

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UPSTATE JOBS PARTY, MARTIN BABINEC, and
JOHN BULLIS,

Plaintiffs,

v.

PETER S. KOSINSKI, New York State Board of Elections Co-
Chair Commissioner, DOUGLAS A. KELLNER, New York
State Board of Elections Co-Chair Commissioner, ANDREW J.
SPANO, New York State Board of Elections Commissioner, and
GREGORY P. PETERSON, New York State Board of Elections
Commissioner, all in their official capacities,

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by their attorneys SANTIAGO BURGER LLP AND HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY, PLLC assert as follows in support of their COMPLAINT against
Defendants:

NATURE OF THE CASE

1. The Upstate Jobs Party (“UJP”), Martin Babinec, and John Bullis (collectively
“Plaintiffs”) hereby challenge the constitutionality of certain New York State statutes
because they unfairly allow political organizations with Party status to raise more
money for political candidates than political organizations without Party status even
though such candidates are competing for the same political office. This creates a
tilted playing field with the advantage always going to established and state-sanctioned

political Parties over new organizations with new ideas. *See* N.Y. Elec. Law §§ 14-114(1), 14-114(3), 14-114(10), and 14-124(3).

2. In this manner, Defendants violated Plaintiffs' constitutional rights under the color of state law. Defendants are therefore liable under 42 U.S.C. § 1983.
3. Plaintiffs seek the equal opportunity to raise, accept, donate, and spend money in the same fashion as political parties such as the Republican, Democratic, Conservative, Green, Working Families, Independence, Women's Equality, and Reform Parties so that Plaintiffs may participate meaningfully in the political process in general, and the 2018 New York State gubernatorial election in particular, in furtherance of their core political values and objectives.
4. Defendants currently read and apply New York State Election Law §§ 14-114(1), 14-114(3), 14-114(10), 14-124(3) to restrict and prevent Plaintiff UJP from raising, accepting, and spending money in the same fashion as the major political parties, thus stifling core political speech without a compelling interest or using means that are narrowly tailored.
5. Defendants currently read and apply New York State Election Law §§ 14-114(1), 14-114(3), 114(10), and 14-124(3) to restrict Plaintiff Martin Babinec from donating or contributing money to UJP in the same fashion as he may donate or contribute money to the major political parties, thus stifling his core political speech without a compelling interest or using means that are narrowly tailored.
6. Plaintiffs seek declaratory, injunctive, and monetary relief under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §§ 1983 and 1988 declaring Defendants' application of N.Y. Elec. Law §§ 14-114(1), 14-114(3), 14-114(10) 14-124(3), as described below, to be

in violation of Plaintiffs' rights to free speech, assembly, association, to petition the government, and to equal protection of the laws guaranteed under the First and Fourteenth Amendments to the United States Constitution.

7. Plaintiffs do not seek to strike down N.Y. Elec. Law §§ 14-114(1), 14-114(3), 14-114(10) 14-124(3), but seek to have those statutes applied to UJP in the same manner as Parties and Constituted Committees such as the New York State Republican, Democratic, and Conservative Parties.
8. Plaintiffs seek to ensure equal access to the New York State electoral process, by removing restrictions on political donations that disparately impact political organizations that have different political ideas from state-sanctioned political parties like the Democratic and Republican parties.
9. Plaintiffs believe and assert that the ability to promote and participate in political discourse, by raising, accepting, and contributing money to political organizations, and to a political committee's Housekeeping Account, and the ability to coordinate with its candidates without limitation, should be fair and equal regardless of membership in a legislatively-favored political party.

JURISDICTION AND VENUE

10. The original subject matter jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1343 because this case concerns a constitutional question and violations of constitutional rights by state actors.
11. The Northern District of New York is the proper venue for this case under 28 U.S.C. § 1391(b) because Defendants reside and/or perform their official duties in this District.

PARTIES

12. In 2016 Martin Babinec founded the Upstate Jobs Party as a political organization and an Independent Body. This independent political organization was founded pursuant to N.Y. Elec. Law § 1-104(12). The UJP seeks to promote political ideals and candidates for the betterment of New York. UJP's political platform includes:
 - a. promoting fundamental change in our political system to incentivize honesty and competency by government officials;
 - b. revitalizing the Upstate New York economy by creating good, middle-class, private sector jobs throughout Upstate New York; and
 - c. fostering transparency in government and an end to corporate welfare.
13. The UJP's goal is to cultivate a new birth of the American Dream. Desiring to reverse years of ineffective governance, and further desiring to develop jobs here in the United States, the UJP seeks to break the duopoly of the two major political parties and bring competition to our elections.
14. The UJP also seeks to break the cycle of corruption and patronage within the major two parties.
15. Mr. Babinec is a politically active New York State citizen who wishes to promote and financially support UJP and diversify the slate of political parties in New York State. Mr. Babinec ran for election as UJP's candidate for Representative of New York's 22nd United States Congressional District in 2016.
16. Mr. Babinec campaigned for Congress in part to build support for the UJP to obtain the 50,000 votes needed to obtain Constituted Committee status.

17. In addition to Mr. Babinec garnering more than 34,000 votes in his 2016 U.S. Congressional campaign running on UJP's platform, the Party continued to demonstrate growing support just one year after its founding. In November 2017 the people of Syracuse elected Ben Walsh as Mayor of Syracuse. Mr. Walsh became the second UJP candidate to overcome the high petition signature requirement mandated for an Independent Body such as UJP in order to secure a ballot line. Mr. Walsh went on to win the election, becoming the first independent candidate to win a mayoral election of a major city in Upstate New York in more than 70 years.
18. John Bullis is the Chairman and Executive Director of the UJP.
19. The New York State Board of Elections (BOE) is a board within the executive branch of New York State government that is created and maintained pursuant to Article 3 of the New York Election Law and enforces New York State Election Laws.
20. The BOE is comprised of four commissioners: two co-chair commissioners, Peter S. Kosinski and Douglas A. Kellner, and two commissioners Andrew J. Spano and Gregory P. Peterson. All four Commissioners are individual Defendants sued in their official capacities. Commissioners Kosinski and Peterson are Republicans and Commissioners Kellner and Spano are Democrats. There is no UJP or any other Independent Body representation on the BOE. Defendants are sued in their official capacities.
21. Defendants' powers and duties include, among other things, the administration and enforcement of the campaign finance provisions of the Election Law.
22. Defendants' principal place of business is located at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729.

THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

23. The First Amendment declares unequivocally “Congress shall make no law... abridging the freedom of speech...or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.
24. The First Amendment is “[p]remised on mistrust of governmental power” and is at “its fullest and most urgent application’ to speech uttered during a campaign for political office.” *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2010).
25. Speech concerning salient political issues is constitutionally enshrined because it is “the type of speech [that is] indispensable to decision making in a democracy” *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 776-77 (1978).
26. A person’s ability to exercise their rights guaranteed under the First Amendment is “undeniably enhanced by group association.” *Buckley v. Valeo*, 424 U.S. 1, 15 (1976) (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)) (quotation marks omitted). Both the First and the Fourteenth Amendments, therefore, guarantee the “freedom to associate with others for the common advancement of political beliefs and ideas....” *Kusper v. Pontikes*, 414 U.S. 51, 56 (1973) (internal quotation omitted); *see also Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (“‘[T]he right of individuals to associate for the advancement of political beliefs . . . rank[s] among our most precious freedoms.’”).
27. The “basic function of a political party is to select the candidates for public office to be offered to the voters at general elections. A prime objective of most voters in associating themselves with a particular party must surely be to gain a voice in that selection process.” *Kusper*, 414 U.S. at 58.

28. Because the right to vote is one of our “most precious freedoms” regulations impacting voting rights must be done with precision. *Id.* at 59.
29. Furthermore, the freedom to associate as a political party is a fundamental right and it has a “diminished practical value if the party can be kept off the ballot.” *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).
30. If a party may be kept off the ballot then the right to vote is infringed upon because “voters can assert their preferences only through candidates or parties or both.” *Id.* If the names of parties and candidates are prevented from appearing on the ballot, “the State impairs the voters’ ability to express their political preferences.” *Id.*
31. The freedom to associate as a political party is infringed where a ballot access provision “falls unequally on new or small political parties or on independent candidates” *Anderson*, 460 U.S. at 793.
32. Similarly, the U.S. Supreme Court has ruled that the First Amendment prohibits “different contribution and coordinated party expenditure limits on candidates vying for the same seat.” *Davis v. FEC*, 554 U.S. 724, 744 (2008).
33. Courts have applied the *Davis* principle to declare unconstitutional campaign finance statutes where third party candidates can raise funds only for the general election because those third party candidates do not have primary elections, but their major party opponents can raise funds in both the primary and general election. *See Riddle v. Hickenlooper*, 742 F.3d 922, 928-29 (10th Cir. 2014) (declaring unconstitutional a Colorado statute because the “statute creates a basic favoritism between candidates vying for the same office” because it permitted major party candidates to raise money

for both primary and general elections and further use unused primary funds in the general election, while third party candidates could not raise primary funds).

34. Third parties have had a significant role in this Nation's history. *Socialist Workers Party*, 440 U.S. at 185. In fact, third party candidates "have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream." *Anderson*, 460 U.S. at 794.
35. Accordingly, "an election campaign is a means of disseminating ideas as well as attaining political office." *Socialist Workers Party*, 440 U.S. at 186. Therefore, ballot access laws that are too restrictive "jeopardize this form of political expression." *Id.*
36. Campaign contributions can be limited only if New York is acting to prevent corruption or the appearance thereof and it uses means that are closely drawn. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1441, 1445-46 (2014).
37. The First Amendment—through the Fourteenth Amendment—applies to state government action. *Lerman v. Board of Elections*, 232 F.3d 135, 145 (2d Cir. 2000).

**THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT**

38. The Fourteenth Amendment to the U.S. Constitution states that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, cl. 1.
39. To determine whether the BOE's application of New York's Election Law violates the Equal Protection Clause, this Court must "examine the character of the classification in question, the importance of the individual interests at stake and [New York's] interest asserted in support of the classification." *Socialist Workers Party*, 440 U.S. at 183.

40. When the classifications impinge on fundamental rights, the State must demonstrate that its classification “is necessary to serve a compelling interest.” *Id.* at 184.
41. Furthermore, the means chosen to achieve this compelling interest must not unnecessarily “restrict constitutionally protected liberty.” This means that New York must “adopt the least drastic means” to achieve its compelling interest. *Id.* at 185.
42. Strict scrutiny applies when there is an unequal infringement of rights protected under the First Amendment. *Riddle*, 742 F.3d at 931-32 (Gorsuch, J., concurring).

NEW YORK ELECTION LAW

43. Under New York Election Law, a “party” is an organization whose gubernatorial candidate received at least 50,000 votes in the most recent election. N.Y. Elec. Law § 1-104(3). As discussed below, the candidates of a Party enjoy automatic ballot access.
44. By contrast, an “Independent Body” is an organization that is not a Party but is a “group of voters which nominates a candidate or candidates for office to be voted for at an election” N.Y. Elec. Law § 1-104(12). Independent Bodies, as discussed below, may also place candidates on ballots, but those candidates do not enjoy automatic ballot access—they must first obtain thousands of additional signatures.
45. “Constituted Committees” are the state or county committees (or subcommittees) of a state Party. Constituted Committees are legally distinct from Political Committees, which are corporations that aide or promote the success or defeat of a political party or the success or defeat of candidates. N.Y. Elec. Law § 14-100(3). The distinctions between Independent Bodies, Parties, and Constituted Committees drive New York’s two track campaign finance system, creating feeble rules for Independent Bodies, and arming Parties and Constituted Committees with muscular campaign finance rules.

46. Accordingly, these distinctions impact the First Amendment rights of the UJP, Mr. Babinec, and Mr. Bullis.
47. Both Party and Constituted Committees are permitted to establish housekeeping accounts. This allows both the Party and Constituted Committees to raise funds to pay for committee's headquarters, staff, and ordinary activities so long as the funds are not used *for the express purpose* of supporting specific candidates. These housekeeping accounts are not subject to the campaign finance limits, permitting Constituted and Party Committees, for these limited purposes, to raise unlimited funds. N.Y. Elec. Law § 14-124(3).
48. The UJP is an Independent Body and is therefore prohibited from establishing a housekeeping account. Consequently, all of the money it raises—whether it is to support candidates or to pay staff and ordinary expenses—are subject to New York's campaign finance limits.
49. Mr. Babinec too is prohibited from making a contribution to the UJP that is above New York's campaign finance limits, even if the contribution is earmarked to pay for UJP staff, office space, and ordinary expenses.
50. While not challenged in this action, New York State awards Parties other distinct monetary advantages over potential challengers:
- a. For example, only Parties may hold and separately raise funds for primary elections and use these additional funds in the general election to compete with Independent Bodies like UJP which may only raise funds for the general election. N.Y. Elec. Law § 14-114(1)(a)-(b). This means that a Party-endorsed candidate for the New York State Assembly may raise \$4,400 for

the primary election and \$4,400 for the general from individual donors, for a total of \$8,800. By contrast, UJP candidates are limited to just \$4,400 from individual donors;¹

- b. Additionally, New York imposes different signature standards to obtain access to New York's ballots. Party committees have two methods of getting candidates on the ballot.
 - i. First, a candidate can obtain access to the primary ballot if the candidate obtains 25% of the weighted vote of the state committee members at a convention. N.Y. Elec. Law § 6-104(2).
 - ii. Second, a candidate can obtain access to the primary ballot for statewide office if the candidate obtains either 15,000 signatures of party members statewide or 5% of the members of the party statewide, whichever is less. N.Y. Elec. Law § 6-136(1). For all races, except those run statewide, the candidate must obtain the lesser of 5% of the enrolled voters for that party in the political subdivision of the office sought or a statutorily established number of signatures. N.Y. Elec. Law § 6-136(2).
- c. By contrast, candidates who wish to appear on the ballot as the UJP nominee, or other Independent Bodies' general election candidate, must file independent nominating petitions. These candidates do not have a convention option. Instead, these candidates must obtain a certain number of signatures.

¹ New York State Bd. of Elections, Contribution Limits, <https://www.elections.ny.gov/CFContributionLimits.html> (last visited April 3, 2018).

- d. Statewide candidates must obtain at least 15,000 signatures. N.Y. Elec. Law § 6-142(1). Non-New York City candidates must obtain at least 5% of the total number of votes cast for Governor in the previous gubernatorial election in that political subdivision excluding blank and void votes, but not less than 3,500 signatures. N.Y. Elec. Law § 6-142(2). The total number of signatures required depends on the office sought, varying between 1,500 and 7,500. Signatures. Id.
- e. The signature requirements are higher for independent nominating petitions than they are for party designating petitions. For example, candidates who wish to obtain access to a party committee's primary ballot for congressional races, must obtain 1,250 signatures, or 5% of the total enrolled party members in that district, whichever is less. N.Y. Elec. Law § 6-136(2)(g). By contrast, candidates wishing to obtain access to the UJP's ballot must obtain 3,500 signatures. N.Y. Elec. Law § 6-142(2)(e).
- f. Additionally, Independent Bodies are at a disadvantage because the independent nominating petition circulation period is after the party designating petition period. Compare N.Y. Elec. Law §§ 6-134(4) and 6-158(1) (party designating petition circulation period is from June 5, 2018 to July 12, 2018) with N.Y. Elec. Law §§ 6-138(4) and 6-158(9) (independent nominating petition circulation period is from July 10, 2018-August 21, 2018).
- g. This presents a problem for third-party candidates because once a person signs a petition to get a candidate on the ballot, that person cannot sign another

party's or independent nominating petition for that office. *Lerman*, 232 F.3d at 147-48; N.Y. Elec. Law §§ 6-134(3); 6-138(1) (stating that a person's signature will be invalid if that same person signed another "upon another valid and effective petition designating or nominating the same or a different person for the same office.").

- h. The Second Circuit has termed this the "shrinking pool" problem "whereby those voters who already have signed the petition of another candidate are no longer available to sign another petition." *Lerman*, 232 F.3d at 148. Thus, even if the statute only requires an independent candidate to obtain a few signatures, doing so "can be like trying to find the proverbial needle in a haystack--especially for a candidate . . . who seeks the nomination of a minor party whose pool of potential petition signatories may already be quite small from the outset of the petitioning period." *Id.*
- i. Thus, New York gives priority treatment to Constituted Committee candidates as they can begin obtaining signatures first without competition from Independent Bodies.

51. Further compounding the disfavored treatment for Independent Bodies, like UJP, Parties and Constituted Committees are permitted to spend unlimited coordinated funds to support their candidates. N.Y. Elec. Law § 14-114(1) and (3).

52. By contrast, the UJP is not permitted to spend unlimited funds in support of its candidates. N.Y. Elec. Law § 14-114(1).

53. This means that the UJP is prohibited from using party funds to pay for the petitioning expenses of UJP's nominees in the same manner as Parties and Constituted

Committees. This places the UJP at a distinct disadvantage because to get a gubernatorial candidate on the ballot, UJP must obtain 15,000 signatures statewide and 100 of those signatures must be from 14 of New York's 27 congressional districts. N.Y. Elec. Law § 6-142(1).

54. UJP is therefore at a distinct disadvantage compared to the Parties and Constituted Committees because the UJP cannot benefit from the unlimited fundraising ability of a Housekeeping Account and the UJP cannot benefit from coordinating with its candidates without limit.

55. New York State has enacted severe penalties to enforce its favored treatment of political parties: Anyone who willfully and knowingly violates New York's campaign finance laws is subject to a misdemeanor criminal conviction. N.Y. Elec. Law § 14-126(4).

56. Persons who willfully contribute money, or accept money, greater than the contribution limit shall be guilty of a misdemeanor criminal offense. N.Y. Elec. Law § 14-126(5).

57. Furthermore, anyone knowingly and willfully acting to evade the contribution limits is guilty of a felony criminal offense. N.Y. Elec. Law § 14-126(6).

STATEMENT OF FACTS

58. The UJP wishes to compete with the parties and constituted committees. To do so, the UJP wishes to compete on a level playing field. Accordingly, the UJP desires to

- a. Make unlimited contributions to the UJP's candidates;
- b. Raise unlimited funds, including unlimited corporate funds, for the UJP's Housekeeping Account;

- c. Accept contributions up to the limits applicable to a Constituted Committee, including without limitation the \$109,600 from an individual annually; and
 - d. Permit UJP candidates to accept contributions for primary election campaigns like Constituted Committee candidates.
59. Defendants, however, prohibit the UJP from fundraising and spending at the levels reserved for Parties and Constituted Committees and a Housekeeping Account pursuant to N.Y. Elec. Law § 14-124(3).
60. Without a Housekeeping account, money that could otherwise be devoted to core political speech is effectively siphoned off to pay for infrastructure that the Constituted Committees can finance via funds deposited to Housekeeping Accounts without limit.
61. Furthermore, the very use of these Housekeeping Account funds for party headquarters, staff and ordinary expenditures is directly related to the UJP's ability to engage in meaningful political speech and activities.
62. This year is the first year in the UJP's existence that there is a gubernatorial election on the ballot.
63. Only if the UJP obtains 50,000 gubernatorial votes will Defendants permit the UJP to form a Constituted Committee.
64. The fundraising limits imposed upon UJP fundamentally handicaps UJP's ability to raise funds central to its purpose, because parties competing for the same voters may accept limitless funds through a Housekeeping Account.
65. Additionally, New York election law hamstring the UJP and other Independent Bodies because the UJP cannot use unlimited funds to coordinate with its candidates. Instead, the UJP can only contribute to its candidates the same amount as individuals.

N.Y. Elec. Law. § 114-14(1); *see also* § 114-14(3) (excluding from the definition of “contributor” Party Committees and Constituted Committees).

66. By contrast, the Parties and Constituted Committees can use unlimited funds to coordinate with its candidates. N.Y. Elec. Law § 114-14(3). This places the UJP at a fundamental disadvantage and the UJP is unable to unleash its full potential to motivate and persuade 50,000 people to vote for its gubernatorial candidate.

67. Furthermore, the Parties and Constituted Committees can receive more money from donors. Constituted Committees can raise \$109,600 per contributor per calendar year. N.Y. Elec. Law § 14-114(10); 9 N.Y.C.R.R. § 6214.0. By contrast, the UJP and other Independent Bodies can receive only \$44,000 per individual if the UJP is fielding a gubernatorial candidate. N.Y. Elec. Law § 14-114(1); 9 N.Y.C.R.R. § 6214.0.

68. Without the benefit of the contribution limits afforded Parties and Constituted Committees, without the ability to make unlimited contributions to its candidates, and without the ability to establish a housekeeping account, the UJP is barred from raising money to the same extent as a Party. This legislatively hamstrings the UJP’s ability to obtain 50,000 gubernatorial votes.

69. Thus, while New York would require the UJP to first garner 50,000 votes before becoming a party, the State would also starve the UJP of the means by which it can organize, build a platform, and get out its message needed to both qualify a candidate for the ballot and secure the 50,000 votes in the general election.

70. On February 7, 2018, the UJP applied to the Defendants to form a Constituted Committee and establish a Housekeeping Account.

71. On February 12, 2018, the Defendants denied UJP’s application.

72. Mr. Babinec has the means to donate to the UJP in annual amounts that exceed the Election Law limits of what he may currently donate to the UJP.
73. Mr. Babinec wishes to and intends to make financial contributions to the UJP to the fullest extent permitted by law and would donate to the UJP the maximum amount that New York law allows him to donate to a party.
74. Mr. Babinec has refrained from doing so due to New York State's laws and Defendants' refusal to allow UJP to form committees that would be authorized to accept this money.
75. Mr. Babinec has refrained from making donations to the UJP in amounts greater than the contribution limits for fear of criminal penalties. N.Y. Elec. Law § 14-126(4-6).
76. Defendants and the Election Law operate as a barricade against new parties and new ideas.
77. There are gubernatorial elections scheduled for November of 2018.
78. The UJP needs to immediately begin fundraising to participate meaningfully in the upcoming November 2018 elections, to get out its message, and to garner candidate support.
79. The UJP wishes to and intends to solicit and accept financial contributions from Martin Babinec and others to the fullest extent that the law permits parties to do so, but has refrained from doing so due to New York Election laws and Defendants' refusal to allow the UJP to form committees that would be authorized to do so.
80. The UJP wishes to and intends to make unlimited contributions to its candidates but has refrained from doing so due to New York's Election laws.

81. Mr. Babinec wishes to immediately begin making donations to promote the political change he wants to see and participate meaningfully in the November 2018 election.

COUNT ONE
DECLARATORY RELIEF: N.Y. Elec. Law § 14-124(3) VIOLATES THE FIRST
AMENDMENT.
42 U.S.C. § 1983 ACTION.

82. Plaintiffs adopt and reassert the information contained in Paragraphs 1-81 of the Complaint as though fully set forth herein.

83. Plaintiffs are entitled to a declaratory judgment that the Housekeeping Account exemption established in N.Y. Elec. Law § 14-124(3) violates the Free Speech and Association Clauses of the First Amendment to the U.S. Constitution because it creates a special exemption for Parties and Constituted Committees only. The Housekeeping Account exemption should apply equally to Parties, Constituted Committees and Independent Bodies.

84. The UJP applied for and was denied the ability to form a Constituted Committee and to establish a Housekeeping Account.

85. The Defendants were acting under the color of state law and violated, and continue to violate, Plaintiffs' civil rights. 42 U.S.C. § 1983.

86. The Housekeeping Account would permit the UJP to raise unlimited funds for the UJP's headquarters and staff. Without this account, the UJP is required to pay for its headquarters and pay UJP staff salaries from donor dollars that are limited to the maximum amount for the candidates the UJP is fielding. N.Y. Elec. Law § 14-114(1). This siphons money away from the UJP that it needs to disseminate its message.

87. Because Parties and Constituted Committees are permitted to have Housekeeping Accounts this amplifies their voice over the voices of the UJP and other Independent

Bodies. This advantage violates the First Amendment because the exemption permits some political committees to raise more funds than others. *Davis*, 554 U.S. at 744.

88. Because election campaigns are a “fertile source[] of new ideas and new programs[,]” *Anderson*, 460 U.S. at 794, and because an election campaign is a means of disseminating ideas, ballot access rules and campaign finance laws that are too restrictive “jeopardize this form of political expression.” *Socialist Workers Party*, 440 U.S. at 186.

89. Campaign contributions can be limited only if New York is acting to prevent corruption or the appearance thereof and it uses means that are closely drawn. *McCutcheon*, 134 S. Ct. at 1441, 1445-46

90. New York does not have an anti-corruption interest in limiting Housekeeping Accounts to Constituted Committees. This is especially true when other political party committees are permitted to have them. *McCutcheon*, 134 S. Ct. 1440-41, 1452.

91. The Housekeeping Account exemption is unconstitutional because it limits the ability to establish Housekeeping Accounts to Parties and Constituted Committees only. This limitation is not justified as a prevention of corruption measure nor is it closely drawn. The Housekeeping Account exemption is therefore unconstitutional. All political party committees should be permitted to have a Housekeeping Account.

COUNT TWO
DECLARATORY RELIEF: N.Y. Elec. Law § 14-124(3) VIOLATES THE EQUAL
PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.
42 U.S.C. § 1983 ACTION.

92. Plaintiffs adopt and reassert the information contained in Paragraphs 1-91 of the Complaint as though fully set forth herein.
93. The Housekeeping Account gives benefits to the Constituted Committees, permitting them to operate on an unequal playing field.
94. Given the importance of third parties in this Nation's political discourse, the importance of the individual interests at stake could not be higher. The Second Circuit previously recognized that New York's ballot access process and likely accompanying litigation is prohibitively expensive for many candidates, especially those not supported by a party committee. *Lerman*, 232 F.3d at 147. The Housekeeping Account exemption further advantages Parties and Constituted Committees at the expense of Independent Bodies.
95. Strict scrutiny is required when state laws give unequal treatment that violates a fundamental right. *Socialist Workers Party*, 440 U.S. at 183-84. This is especially true for laws that selectively infringe First Amendment rights. *Riddle*, 742 F.3d at 931-32 (Gorsuch, J., concurring). Contribution limits infringe First Amendment rights already. *See Buckley*, 424 U.S. at 19, 23-24. New York compounds the problem by infringing upon those rights unequally. *Riddle*, 742 F.3d at 931-32.
96. New York does not have a compelling interest nor has it used narrowly tailored means to support the limitation of the Housekeeping Account exemption to Parties and Constituted Committees. *Socialist Workers Party*, 440 U.S. at 183-85.

97. The unequal application of the Housekeeping Account exemption is unconstitutional.

The Housekeeping Account exemption should apply to all parties equally, and to Parties and Constituted Committees and Independent Bodies equally.

98. At all times relevant, Defendants were acting under the color of state law and violated and continue to violate Plaintiffs' civil rights. 42 U.S.C. § 1983.

COUNT THREE
DECLARATORY RELIEF: N.Y. Elec. Law § 14-114(1) VIOLATES THE FREE SPEECH
AND ASSOCIATION CLAUSES OF THE FIRST AMENDMENT AND THE EQUAL
PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.
42 U.S.C. § 1983 ACTION.

99. Plaintiffs adopt and reassert the information contained in Paragraphs 1-98 of the Complaint as though fully set forth herein.

100. The Equal Protection Clause is violated where two candidates are competing for the same office but are subject to different contribution limits. *Davis*, 554 U.S. at 744; *see Riddle*, 742 F.3d at 928-29 (third party candidate could not raise funds for primary but Republican could despite not having a primary opponent providing the Republican with a distinct advantage).

101. The First Amendment is violated when New York limits contributions for any reason other than the prevention of corruption or the appearance thereof, and New York does not use closely drawn means. *See McCutcheon*, 134 S. Ct. at 1444.

102. The UJP is prohibited from making contributions to its candidates above the individual limits set for those candidates. For example, the UJP may contribute only \$44,000 to its gubernatorial candidate. N.Y. Elec. Law § 14-114(1); 9 N.Y.C.R.R. § 6214.0.

103. By contrast, the Parties and Constituted Committees may make unlimited contributions to their candidates. N.Y. Elec. Law § 14-114(3).
104. The reason for this dichotomy of treatment between Independent Bodies and Parties with Constituted Committees is not to prevent corruption or the appearance thereof. *McCutcheon*, 134 S. Ct. at 1452.
105. Moreover, even if this dichotomy of treatment does advance New York's goal of preventing corruption or the appearance thereof, New York does not use means that are closely drawn. *Id.* at 1456-58.
106. Furthermore, New York has already infringed the First Amendment rights of speakers by limiting campaign contributions. With the selective treatment of the Housekeeping Account exemption, New York infringes the First Amendment rights of the UJP unequally. This warrants strict scrutiny. *Riddle*, 742 F.3d at 931-32 (Gorsuch, J., concurring).
107. New York does not have a compelling interest nor does it use means that are narrowly tailored. There is no evidence that New York created this selective exemption regime to prevent corruption or the appearance thereof. Nor could a complete prohibition on the UJP's use of coordinated contributions above \$44,000 be narrowly tailored.
108. The Defendants at all times were acting under the color of state law in violating Plaintiffs' civil rights. 42 U.S.C. § 1983.

COUNT FOUR
DECLARATORY JUDGMENT ACTION: VIOLATION OF THE FIRST
AMENDMENT.
42 U.S.C. § 1983 ACTION.

109. Plaintiffs adopt and reassert the information contained in Paragraphs 1-108 of the Complaint as though fully set forth herein.
110. “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon*, 134 S. Ct. at 1440-41. Citizens can exercise this right by making political contributions. *Id.* at 1441.
111. The First Amendment protects the right to make political contributions. *McCutcheon*, 134 S. Ct. at 1441.
112. Although this right is not absolute, New York may limit contributions only to prevent corruption or the appearance thereof and not to “restrict the political participation of some in order to enhance the relative influence of others.” *McCutcheon*, 134 S. Ct. at 1441, 1444, 1450.
113. Mr. Babinec wants to—and intends to—make political contributions above the limit permitted for the UJP. In fact, Mr. Babinec wants to and intends to contribute to the UJP the maximum allowed for Parties and Constituted Committees.
114. If Mr. Babinec wanted to, he could contribute \$109,600 to the New York Republican Party State Committee. N.Y. Elec. Law § 14-114(10); 9 N.Y.C.R.R. § 6214.0. He could also contribute an unlimited amount of money to the New York Republican Party State Committee Housekeeping Account. N.Y. Elec. Law § 14-124(3).

115. But New York structures the individual contribution limits to the UJP and other Independent Bodies differently from that of Parties. The UJP will field a gubernatorial candidate this year. New York therefore limits Mr. Babinec's contributions to the UJP to the same amount as Mr. Babinec's contributions to the UJP's candidate for Governor: that is, \$44,000. N.Y. Elec. Law § 14-114(1); 9 N.Y.C.R.R. § 6214.0. This is substantially less than the \$109,600 that Mr. Babinec could contribute to any one of the Parties and Constituted Committees.
116. New York has already deemed that \$109,600 to the Parties and Constituted Committees does not trigger New York's anti-corruption interest. New York cannot argue, therefore, that \$109,600 to the UJP triggers New York's anti-corruption interest. *McCutcheon*, 134 S. Ct. at 1452.
117. N.Y. Elec. Law § 14-114(1); 9 N.Y.C.R.R. § 6214.0 therefore violates Mr. Babinec's First Amendment rights.
118. The Defendants at all times were acting under the color of state law in violating Plaintiffs' civil rights. 42 U.S.C. § 1983.

COUNT FIVE
DECLARATORY RELIEF: N.Y. Elec. Law § 14-114(10) VIOLATES THE
FREE SPEECH AND ASSOCIATION CLAUSES OF THE FIRST
AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT
42 U.S.C. § 1983 ACTION.

119. Plaintiffs adopt and reassert the information contained in Paragraphs 1-118 of the Complaint as though fully set forth herein.
120. "There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon*, 134 S. Ct. at 1440-41. Citizens can exercise this right by making political contributions. *Id.*

121. The First Amendment protects the right to make political contributions. *McCutcheon*, 134 S. Ct. at 1441.
122. Although this right is not absolute, New York may limit contributions only to prevent corruption or the appearance thereof and not to “restrict the political participation of some in order to enhance the relative influence of others.” *McCutcheon*, 134 S. Ct. at 1441.
123. N.Y. Elec. Law § 114-14(1) violates the First Amendment to the U.S. Constitution. This statute prohibits the UJP from soliciting or raising money above \$44,000 if the UJP is fielding a gubernatorial candidate, yet the Parties and Constituted Committees can raise \$109,600. N.Y. Elec. Law § 114-14(10); 9 N.Y.C.R.R. § 6214.0.
124. Because New York does not have an anti-corruption interest to justify why the UJP must adhere to one set of contribution limits while the Parties and Constituted Committees must adhere to a higher contribution limit, the statutory dichotomy is unconstitutional. *Davis*, 554 U.S. at 744; *McCutcheon*, 134 S. Ct. at 1441.
125. Contribution limits already impinge on First Amendment rights. *Buckley*, 424 U.S. at 19, 23-24. But New York compounds the problem by selectively infringing upon First Amendment rights. *Riddle*, 742 F.3d at 931-32 (Gorsuch, J., concurring). This also violates the Equal Protection Clause because a fundamental right is being infringed and infringed in an unequal manner.
126. New York cannot support this unequal infringement of fundamental rights with a compelling interest. New York also cannot show that the means it uses are narrowly tailored.

COUNT SIX
DECLARATORY RELIEF: N.Y. Elec. Law § 14-114(1) AND 9 N.Y.C.R.R. §
6214.0 VIOLATE THE FREE SPEECH AND ASSOCIATION CLAUSES OF
THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF
THE FOURTEENTH AMENDMENT
42 U.S.C. § 1983 ACTION.

127. Plaintiffs adopt and reassert the information contained in Paragraphs 1-126 of the Complaint as though fully set forth herein.
128. Because the UJP does not hold primary elections, Mr. Babinec can only contribute to the UJP's candidates' for general elections.
129. Accordingly, the UJP's candidates are at a disadvantage because these candidates cannot raise money for the primary that, if unused, can be used in the general election.
130. Thus, Party and Constituted Committee candidates for governor can raise at most, \$21,000 in the primary—for the Democrats—from individuals, and then another \$44,000 in the general, for a total of \$65,000. N.Y. Elec. Law § 14-114; 9 N.Y.C.R.R. § 6214.0.
131. By contrast, UJP's Gubernatorial candidate will be limited to raising \$44,000 from individuals for the general election, and nothing more.
132. This violates both the First Amendment and the Fourteenth Amendment. *Davis*, 554 U.S. at 744; *Riddle*, 742 F.3d at 928-29.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request Judgment against Defendants, as follows:

- A. Declaring that as currently selectively applied to Plaintiffs, N.Y. Elec. Law §§ 14-114(1), 14-114(3), 14-114(10), 14-124(3), and 9 N.Y.C.R.R. § 6214.0 are unconstitutional as violating the First Amendment and/or the Fourteenth Amendment;

- B. Declaring that Plaintiff UJP may raise and accept donations to the same extent as if UJP were a Party and a Constituted Committee under N.Y. Elec. Law § 1-104(3);
- C. Declaring that Plaintiff UJP, may establish a Housekeeping Account for use in the same manner as a Party or Constituted Committee;
- D. Declaring that Plaintiff Martin Babinec and any and all other donors may make donations to Plaintiff UJP to the same extent as if UJP were a Party and Constituted Committee with a Housekeeping Account under N.Y. Elec. Law § 1-104(3), meaning \$109,600 per calendar year. N.Y. Elec. Law § 14-114(10);
- E. Declaring that the UJP may make unlimited contributions to its candidates in the same manner as a Party and a Constituted Committee;
- F. Enjoining Defendants, their agents, and assigns from enforcing N.Y. Elec. Law §§ 14-114(1), 14-114(3), 14-114(10), 14-124(3), and 9 N.Y.C.R.R. § 6214.0 against Plaintiffs;
- G. Directing Defendants to pay Plaintiffs all reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- H. Award all other relief that this Court deems just and proper.

DATED: April 13, 2018

Respectfully submitted,

Jason Torchinsky (VA 47481)*
Shawn Toomey Sheehy (VA 82630)*
HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY PLLC
45 North Hill Drive, Suite 100
Warrenton, Virginia 20186
Phone: 540-341-8808
Fax: 540-341-8809
jtorchinsky@hvjt.law
ssheehy@hvjt.law

**pro hac vice applications pending*

/s/

Michael Burger, Bar Number 515216
Fernando Santiago, Bar Number 517516
SANTIAGO BURGER LLP
Attorneys for Plaintiffs
1250 Pittsford-Victor Road
Building 100, Suite 190
Pittsford, NY 14534
Phone: 585-563-2400
Fax: 585-563-7526
mike@litgrp.com
fernando@litgrp.com