatures and file their petitions with the relevant registrar of voters. Herzi was thus afforded forty-two days within which to secure the appropriate number of signatures, in the present case 3,833 in number. Petition pages may contain only the signatures of members residing in the same municipality. General Statutes § 9-404b (d). The various registrars of voters must then certify the signatures on each petition page against the enrolled party members for the town and were required to file the certification with the Secretary by June 14, 2022, within seven days after receipt of the petition pages. General Statutes § 9-404c. Additionally, the petition must be signed in the presence of the circulator. General Statutes § 9-404b (d). Each petition page must also be acknowledged in front of the appropriate person. *Id.* Each petitioner circulating petitions for the signature requirement must be an enrolled member of a state municipality. *Id.*

ANDERSON-BURDICK FRAMEWORK

First and fourteenth amendment challenges to election laws are analyzed under the *Anderson-Burdick* framework. See *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983). Under this analysis, the court must “[f]irst . . . ascertain the extent to which the challenged restriction burdens the exercise of the speech and associational rights at stake. The restriction could qualify as reasonable [and] nondiscriminatory or as severe. Once [the court has] resolved this first question, [the court proceeds] to the second step, in which [the court applies] one or another pertinent legal standard to the restriction. If the restriction is reasonable [and] nondiscriminatory, [the court applies] the standard that has come to be known as the *Anderson-Burdick* balancing test: [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 seeks to vindicate, and then . . . identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment under this more flexible standard, [the court] must determine [both] the legitimacy and strength of each of those interests and the extent to which those interests make it necessary to burden the plaintiff’s rights.” (Footnotes omitted; internal quotation marks omitted.) *Yang v. Kosinski*, 960 F.3d 119, 129 (2d Cir. 2020). “[W]hen a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State’s important regulatory interests are generally sufficient to justify the restrictions.” (Internal quotation marks omitted.) *Burdick v. Takushi*, supra, 504 U.S. 434. “If the restriction is severe, then [the court is] required to apply the more familiar test of strict scrutiny: whether the challenged restriction is narrowly drawn to advance a state interest of compelling importance. It follows then that the rigorousness of [the court’s] inquiry into the propriety of a state election law depends upon the

extent to which a challenged [restriction] burdens First and Fourteenth Amendment rights.”

(Footnotes omitted; internal quotation marks omitted.) *Yang v. Kosinski*, supra 129.

A statute can be challenged under the first amendment in two ways. “A facial challenge to a statute considers only the text of the statute itself, not its application to the particular circumstances of an individual. . . . An as-applied challenge, on the other hand, requires an analysis of the facts of a particular case to determine whether the application of a statute, even one constitutional on its face, deprived the individual to whom it was applied of a protected right.” (Citation omitted; internal quotation marks omitted.) *Field Day, LLC v. Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006). Courts have applied the *Anderson-Burdick* analysis to both claims that an election statute is facially unconstitutional and unconstitutional as applied to a particular set of facts. For example, in *Garbett v. Herbert*, the court stated that “because [the plaintiff] brings an as-applied [first amendment freedom of association] challenge [to the state’s ballot access signature requirement], the court must consider her injury under the unique circumstances related to the COVID-19 pandemic.” *Garbett v. Herbert*, 458 F. Supp. 3d 1328, 1344 (D. Utah 2020), appeal dismissed, Docket No. 20-4051, 2020 WL 6326299, at *1 (10th Cir. May 4, 2020). “Thus, the court [in *Garbett v. Herbert* had to] decide whether, taken together, the ballot access framework as applied [that] year was narrowly tailored to achieve the State’s compelling interests.” *Id.*, 1346; see *Fusaro v. Howard*, 19 F.4th 357, 366 (4th Cir. 2021) (“We accordingly turn to our application of the *Anderson-Burdick* balancing test to [the plaintiff’s] claim that the [election statute provision] — as applied to him — contravenes the Free Speech Clause of the First Amendment. . . . In order to prevail on an as-applied First Amendment challenge, a plaintiff must show that the regulations are unconstitutional as applied to their particular speech activity. . . . As we have observed, an as-applied challenge is based on a developed factual record

and the application of a statute to a specific person. . . . As-applied challenges are fact-specific inquiries because of the general rule that constitutional adjudication requires a review of the application of a statute to the conduct of the party before the Court.” [Internal quotation marks omitted; citations omitted.]); *Price v. New York State Board of Elections*, 540 F.3d 101, 108, 112 (2d Cir. 2008) (finding election laws unconstitutional as applied to specific election pursuant to *Anderson-Burdick* framework); *Libertarian Party of New York v. New York Board of Elections*, 539 F. Supp. 3d 310, 329 (S.D.N.Y. 2021) (finding plaintiffs did not show likelihood of success on merits as plaintiffs failed to show election law was unconstitutional as applied to them under *Anderson-Burdick* framework); *Fair Maps Nevada v. Cegavske*, 463 F. Supp. 3d 1123, 140 n.12 (D. Nev. 2020) (stating that in regard to court’s *Anderson-Burdick* analysis that it “must consider the constitutionality of the applicable statutes as applied to Plaintiffs during the COVID-19 pandemic. As Plaintiffs have articulated their challenge here, COVID-19 and the Stay at Home Order constitute the factual circumstances under which [gave rise to their cause of action].”); *Gonsalves v. New York State Board of Elections*, 974 F. Supp. 2d 191, 201 (E.D.N.Y. 2013) (finding that voting laws were not unconstitutional either facially or as applied to facts of case).

CASE EXAMPLES OF SEVERE BURDEN

The Supreme Court has not identified a “litmus test for measuring the severity of a burden that a state law imposes on a political party, an individual voter, or a discrete class of voters.” *Crawford v. Marion County Election Board*, 553 U.S. 181, 191, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008). “Election laws will invariably impose some burden upon individual voters.” *Burdick v. Takushi*, supra, 504 U.S. 433. “[T]he hallmark of a severe burden is exclusion or virtual exclusion from the ballot.” (Internal quotation marks omitted.) *Libertarian Party of Connecticut v. Lamont*, 977 F.3d 173, 177 (2d Cir. 2020). Nevertheless, courts have found that election laws

became severely burdensome due to the circumstances at the time of or time leading up to an election. These circumstances include a short temporal requirement for collection of signatures, excessive signature requirements, overly restrictive signature collection procedures, limitations on the pool of available signatories, as well as external circumstances that impede the collection of signatures such as seasonal limitations, severe weather events, the timing of an election or earlier phases of the current pandemic.

For example, in *Breck v. Stapleton*, the governor ordered a special election to fill the seat of a United States representative who resigned. *Breck v. Stapleton*, 259 F. Supp. 3d 1126, 1129 (D. Mont. 2017). The state law required minor parties to submit a nominating petition containing 5,000 signatures for their candidate to appear on the ballot. *Id.* The state laws further provided that an independent party candidate must file a nominating petition containing signatures of 5% of the votes cast for the last successful candidate for the office at issue. *Id.* The 5% requirement, as applied to the primary at issue, would require independent party candidates to obtain 14,268 signatures. *Id.* Two independent candidates and one minor party candidate did not collect enough signatures to get on the ballot and sought injunctive relief. *Id.*, 1129. The court found that the state signature requirement, as applied to the special election, imposed a severe burden on the candidates' first and fourteenth amendment rights. *Id.*, 1134. Specifically, the court found that the signature requirement was a severe burden on the candidates' rights because they were subjected to a compressed timeframe of no more than forty-six days to collect signatures from the time the secretary of state posted the necessary forms with the requirements for the possible special election on his website, yet the sitting representative did not actually resign until five days before the signatures were due. *Id.*, 1132, 1134. Further, the court found that there was a lack of preparation time prior to the petitioning period to organize large scale

signature drives. *Id.*, 1133-34. The court also reasoned that the ballot access laws imposed a severe burden because the plaintiffs had to gather signatures during winter, as compared to a regular election when the candidates collect signatures in the spring, and there was a low voter turnout due to the off-year of the election. *Id.*, 1134.

Further, in *Rockefeller v. Powers*, the plaintiffs, republican voters, alleged that the primary ballot access rules as applied to the 1996 republican primary to select delegates for the republican national convention violated their first amendment rights when their delegates did not get on the ballot in both densely and sparsely populated republican districts. *Rockefeller v. Powers*, 917 F. Supp. 155, 156 (E.D.N.Y.), *aff'd*, 78 F.3d 44 (2d Cir. 1996). The applicable ballot access laws provide that “to get on the ballot for the Republican presidential primary in any one of [the state’s] thirty-one congressional districts, delegates supporting a candidate for President must obtain signatures from 5% or 1250, whichever is less, of the enrolled Republican voters in the district. The total number of signatures necessary to put a candidate’s name on the ballot in all thirty-one districts is approximately 37,000.” *Id.*, 161. “Because signatures must be gathered in every district, presidential candidates who do not enjoy the support of the existing Party apparatus must create far-flung organizations that reach to every corner of New York State.” *Id.*, 160. Further, the ballot access laws prohibited a person from signing petitions for more than one candidate and “[invalidated] any signatures given after the first.” *Id.* Therefore, “[a]s the petitioning phase proceeds, the number of people still available to sign petitions decreases and the difficulty in finding them increases.” *Id.* Additionally, the already short thirty-seven-day petitioning timeframe “now falls during the period from Thanksgiving to just after New Year’s Day. As a result, petition gatherers were hampered by holidays and vacations, short days, and winter storms.” *Id.* “[The ballot access laws] will invalidate a signature for a host of

defects that have nothing to do with whether the person who signed the petition was qualified to do so. For example, signatures can be invalidated for failure to comply with strict rules regulating who may witness a signature. . . . The witness must be a registered Republican voter from within the district or a notary public or Commissioner of Deeds.” Id. The law also required each signature be accompanied by the signer’s address, election district number, and in some towns, the voter’s assembly district number, which oftentimes voters would not know. Id. Then, the law required the petition to be “assembled in volumes, each accompanied by the appropriate summary sheet” and failure to comply with any of the requirements may invalidate substantial numbers of perfectly valid signatures. Id. The effect of these rules made parties obtain significantly more signatures than the 5% or 1250 signature requirement to anticipate challenges to the signatures. Id., 162. The court found that the following imposed a severe burden on the plaintiffs’ constitutional rights: “(i) the requirement that a slate of delegates collect signatures in each district amounting to 5% or 1250 registered Republicans, whichever is less; (ii) the requirement that the collection of signatures must occur in a period of 37 days, during which there are several important holidays, inclement weather, school and family vacations, and short periods of daylight; (iii) a rule limiting a voter from signing petitions for more than one candidate, thus reducing the total pool available to those collecting signatures; (iv) a host of rules defining what is a valid signature, including rules as to the qualification of witnesses to signings and inclusion of the election or Assembly district numbers of signers; and (v) other highly technical requirements that concern the presentation of petitions containing the signatures to election officials. . . . Indeed, as the district court found, at least 140% of the requisite 5%/1250 signatures usually must be collected to survive hypertechnical challenges and to succeed in getting a delegate slate on the ballot.” *Rockefeller v. Powers*, 78 F.3d 45.; see *Prestia v.*

O'Connor, 178 F.3d 86, 87 (2d Cir. 1999) (stating that *Rockefeller v. Powers* was limited to “the special circumstances of that case”), cert. denied, 528 U.S. 1025, 120 S. Ct. 539, 145 L. Ed. 2d 418 (1999).

Moreover, in *Hall v. Merrill*, the state held a special election after the sitting United States representative retired, and the plaintiffs, independent candidates, sought declaratory and injunctive relief on the ground that the ballot access laws are unconstitutional as they applied to the special election after one of the candidates was unable to collect enough signatures to gain access to the ballot in a special election. *Hall v. Merrill*, 212 F. Supp. 3d 1148, 1153, 1157 (M.D. Ala. 2016), vacated and remanded on other grounds sub nom. *Hall v. Secretary, Alabama*, 902 F.3d 1294 (11th Cir. 2018). The election law provided that independent candidates must obtain signatures of 3% of the number of voters who cast “ballots for the office of Governor in the last general election in the political subdivision in which the candidate seeks to qualify.” *Id.*, 1153. There was no requirement that a signer must be unaffiliated with a political party, no prohibition on signers voting in a party primary, no prohibition on signing multiple petitions, no fee for the secretary of state to verify signatures, and no requirement that the signature petition be notarized or witnessed. *Id.* The ballot laws required that the signature petitions contain the date of the election that ballot access is sought. *Id.* One of the plaintiffs, an independent candidate, did not start collecting signatures until the secretary of state announced the election date, fifty-six days before the election, in fear that the signatures collected prior to the election date announcement would not count because the petition would not contain the election date. *Id.*, 1153-54. The court found that the election laws imposed a severe burden on the plaintiff because a reasonably diligent candidate, in light of all the challenges that come with these requirements during the special election, could not satisfy the 3% requirement. *Id.*, 1166. The

court reasoned that the plaintiff was a reasonably diligent candidate as he began collecting signatures three weeks after the representative announced his retirement, he worked tirelessly for two months to obtain enough signatures by visiting numerous businesses and events, and he knocked on 5,000 doors. *Id.* However, the response rate was low and although he attempted to enlist the help of paid petitioners when he put an advertisement in the newspaper, only one person responded, and that person would cost the plaintiff a large sum to collect enough signatures. *Id.* Further, the court reasoned that these requirements, in light of the nature of a special election, severely burdened the plaintiff because the plaintiff was subjected to a limited time period to collect signatures as he could not start collecting signatures until the current representative stepped down and the date the special election was announced to comply with the requirement that the election date must be on the petition, unlike a regular election that has predetermined dates and deadlines. *Id.*, 1166-67. Additionally, the court reasoned that the requirements severely burdened the plaintiff because of the lack of preparation time before the off-season election to organize a successful signature drive, which can take months, low voter turnout due to the off-season special election, and the history of independent party candidates unsuccessfully gaining access to the ballot in a special election. *Id.*, 1167-68.

In *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, minor party candidates argued that the election laws as applied to them in the general election were unconstitutional. *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, 593 F. Supp. 118, 119 (W.D. Okla. 1984). The election law at issue required that a group seeking to form a new political party and be placed on the ballot must file a petition bearing the signatures of 5% of the votes cast in the last general election within ninety days of filing a notice of intent to form a political party. *Id.*, 121. The court found that the signature requirement, in light of only

having ninety days to collect the signatures, was much more severe than other states and if other states did require this number of signatures, they allowed for a longer time to collect them. *Id.* The court also found that in addition to this rigorous standard the plaintiffs were not allowed to petition in malls, campuses, and other public areas because of restrictions on petitioning. *Id.* The court also recognized that the plaintiffs endured inclement weather during the short petitioning period, the voter turnout was low, and the state did not allow write-in voting. *Id.*, 122. Therefore, the court reasoned that the combination of all these factors “resulted in a deprivation of these plaintiffs’ constitutional rights.” *Id.*

Additionally, *Florida Democratic Party v. Scott*, involved a voting law that did not allow aspiring voters to vote in an upcoming election if they did not register to vote by a certain deadline. *Florida Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1253 (N.D. Fla. 2016). During the voter registration period, a hurricane prevented aspiring voters from registering to vote both in person and by mail as a hundred thousand citizens had to evacuate the state and the United States Postal Service suspend operations. *Id.*, 1253, 1257. Therefore, the court found that the statute as applied to the circumstances presented constituted a severe burden on the right to vote because the hurricane foreclosed the only method of registering to vote and disenfranchised thousands of voters. *Id.*, 1257.

Further, in *Libertarian Party of Illinois v. Pritzker*, new parties and voters who wanted to vote for those parties’ candidates for state and federal offices in the November 2020 election brought a lawsuit seeking to enjoin the state’s in person signature requirement in light of the burdens imposed on it by the COVID-19 pandemic. *Libertarian Party of Illinois v. Pritzker*, 455 F. Supp. 3d 738, 740 (N.D. Ill. 2020), *aff’d sub nom. Libertarian Party of Illinois v. Cadigan*, 824 F. Appx. 415 (7th Cir. 2020). The relevant statute provided: “To appear on the ballot for

statewide office, new party and independent candidates must collect signatures from the lesser of 25,000 voters or 1 percent of the votes cast in the most recent statewide election. . . . And to appear on the ballot for a political subdivision within the state, like a legislative district, the number of signatures required is 5 percent of the voters who voted for the last election for that office.” (Citation omitted.) Id., 141. Additionally, “all signatures have to be ‘wet’ signatures (*i.e.*, physical signatures as opposed to electronic signatures), signed by a voter in person, and notarized.” Id. In response to the COVID-19 public health emergency, the governor issued a series of executive orders “limiting public gathering and culminating in a shelter-at-home order on March 20, which [required] all individuals to stay at home except for persons engaged in certain ‘essential’ activities. . . . Practically all public gatherings of any size [had] been banned.” (Citations omitted.) Id., 742. There was great uncertainty about how long the stay at home order would last. Id. The court held that the signature requirements imposed a severe burden on the plaintiffs’ first and fourteenth amendment rights as applied to the 2020 general state and federal elections because of the restrictions on public gatherings pursuant to the stay-at-home order at the time the candidates were supposed to collect signatures imposed “a nearly insurmountable hurdle for new party and independent candidates attempting to have their name placed on the general election ballot [through petitioning].” Id., 744.

In *Esshaki v. Whitmer*, a republican candidate for United States Congress in the 2020 election was required to collect one thousand signatures by April 21, 2020. *Esshaki v. Whitmer*, 455 F. Supp. 3d 367, 369 (2020). During the petitioning period, the governor issued a stay at home executive order due to the rising COVID-19 cases that “suspended in-person non-essential commercial activities and directed residents to remain at home or in their place of residence to the maximum extent feasible. . . . It also prohibited all public and private gatherings of any

number of people not part of a single household and ordered that persons performing essential activities outside of their homes remain six feet apart. . . . The Stay-at-Home Order [did] not contain any exception for campaign workers. On April 9, 2020, the Governor signed a second executive order extending the Stay-at-Home Order through the end of April.” (Citations omitted; internal quotation marks omitted.) *Id.*, 372. A violation of this order was a misdemeanor criminal offense. *Id.* The republican candidate maintained that the signature requirement in light of the stay at home order substantially burdened his access to the ballot in violation of his first and fourteenth amendment rights. *Id.*, 372. The court held that the signature requirement as applied during the time of the COVID-19 pandemic when the stay-at-home order was in place imposed a severe burden on the plaintiff’s first and fourteenth amendment rights because through no fault of the plaintiff, he could no longer solicit signatures in person at large gatherings or by going door to door as this was now a misdemeanor offense and alternative options to collecting signatures, such as mail campaigns, were both costly and ineffective. *Id.*, 376-77. Therefore, the court stated that “the unprecedented—though understandably necessary—restrictions imposed on daily life by the Stay-at-Home Order, when combined with the ballot access requirements . . . have created a severe burden on Plaintiff’s exercise of his free speech and free association rights under the First Amendment, as well as his due process and equal protection rights under the Fourteenth Amendment” *Id.*, 377.

In *The Constitution Party of Virginia v. Virginia State Board of Elections*, minor parties and candidates sought to appear on the 2020 general election ballot and asserted that the ballot access laws as applied during the 2020 election cycle violated their first and fourteenth amendment rights. *The Constitution Party of Virginia v. Virginia State Board of Elections*, 472 F. Supp. 3d 285, 288-89 (2020). The relevant ballot access statute required independent and

minor party candidates for United States Senate to obtain 10,000 signatures with signatures of at least 400 qualified voters from each congressional district. *Id.*, 289. An independent or minor party candidate running for the United States House of Representatives must obtain 1,000 signatures from the congressional district. *Id.*, 290. Further, an independent or minor party candidate running for president or vice president must collect 5,000 signatures, with signatures of at least 200 qualified voters from each congressional district. *Id.* The laws required that the witness of the signature must sign under the penalty of perjury before a notary. *Id.* The pandemic completely halted the minor and independent party candidates' efforts to collect signatures, and the parties found it difficult to resume collecting signatures because these parties typically "collect signatures at large public gatherings during the spring and summer, outside the [DMV], outside grocery and department stores, through door-to-door canvassing, and at polling places during primary elections." *Id.*, 291-92. Nevertheless, "[s]ince COVID-19 began and [the governor] issued the Executive Orders, nearly all large public gatherings have been canceled. The DMV and many private businesses no longer allow the plaintiffs to collect signatures or set up a table on their properties. At least two of the parties either have used or are considering using a paid petition circulator, but the petition circulator . . . expressed concerns about putting his and others' health at risk." *Id.*, 291. The court found that the signature requirement imposed a severe burden on the plaintiffs' ballot access rights because there were no normal signature gathering methods available due to the COVID-19 executive orders as the plaintiffs could not collect signatures in their typical manner, they could not pass a clipboard to voters when going door to door, and approaching voters at polling places was unsuccessful as most voters were voting through absentee ballots. *Id.*, 293-94.

In *Garbett v. Herbert*, the relevant statute required a republican governor candidate to obtain either 28,000 signatures of the registered republican voters or be selected by delegates at the state republican convention to be placed on the primary ballot. *Garbett v. Herbert* supra, 458 F. Supp. 3d 1332. The plaintiff, a republican governor candidate, sought to get on the primary ballot by collecting signatures and she ensured that she would be able to collect enough signatures before the April 13, 2020 deadline. Id. Although the candidate did leave open the possibility of gaining access to the ballot through the convention route, she realized that became impossible when the republican party announced, in light of the COVID-19 pandemic, it would hold a virtual convention and instead use delegates previously selected in 2018. Id., 1333. Therefore, the plaintiff could not organize her supporters to become state delegates. Id. In March 2020, in response to the COVID-19 pandemic, the governor issued directives advising citizens against gatherings of more than ten people, to stay six feet apart from each other, and not to leave their homes, therefore most public events were canceled. Id., 1338. Even though the governor issued directives rather than orders, the court found that laws requiring candidates to gain ballot access either by obtaining signatures or through the state convention imposed a severe burden on the plaintiff's first amendment rights as applied during COVID-19 pandemic because pursuant to the governor's directives the plaintiff could not engage in the typical in person signature collecting methods and virtual signature collecting was both costly and ineffective. Id., 1344-45. Thus "it [was] difficult to imagine a confluence of events that would make it more difficult for a candidate to collect signatures." Id., 1344. The court also took note that the uncertainty as to the nature, transmission, effects, and treatments of the virus in March 2020 also contributed to the severe burden. Id., 1345.

On its face, the petitioning laws at issue in the present case do not impose a severe burden on the plaintiffs' first and fourteenth amendment rights. Unlike *Rockefeller v. Powers*, supra, 917 F. Supp. 160, where the candidates had to collect 37,000 signatures in fifty-six days, *Hall v. Merrill*, supra, 212 F. Supp. 3d 1153-54, where candidates had to collect 5,938 signatures in fifty-six days, and *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, supra, 593 F. Supp. 121, where the candidates had to collect 37,000 in thirty five-days, here, Hrezi's campaign had to collect 3,833 signatures in forty-two days. See *Gottlieb v. Lamont*, United States District Court, Docket No. 3:20-CV-00623 (JCH), 2022 WL 375525, at *13-14 (D. Conn. February 8, 2022). Additionally, the United States Supreme Court has held that fifty-five days was not an unduly short time to collect 22,000 signatures as that would only require the campaign to collect 400 signatures a day or four signatures a day for every 100 canvassers. *American Party of Texas v. White*, 415 U.S. 767, 787, 94 S. Ct. 1296, 39 L. Ed. 2d 744 (1974). The United States Supreme Court has held that standing alone, gathering 325,000 signatures in twenty-four days would not be an impractical burden for an independent presidential candidate as it would require 13,542 signatures a day and 1,000 canvassers could perform the task if each gathered fourteen signatures a day. *Storer v. Brown*, 415 U.S. 724, 740, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974). Nevertheless, the court did note that this requirement could become a severe burden if the state law that disqualified voters who voted in the primary significantly diminished the pool of eligible signers. *Id.* Moreover, the Second Circuit found in *LaRouche v. Kezer*, that a law that required a candidate to acquire the signatures of 1% of their party's registered voters was constitutional because the United States Supreme Court had upheld 5% signature requirements; see *Jenness v. Fortson*, 403 U.S. 431, 442, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971); the statute was free from any restrictive features, thus preserving the pool of signatures,

and while the court acknowledged that fourteen days to collect signatures was short it was constitutional because Connecticut was small but densely populated, therefore it was easier to contact voters than in larger more spread out states and the candidates only needed to utilize a small number of supporters as volunteers to meet the signature goal. *LaRouche v. Kezer*, 990 F.2d 36, 39-41 (2d Cir. 1993). The court also noted that if a ballot access requirement alone is constitutional, then any additional means of getting onto the ballot serves only increase ballot access. *Id.*, 38-39. In the present matter, Hrezi testified that three signatures per hour would be a reasonable expectation of what a petitioner for his campaign could collect. Therefore, a petitioner could collect twenty-four signatures per day and the campaign would only need four petitioners working every day to meet the signature requirement. Additionally, this average could be much higher depending on the day. Therefore, this requirement is quite lower than the signature requirements that the United States Supreme Court held were not severely burdensome and it also is quite lower than the requirements in *Rockefeller v. Powers*, supra, 917 F. Supp. 160, *Hall v. Merrill*, supra, 212 F. Supp. 3d 1153-54, and *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, supra, 593 F. Supp. 121.

Moreover, the Connecticut signature requirement does not have severe additional restrictions that would require the voters to acquire a substantial number of additional signatures to anticipate signature disqualification like in *Rockefeller v. Powers*, supra, 917 F. Supp. 160. The petition pages had to be circulated by party members, the signers had to be residents of the state and a town in the district, the signers had to sign the petition page for the correct town, and the circulator had to witness the signature. Nevertheless, there were no requirements that risked severely limiting the pool of signers like in *Storer v. Brown*, supra, 415 U.S. 740, or rules requiring the signer to know election district numbers, strict witness requirements, or laws

requiring the petitions to be assembled in a very particular way. See *Rockefeller v. Powers*, supra, 917 F. Supp. 161. There was no testimony or other evidence that the requirement that the circulator had to be a registered democrat severely burdened the campaign. Indeed, there was only one isolated instance where a volunteer became unenrolled while petitioning. Further, these requirements did not burden the campaign beyond having to carry around multiple petitions, one for each town they were petitioning for. Therefore, it cannot be said that the petitioning restriction virtually excluded Hrezi from the ballot as the 2% signature requirement was not an impossible number of signatures to collect in forty-two days and the additional requirements were not hyper technical nor did they significantly limit the pool from which the campaign could collect signatures from. In fact, Hrezi obtained more than the required number of signatures, but due to avoidable errors such as handing in the petitions late, many of the signatures were not counted.

In the present case, the circumstances at issue differ substantially from the circumstances presented in the above cited cases, which found that the ballot access laws as applied imposed a severe burden on the plaintiffs' constitutional rights. Hrezi's campaign was not for a special election, it was for a seat in the United States House of Representatives against the incumbent representative. Contra *Breck v. Stapleton*, supra, 259 F. Supp. 3d 1129; *Hall v. Merrill*, supra, 212 F. Supp. 3d 1153. Therefore, Hrezi and his campaign knew about the election, unlike the plaintiffs in *Hall v. Merrill* and *Breck v. Stapleton*, who could not anticipate the sitting representative resigning and the special election for the empty seat. See *Breck v. Stapleton*, supra, 259 F. Supp. 3d 1132; *Hall v. Merrill*, supra, 212 F. Supp. 3d 1153-54. Accordingly, the campaign was not subjected to an abbreviated preparation period like the candidates in *Hall v. Merrill* and *Breck v. Stapleton*. See id. Further, the campaign was not subjected to a compressed

signature collection period compared to past primary elections for the United States House of Representatives. *Contra id.*

In the present case, Herzi was aware of the signature requirement for getting on the ballot, and Hrezi realized before the convention that it was going to be nearly impossible to get enough support at the convention. Despite having time to prepare for the signature collection, which was to commence on April 26, 2022, the campaign did not start recruiting its fellows on Twitter until April 21, 2022 and the campaign did not advertise for paid petitioners on ZipRecruiter, Indeed, and Handshake until April 26, 2022, and the campaign did not advertise for high school volunteers until May 2, 2022. Even though Hrezi had time to effectively prepare for the signature collection, his campaign put most of its efforts towards recruiting paid college student fellows who could not start petitioning until the beginning of May, a few weeks into the petitioning period, because that is when the college semester ended. As a result, the campaign had no paid petitioners or fellows that began working on April 28, 2022, and only had five volunteer petitioners along with Hrezi and Bazila to collect signatures on April 28th.

Additionally, Hrezi testified that the campaign waited until the petitioning period began to train their petitioners. Hrezi attributes this delay to not receiving the Secretary's signature rules until April 28, 2022, two days into the petitioning period. Nevertheless, Hrezi and Bazila acknowledged that they could have called the Secretary to get the rules before April 28th or looked up the relevant statutory authority. Therefore, unlike the plaintiff in *Hall v. Merrill*, that could not start collecting signatures until the secretary of state, announced the election date, Hrezi's campaign could have started collecting signatures earlier if he called the Secretary to inquire about the rules or simply looked them up.

Further, while the court does not discount Hrezi and his campaign's attested efforts, unlike the diligent candidate in *Hall v. Merrill*, who could not hire anyone to collect signatures on his behalf due to the lack of interest but nevertheless effectively collected signatures to the best of his ability, here, the Hrezi campaign had twenty-five volunteers. See *Hall v. Merrill*, supra, 212 F. Supp. 3d 1166. Despite having the above assistance, most of the Hrezi collectors did not commence petitioning until the middle of the petitioning period. Further, the campaign did not keep formal records of where the petitioners went and how many signatures they were collecting on what days, at what time, and at what events. Rather, Bazila testified that the campaign took a learn as they go approach, where they would try different areas and petitioning techniques, then reflect on whether they were effective or not and decide whether to continue with them. Another self-imposed impediment was testified to by Bazila, whose testimony revealed that the Connecticut Democratic Party's VAN app, intended to help with campaigning by showing maps of registered democrats, was not always accurate. The campaign, however, never went to the towns' registrar of voters to obtain an updated list of registered democrats.

The pandemic conditions in the present case differ significantly from those circumstances considered in *The Constitution Party of Virginia v. Virginia State Board of Elections*, supra, 472 F. Supp. 3d 291, *Esshaki v. Whitmer*, supra, 455 F. Supp. 3d 372, and *Libertarian Party of Illinois v. Pritzker*, supra, 455 F. Supp. 3d 742, because there were no executive orders in place banning public gatherings, mandating citizens stay at home, limiting the number of people that could gather, or the distance people could be from each other. See Connecticut's Official State Website, "Governor Lamont Statement on Expiration of His Authority to Issue Emergency Orders Related to COVID-19 Pandemic", (2022), available at <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2022/02-2022/Governor-Lamont-Statement-on-Todays->

Expiration-of-His-Authority-to-Issue-Emergency-Orders (last visited July 29, 2022). In the present pandemic, there were no legal repercussions for gathering with large groups of people and leaving one's home, unlike *Esshaki v. Whitmer*, supra, 372. Further, unlike the uncertainty that existed around COVID-19 at the beginning of the pandemic in 2020, vaccines and treatments are widely available, and the country has a better understanding of the virus. See *Garbett v. Herbert*, supra, 458 F. Supp. 3d 1345.

The present case is comparable to *Gottlieb v. Lamont*, where one plaintiff, a 2022 candidate for state representative, asserted that similar Connecticut ballot access requirements burdened his first and fourteenth amendment rights in light of the surge of COVID-19 Omicron cases and the lack of executive action to relieve candidates of the typical signature guidelines. *Gottlieb v. Lamont*, supra, United States District Court, Docket No. 3:20-CV-00623 (JCH), 2022 WL 375525, at *3. The court found that the ballot laws as applied to the plaintiff's candidacy during the surge in Omicron cases did not severely burden the plaintiff's rights because "[u]nlike in 2020, plaintiffs have come forward with no evidence upon which a reasonable jury could conclude that Governor Lamont has implemented similar restrictions on all workplaces of nonessential businesses . . . prohibited social gathering[s] of six people or more, or implemented other restrictions that would substantially hinder plaintiffs' ability to gather signatures, as was the case in 2020 during the early days of the pandemic. . . . While the surge in Omicron cases is likely to present an additional burden on petitioning candidates in the coming months, the absence of these sorts of restrictions – and the wide availability of vaccines in 2022 – means that, even absent modifications to the signature requirements similar to the ones implemented through Executive Order in 2020, petitioning does not present a severe burden on plaintiffs." (Internal quotation marks omitted.) *Id.*, 13.

Similarly, in the present matter, while Hrezi undoubtedly incurred some burdens on his campaign from the surge in COVID-19 cases in April and May of 2022, these burdens were not severe. While the testimony from the campaign petitioners and Hrezi all stated that people would not answer their doors and would decline to talk to them about signing petitions due to COVID-19, none of the witnesses could conclusively say that was the true reason these voters were declining to talk to them. Additionally, Bazila testified that only about fifteen to twenty people declined to talk to her due to COVID-19 in her forty days of petitioning and Muneeka testified that only about twenty people declined to talk to her due to COVID-19 out of hundreds. Only one petitioner, Fussell, had prior experience collecting signatures, therefore, the witnesses could not compare their experience collecting signatures for this campaign to how often a petitioner is typically denied when collecting signatures before COVID-19. Additionally, while the campaign lost petitioners for days due to contracting COVID-19 and corresponding exposures, the plaintiffs have not presented evidence on how this is different from illness that could happen in any given campaign year. Moreover, the CDC quarantine time for COVID-19 cases and exposures is significantly less than it was in 2020. See Center for Disease Control and Prevention, “Quarantine and Isolation”, (2022), available at <https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html> (Last Visited July 29, 2022).

The petitioners were also not denied access to public spaces where there are typically large gatherings because of COVID-19; see *The Constitution Party of Virginia v. Virginia State Board of Elections*, supra, 472 F. Supp. 3d 291; *Libertarian Party of Illinois v. Pritzker*, supra, 455 F. Supp. 3d 742; *Esshaki v. Whitmer*, supra, 455 F. Supp. 3d 372; or for other reasons. See *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, supra, 593 F. Supp. 122. In

fact, while there was testimony that normal public gatherings, such as religious services, were no longer occurring because they were virtual, Bazila testified that one of their most successful days happened from petitioning at a congregation. The plaintiffs' asserted severe burden is undercut by the fact that they were able to collect more than the required signatures, approximately 4,900. Nevertheless, some were rejected for reasons such as they were late, some signers' birthdays did not match, or the signers were not registered democrats. The signatures were late because the campaign had to get all the signature pages notarized and some petitioners were held up at one registrar of voters submitting the petitions, which resulted in them being late to the next registrar of voters. This eventuality could have been avoided by the Hrezi campaign by simply assigning other volunteers to assist in the filing of the petitions.

Further, other candidates met the signature requirement for similar primaries this year that were presumably faced with the same obstacles that COVID-19 presented this election cycle. Tellingly, the primary challenger for the fourth congressional district, facing the same obstacles confronted by the Hrezi campaign, successfully petitioned and received 2% of the registered republican voters' signatures. Seven primary challengers for Connecticut state assembly districts successfully received signatures of 5% of enrolled party members. Furthermore, at the start of Hrezi's petitioning period, COVID-19 had been present in everyday life for over two years, so he could have anticipated the effects of COVID-19 on his campaign, unlike the campaigns petitioning at the beginning of the pandemic in 2020 when no one anticipated COVID-19. See *The Constitution Party of Virginia v. Virginia State Board of Elections*, supra, 472 F. Supp. 3d 291; *Libertarian Party of Illinois v. Pritzker*, supra, 455 F. Supp. 3d 742; *Esshaki v. Whitmer*, supra, 455 F. Supp. 3d 372.

Moreover, the campaign was not faced with inclement winter weather, natural disasters, holidays, or short daylight. See *Rockefeller v. Powers*, supra, 917 F. Supp. 45; *Florida Democratic Party v. Scott*, supra 215 F. Supp. 3d, 1253; *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, supra, 593 F. Supp. 122. Hrezi testified that the petitioners were faced with extensive walking and heat, nevertheless, that is expected when collecting signatures for a campaign. Accordingly, the court finds that the ballot access laws did not impose a severe burden on the plaintiffs as they were applied during April and May of 2022 when there was an uptick in COVID-19 cases.

STATE INTERESTS

Finding that the ballot access laws as applied to the plaintiffs did not impose a severe burden, the court must apply the flexible *Anderson-Burdick* framework. “In passing judgment under this more flexible standard, [the court] must determine [both] the legitimacy and strength of each of those interests and the extent to which those interests make it necessary to burden the plaintiff’s rights.” (Footnotes omitted; internal quotation marks omitted.) *Yang v. Kosinski*, supra, 960 F.3d 129. The defendants assert that the state has a compelling interest in conducting orderly, fair, and transparent elections. See *Storer v. Brown*, supra, 415 U.S. 730.

“There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization’s candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election.” *Jenness v. Fortson*, supra, 403 U.S. 442; see also *Gottlieb v. Lamont*, 465 F. Supp. 3d 41, 54 (2020). One way of showing a modicum of support is by requiring a candidate to obtain a certain number of eligible voters’ signatures. See *Jenness v. Fortson*, supra, 442. Further, the “[s]tates have evolved comprehensive, and in many respects

complex, election codes regulating . . . both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates to ensure that elections are fair and honest and [in] some sort of order, rather than chaos” See *Storer v. Brown*, *supra*, 415 U.S. 730.

States have an interest in regulating elections to prevent election fraud, specifically frivolous and fraudulent candidacies; *Storer v. Brown*, *supra*, 415 U.S. 733; *Fay v. Merrill*, 338 Conn. 1, 30, 43 n.32, 49, 256 A.3d 622 (2021); and to prevent candidates and voters from engaging in unfair election tactics. *Gonzalez v. Surgeon*, 284 Conn. 573, 595-97, 937 A.2d 24 (2007). The Supreme Court of the United States has also recognized “that the State’s interest in keeping its ballots within manageable, understandable limits is of the highest order. . . . [because the primary’s] special function [is] to assure that fragmentation of voter choice is minimized. That function is served, not frustrated, by a procedure that tends to regulate the filing of frivolous candidates. A procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate’s desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process.” (Citation omitted.) *Lubin v. Panish*, 415 U.S. 709, 715, 94 S. Ct. 1315, 39 L. Ed. 2d 702 (1974). Moreover, “[t]he State has a legitimate interest in fostering an informed electorate. . . . [A] State may regulate the flow of information between political associations and their members when necessary to prevent fraud and corruption” (Citations omitted.) *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 227, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989).

The United States Supreme Court has also recognized that states have an interest in government and party stability because “splintered parties and unrestrained factionalism may do

significant damage to the fabric of government” (Citations omitted; internal quotation marks omitted.) *Eu v. San Francisco County Democratic Central Committee*, supra, 489 U.S. 227. Therefore, parties “employ the primary campaign and the primary election to finally settle their differences. . . . [and resolve] intraparty feuds” (Internal quotation marks omitted.) *Id.*

Here, the plaintiffs’ asserted injury is that the ballot access laws as applied to Hrezi and his campaign during the petitioning period for the 2022 primary for the United State House of Representatives for the First District burdened their right to petition, free speech, and free association. Specifically, the plaintiffs who are voters are harmed because they cannot vote for their candidate of choice and Hrezi is harmed because the ballot access laws precluded him from appearing on the ballot. Nevertheless, in the present matter, Connecticut ballot access laws for the United States House of Representatives primary were applied nondiscriminatory to all democratic candidates seeking to gain access to this ballot. The eight other candidates, that the defendants present in exhibit I, who had to petition under similar requirements to get on the ballot for other offices were faced with the same burdens COVID-19 imposed during Hrezi’s petitioning process, nevertheless, they managed to access the ballot through petitioning. Therefore, the plaintiffs’ injury is grounded in their dissatisfaction with the voters choice of candidate rather than the state law’s burden on their constitutional rights. See *New York State Board of Elections v. Lopez Torres*, 552 U.S. 196, 205, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008). However, the plaintiffs do not have a constitutional right “to have a fair shot at winning the party’s nomination and with good reason. What constitutes a fair shot is a reasonable enough question for legislative judgment, which we will accept so long as it does not too much infringe upon the party’s associational rights.” (Internal quotation marks omitted.) *Id.*, 205-206. Therefore, the plaintiffs’ alleged injury is not one that the United States Supreme Court

recognizes unless it severely burdens their constitutional rights, which the court has already determined it does not. Connecticut's interests are legitimate as they are recognized by the Connecticut and United States Supreme Court, and they are furthered by the signature requirement to show that a candidate has a modicum of support. Accordingly, they are sufficient to justify the small burden that the signature requirement imposed on Hrezi's campaign in April and May of 2022. Since the court determined that the burdens the campaign was faced with were not severe, the state's legitimate interests, listed above, are sufficient to justify these burdens. See *Gottlieb v. Lamont*, supra, United States District Court, Docket No. 3:20-CV-00623 (JCH), 2022 WL 375525, at *14 (stating "[g]iven that the Supreme Court has recognized that a state has an important interest in promulgating regulations to ensure the stability of their political systems that may, in practice, favor the traditional two-party system and temper the destabilizing effects of party-splintering and excessive factionalism, Connecticut's interests are sufficiently important to justify reasonable and non-discriminatory restrictions on access to primary ballots").

STATE CONSTITUTIONAL CLAIMS

The plaintiffs also contend that these ballot access laws violate their rights under the Connecticut Constitution and should be subject to strict scrutiny because the Connecticut constitution provides greater protection than the United States constitution. Connecticut courts utilize six factors laid out in *State v. Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992) "to define the scope and parameters of the state constitution: (1) persuasive relevant federal precedents; (2) historical insights into the intent of our constitutional forebears; (3) the operative constitutional text; (4) related Connecticut precedents; (5) persuasive precedents of other states; and (6) contemporary understandings of applicable economic and sociological norms, or, as

otherwise described, relevant public policies.” *State v. Santiago*, 318 Conn. 1, 17-18, 122 A.3d 1 (2015). “It is not critical to a proper *Geisler* analysis that we discuss the various factors in any particular order or even that we address each factor.” (Internal quotation marks omitted.) *O’Shea v. Scherban*, 339 Conn. 775, 797, 262 A.3d 776 (2021). In order to prevail on a claim that the Connecticut constitution provides greater protection than the federal constitution, the plaintiff must “identify the specific additional rights recognized under the state constitution, and describe how such rights are infringed upon by the [statute].” *Ramos v. Vernon*, 254 Conn. 799, 817, 761 A.2d 705 (2000). “The *Geisler* analysis applies to cases in which the state constitution has no federal analogue, as well as those in which the claim is that the state constitution provides greater protection than does the federal constitution.” *Fay v. Merrill*, 338 Conn. 1, 27, 256 A.3d 622, 640 (2021)

A. Text of the Constitution

The court must first look at the operative text of the state constitution. As an initial matter, “[w]hen determining whether a statutory provision conflicts with the state constitution, this court must begin with a strong presumption of the statute’s validity. . . . It is well established that a validly enacted statute carries with it a strong presumption of constitutionality, [and that] those who challenge its constitutionality must sustain the heavy burden of proving its unconstitutionality beyond a reasonable doubt. . . . The court will indulge in every presumption in favor of the statute’s constitutionality. . . . Therefore, [w]hen a question of constitutionality is raised, courts must approach it with caution, examine it with care, and sustain the legislation unless its invalidity is clear. . . . It is an extreme act of judicial power to declare a statute unconstitutional. It should be done with great caution and only when the case for invalidity is established beyond a reasonable doubt.” (Citations omitted; internal quotation marks omitted.)

Bysiewicz v. Dinardo, 298 Conn. 748, 789, 6 A.3d 726 (2010). “[W]hen interpreting constitutional provisions, this court strive[s] to achieve a workable, commonsense construction that does not frustrate effective governmental functioning, at least where such is not clearly contradicted by application of the [interpretative tools] enumerated in *Geisler*.” (Internal quotation marks omitted.) *Id.*, 753.

The plaintiffs rely on article first, §§ 2, 4, 5, 10, 14, and 20, and article sixth, §§ 1, 4, 5, and 10 of the Connecticut constitution to support their assertion that strict scrutiny should apply because the Connecticut constitution has greater protection of speech than the federal constitution. While the plaintiff has failed to identify a specific additional right that these provisions provide besides the general assertion that they provide more protection than the federal constitution, the court will nevertheless analyze their text.

Article first, § 2 of the Connecticut constitution provides: “All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times an undeniable and indefeasible right to alter their form of government in such manner as they may think expedient.” Article first, § 4, provides that “[e]very citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.” Further, article first, § 5 of the Connecticut constitution states that “[n]o law shall ever be passed to curtail or restrain the liberty of speech or of the press.” Article first, § 10 of the Connecticut constitution provides: “All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.” Article first, § 14 states that “[t]he citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of

grievances, or other proper purposes, by petition, address or remonstrance.” Article first, § 20 of the Connecticut constitution provides: “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin.”

In addition, article sixth, § 1 of the Connecticut constitution provides that “[e]very citizen of the United States who has attained the age of eighteen years, who is a bona fide resident of the town in which he seeks to be admitted as an elector and who takes such oath, if any, as may be prescribed by law, shall be qualified to be an elector.” Article sixth, § 4 of the Connecticut Constitution states: “Laws shall be made to support the privilege of free suffrage, prescribing the manner of regulating and conducting meetings of the electors, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult and other improper conduct.” Article sixth, § 5 of the Connecticut constitution provides: “In all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed, except that voting machines or other mechanical devices for voting may be used in all elections in the state, under such regulations as may be prescribed by law. No voting machine or device used at any state or local election shall be equipped with a straight ticket device. The right of secret voting shall be preserved.” Lastly, Article sixth, § 10 of the Connecticut constitution provides that “[e]very elector who has attained the age of eighteen years shall be eligible to any office in the state, but no person who has not attained the age of eighteen shall be eligible therefor, except in cases provided for in this constitution.”

In regard to the plaintiffs’ right to free speech under the Connecticut constitution, the Connecticut Supreme Court has held that “article first, §§ 4, 5 and 14, also include other language that suggests that our state constitution bestows greater expressive rights on the public

than that afforded by the federal constitution. . . . Article first, § 4, of the Connecticut constitution provides that ‘[e]very citizen may freely speak, write and publish his sentiment *on all subjects*, being responsible for the abuse of that liberty.’ . . . By contrast, the first amendment does not include language protecting free speech ‘on all subjects.’ Article first, § 5, provides that ‘[n]o law shall *ever* be passed to curtail or restrain the liberty of speech or of the press.’ Unlike the first amendment which provides that ‘Congress shall pass no law’ the use of ‘ever’ in our state constitution offers additional emphasis to the force of the provision. Finally, article first, § 14, provides that citizens have a right, *inter alia*, ‘to apply to those invested with the powers of government, for redress of grievances . . . by petition, address or *remonstrance*.’ . . . Again, our state constitution offers language, i.e., ‘remonstrance,’ that sets forth free speech rights more emphatically than its federal counterpart.” (Emphasis in original; internal quotation mark omitted.) *State v. Linares*, 232 Conn. 345, 380-81, 655 A.2d 737 (1995). Therefore, these provisions are broader than the one-sentence freedom of speech clause contained in the first amendment to the United States constitution, which states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Additionally, article first, § 2 of the Connecticut constitution is also more expansive than the federal constitution as there is no federal counterpart. Further, while article first, § 10 of the Connecticut constitution is protective of a citizen’s right to redress, it is not particularly relevant to the case at issue. Article first, § 20 of the Connecticut constitution is also not particularly relevant because while it is protective of equal political rights, this case does not implicate discrimination.

Furthermore, though article sixth, § 1 of the Connecticut constitution is protective of citizens' right to vote, § 2 expressly permits the influence of laws on this right such as requiring an elector to take an oath. Additionally, while article sixth, § 10 permits every elector to be eligible for any office in the state, it does not guarantee the right to be placed on the ballot. Article sixth, § 4 of the Connecticut constitution supports laws regulating elections by permitting the legislature to make laws that will deter improper conduct. This conduct presumably could be the conduct that petitioning is intended to prevent such as fraud, deception, and fraudulent candidacies. Lastly, article sixth, § 5 of the Connecticut constitution supports petition laws because it allows party members to select a candidate or candidates with enough support to be placed on the ballot rather than to engage in straight ticket voting. It further recognizes that there should be laws to regulate voting mechanics. The defendants also cite article sixth, §§ 2, 3, and 8 which all permit laws to regulate elections and voting. See Con Const., art. XI § 2 ("The qualifications of electors as set forth in Section 1 of this article shall be decided at such times and in such manner as may be prescribed by law"); Con Const., art. XI § 3 ("The general assembly shall by law prescribe the offenses on conviction of which the right to be an elector and the privileges of an elector shall be forfeited and the conditions on which and methods by which such rights may be restored"); Con Const., art. XI § 8 ("The general assembly may provide by law for the absentee admission of electors").

Therefore, the Connecticut constitution's freedom of speech protections are facially broader than the federal constitution, and the provisions in article sixth of the Connecticut constitution recognize the right to vote, the right to be eligible for office, and the need for laws to regulate these rights. Therefore, the text of the Connecticut constitution weighs in favor of using a more flexible *Anderson-Burdick* standard, rather than strict scrutiny, because the *Anderson-*

Burdick standard takes into consideration both the constitutional rights at jeopardy and the interests of the states in making the applicable ballot access laws.

B. Connecticut Precedent

The court cannot locate any relevant Connecticut authority on the freedom of speech and association under the Connecticut constitution with respect to elections and ballot access. While *State v. Linares*, concerned freedom of speech in the context of expression on public property, that case was helpful in noting that “our state constitution is an instrument of progress, it is intended to stand for a great length of time and should not be interpreted too narrowly or too literally so that it fails to have contemporary effectiveness for all our citizens.” *State v. Linares*, supra, 232 Conn. 382. Therefore, the court in *State v. Linares*, adopted a flexible approach, which allowed the court to analyze speech in the public forum and balance the right to free speech against the property’s normal activity. Id., 382, 383-84 (stating that adopted test “is designed to maximize the speech which the government is constitutionally required to tolerate, consistent with the appropriate and needful use of its property”). “The fact that the court in *Linares* chose the more flexible standard supports the notion that Connecticut courts support more flexible standards in determining speech protections” *Matthews v. Dept. of Public Safety*, Superior Court, judicial district of Hartford, Docket No. CV-11-6019959-S, 2013 WL 3306435, at *17 (May 31, 2013, *Peck, J.*) (956 Conn. L. Rptr. 262) (analyzing free speech in employment context); see also *Trusz v. UBS Realty Investors LLC*, 319 Conn. 175, 210, 123 A.3d 1212 (2015) (applying flexible approach to free speech in employment context because it “recognizes both the state constitutional principle that speech on *all* subjects should be protected to the maximum extent possible and the important interests of an employer in controlling its own message and preserving workplace discipline, harmony and efficiency, provides the proper test

for determining the scope of a public employee's rights under the free speech provisions of the state constitution when the employee is speaking pursuant to his or her official duties" [emphasis in original]).

Additionally, Connecticut courts have recognized that "government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." (Internal quotation marks omitted.) *Butts v. Bysiewicz*, 298 Conn. 665, 674, 5 A.3d 932 (2010). The Connecticut Supreme Court has also recognized that "a [s]tate has a legitimate interest in regulating the number of candidates on the ballot. . . . In so doing, the [s]tate understandably and properly seeks to prevent the clogging of its election machinery [and to] avoid voter confusion. . . . Moreover, a [s]tate has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." (Internal quotation marks omitted.) *Gonzalez v. Surgeon*, supra, 284 Conn. 595.

Accordingly, while Connecticut courts have adopted tests that favor protecting speech, these tests involve flexible standards that consider both parties' interests at issue. These tests adapt to various challenges and circumstances that free speech might face. Moreover, the Connecticut Supreme Court has recognized the important interest of state involvement in elections to conduct orderly elections and avoid fraudulent candidacies. Therefore, this factor favors the *Anderson-Burdick* balancing test because it is a flexible approach to protecting free speech as it takes into account the voters' and candidates' rights and also the state's interests, while also considering the circumstances surrounding the laws under review. While a strict scrutiny analysis may protect speech at a higher rate in election cases, the *Anderson-Burdick* framework takes into account all of the rights and interests that Connecticut values.

C. Federal Precedent

The relevant federal precedent also has not addressed the difference between the Connecticut constitution and the United States constitution regarding free speech and how it applies to elections besides recognizing that the Connecticut constitution has a broader free speech clause. See *Ozols v. Madison*, United States District Court, Docket No. 3:11CV1324 SRU, 2012 WL 3595130, at *4 (D. Conn. August 20, 2012) (“[t]he Connecticut Supreme Court has repeatedly held that Connecticut’s protection of free speech is broader than the federal government’s”). Nevertheless, the federal precedent supports applying the *Anderson-Burdick* analysis to cases where the first amendment is at issue in the context of voting and election cases. The United States Supreme Court stated that “[e]lection laws will invariably impose some burden upon individual voters. Each provision of a code, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.” (Internal quotation marks omitted.) *Burdick v. Takushi*, supra, 504 U.S. 433. “Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest . . . would tie the hands of States seeking to assure that elections are operated equitably and efficiently. . . . Accordingly, the mere fact that a State’s system creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not of itself compel close scrutiny.” (Internal quotation marks omitted.) *Id.*

Therefore, the *Anderson-Burdick* standard takes into account the plaintiffs’ free speech and associational rights injury in regard to political parties, casting votes, and running for office, while also considering the state’s interest. This is reflective of the Connecticut constitution and

federal precedent as it broadly protects speech and voting rights, but also recognizes that the legislature will have to make laws regarding elections to promote its interests.

D. Sister State Precedent

In the court's *Geisler* analysis, it must also consider sister state precedent. Fellow states have been faced with similar issues and provide insight. For example, in *Working Families Party v. Commonwealth*, a minor party argued that the state's anti-fusion provisions violated the freedom of speech and association provision in the state constitution. *Working Families Party v. Commonwealth*, 169 A.3d 1247, 1259 (Pa. Commw. Ct. 2017), *aff'd*, 653 Pa. 41, 209 A.3d 270 (2019). The plaintiff asserted that this burden on its constitutional right required strict scrutiny review and the court recognized that the state constitution provided greater protection than the federal constitution, nevertheless, the court still engaged in the *Andrew-Burdick* analysis. *Id.*, 1262. The court reasoned that the United States Supreme Court's teaching guided their decisions implicating the state constitution and the plaintiff had not proffered an explanation as to why they should stray from the United States Supreme Court precedent. *Id.* Further, in *Edelstein v. San Francisco*, the court decided the issue of whether a city charter provision prohibiting write-in voting in a run-off election for municipal officers violated the free speech clause of the state constitution, which the court recognized was more expansive and protective than the federal constitution. *Edelstein v. San Francisco*, 29 Cal. 4th 164, 167-68, 56 P.3d 1029 (2002). The court noted that although it had previously found the state constitution broader in some respects, it did not mean the constitution should be considered broader in all respects. *Id.*, 179. The court applied the *Anderson-Burdick* framework to the state constitutional claim because the court usually followed the United States Supreme Court's construction of similar federal provisions

unless the court is given a cognitive reason not to and in that case the court could not find a reason not to follow the United States Supreme Court's guidance. *Id.*

Moreover, in *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, the court declined to apply strict scrutiny to analyze a voter photo identification law when the plaintiff asserted that the state constitution's equal protection clause provided more protection than the federal equal protection clause. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich. 1, 29, 740 N.W.2d 444 (2007). The court stated that just because the state's equal protection clause included the word political party, it does not implicate an unfettered right to vote. *Id.*, 29. Therefore, the court applied the *Anderson-Burdick* test to the state constitution claim and stated that the state constitution "does not compel that every election regulation be reviewed under strict scrutiny. Given that the appropriate standard by which to evaluate election laws must be compatible with our *entire* constitution, and must not nullify or impair any other constitutional provision" (Emphasis in original.) *Id.*, 35. The court reasoned that the *Anderson-Burdick* test struck a balance between the state constitution's competing interests, protection against voter fraud and citizens' right to vote. *Id.*

In *Libertarian Association of Massachusetts v. Secretary of Commonwealth*, the court found that there was no reason to conclude that the state constitution provided greater ballot access protection than the federal constitution in regard to a claim that the ballot access laws discriminated against a minor party. *Libertarian Association of Massachusetts v. Secretary of Commonwealth*, 462 Mass. 538, 557-58, 969 N.E.2d 1095 (2012). The state constitutional provision stated that "[a]ll elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments." *Id.*, 557 n.22.

Therefore, the court applied the *Anderson-Burdick* analysis to the state constitutional claims because the court “did not enlarge generally the scope of ballot access rights protected under art. 9 vis-à-vis the Federal Constitution, and significantly, we have not done so in other cases. Indeed, in every other context where this issue has arisen, we have treated the State and Federal constitutional safeguards in the same manner” *Id.*, 558; see *Moody v. New York State Board of Elections*, 165 A.D.3d 479, 480, 86 N.Y.S.3d 25 (2018) (finding that state constitution’s voter franchise protection provisions did not require heightened scrutiny beyond what was afforded by United States constitution); *Weinschenk v. State*, 203 S.W.3d 201, 212 (Mo. 2006) (applying *Anderson-Burdick* framework even when state constitution provided more protection to voting rights than federal counterpart).

Accordingly, looking to our sister states’ case law, simply because the state constitution provides greater or broader protection, it does not mean that strict scrutiny is automatically applied. Rather, the flexible approach of the *Anderson-Burdick* analysis allows courts to take into account and support multiple interests of the state constitution rather than favoring one over another. See *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, *supra*, 479 Mich. 35.

E. Historical Insight into the Intent of our Constitutional Framers

Next, the court will look to any historical insight on the intent of our state constitution to guide the court on the present issue. “[T]he framers of [the Connecticut] constitution contemplated vibrant public speech, and a minimum of governmental interference” *Trusz v. UBS Realty Investors, LLC*, *supra*, 319 Conn. 206. While Article sixth, § 1 was originally very restrictive on the right to vote, after the first constitutional convention in 1818, the constitution was slowly amended to eliminate the restrictions contained in this provision. W. Horton, The

Connecticut State Constitution, (2d Ed. 2012) p. 156. Further, the right to vote was heavily debated at the 1965 constitutional convention. *Id.*, 157. While the motions to liberalize the right to vote failed at the convention, Connecticut did eventually follow federal precedent in having equal rights to vote. *Id.*, 156-57. However, there was no relevant debate over article sixth, §§ 4, 5, and 10 at either constitutional convention for the court to look to for guidance on this issue. *Id.*, 157-62. While there is not much historical insight into the constitutional framers' intent to guide the court on this issue, this limited insight supports Connecticut's strong interest in maintaining free speech and voting rights.

F. Public Policy, Economic and Sociological Considerations

The next *Geisler* factor is to take into account public policy, economic factors, and sociological considerations. Many of the public policy considerations have been explained above, nevertheless, the court will summarize them. While Connecticut has a broader freedom of speech provision, it also has constitutional provisions taking into account the laws that the legislature will make regarding elections and voting. The state's ballot laws will inevitably burden the voters and candidates' free speech and association rights. See *Burdick v. Takushi*, *supra*, 504 U.S. 433. Nevertheless, the state has an important state interest in holding elections that are fair, honest, and orderly to support the democratic process through the selection of qualified candidates. See *Storer v. Brown*, *supra*, 415 U.S. 730; *Jenness v. Fortson*, *supra*, 403 U.S. 442; *Butts v. Bysiewicz*, *supra*, 298 Conn. 674. Therefore, these policy considerations support the flexible *Andrew-Burdick* standard as it takes both, state interests and constitutionally recognized rights into consideration.

This flexible standard is further supported by the sociological considerations consonant with the evolution of COVID-19. A flexible standard allows the court to take into consideration

the burden of factors like COVID-19 at the time they affect the election laws. Rather than always applying strict scrutiny as the plaintiffs contend, the court can take into consideration the varying burdens of COVID-19, and then decide the appropriate standard, so that the constitutional values can be appropriately upheld under modern circumstances. For example, the flexible standard allowed courts to apply strict scrutiny when it was warranted at the beginning of the COVID-19 pandemic; see *Esshaki v. Whitmer*, supra, 455 F. Supp. 3d 378; and a lower standard two years after the beginning of the pandemic when COVID-19 still imposed burdens but not as severe as at the beginning of the pandemic. See *Gottlieb v. Lamont*, supra, United States District Court, Docket No. 3:20-CV-00623 (JCH), 2022 WL 375525, at *14. Accordingly, the public policy and sociological considerations weigh in favor of a flexible standard.

In conclusion, the majority of the *Geisler* factors weigh in favor of applying the *Anderson-Burdick* flexible standard to the plaintiffs' Connecticut constitution claims. The *Anderson-Burdick* framework allows the court to take into consideration voting rights, election rights, free speech rights, rights of the state to make laws concerning elections, and the state's interest in requiring candidates to show a modicum of support. Further, applying strict scrutiny every time free speech and association rights were allegedly violated would not give the court much flexibility in evaluating each law's burden in light of the surrounding circumstances. This standard directly reflects and supports the important rights found in the Connecticut constitution. This is especially crucial in elections where many varying factors in each campaign and election cycle must be considered. Therefore, the court finds that the *Geisler* factors support applying the *Anderson-Burdick* analysis to actions concerning election law that implicate free speech and association rights under the state's constitution in which a severe burden is not proven.

Even if the court were to apply strict scrutiny as the plaintiffs propose, the signature requirement at issue, as applied to the 2022 primary election for United States House of Representatives for the First District, would still pass the muster of strict scrutiny. “Once a percentage or number of signatures is established, it would probably be impossible to defend it as either compelled or least drastic. At any point, probably a fraction of a percentage point less, or a few petitioners less, would not leave the interests of the state unprotected. Any numerical requirement could be challenged and judicially reduced, and then again, and again until it did not exist at all. This is not the thrust of the Court’s teachings, however.” *Libertarian Party of Florida v. State of Florida*, 710 F.2d 790, 793 (11th Cir. 1983), cert. denied, 469 U.S. 831, 105 S. Ct. 117, 118, 83 L. Ed. 2d 60 (1984). That is why the federal courts undertake a flexible standard of evaluating the burden, rather than only applying strict scrutiny. See *id.* Nevertheless, the number of signatures that Hrezi was required to collect was not impractical, and there were no additional restrictions regarding the signatures to make it more difficult to collect valid signatures or significantly reduce the pool of eligible signers. See *American Party of Texas v. White*, *supra*, 415 U.S. 787; *Rockefeller v. Powers*, *supra*, 917 F. Supp. 160. Therefore, this requirement is narrowly tailored to support the state’s compelling interest in requiring candidates to show a modicum of support.

Moreover, the statutory scheme, both facially and as applied, survives strict scrutiny because: the percentage of signatures and the amount of time is narrowly tailored to demonstrate that a candidate has support considering Connecticut is a densely populated state and the candidate is affiliated with a majority party; see *LaRouche v. Kezer*, *supra*, 990 F.2d 39-41, and Connecticut allows two other methods to qualify for the primary ballot, creating more access to the ballot; see *id.*, 38-39.

CONCLUSION

For the foregoing reasons, the plaintiffs' motion for injunctive relief is denied and judgment shall enter for the defendants.

THE COURT

435707

Cesar A. Noble
Judge, Superior Court