

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of September, two thousand twenty-six.

Present:

DENNY CHIN
WILLIAM J. NARDINI,
*Circuit Judges.**

LEWIS Y. LIU,

Plaintiff-Appellant,

v.

25-1031-cv

KATHLEEN HOCHUL, HENRY T. BERGER,
PETER S. KOSINSKI, NEW YORK STATE BOARD
OF ELECTIONS,

Defendants-Appellees.

For Plaintiff-Appellant:

LEWIS Y. LIU, *pro se*, Flushing, NY.

For Defendants-Appellees:

SAMANTHA NEAL, ASSISTANT SOLICITOR GENERAL
(Barbara D. Underwood, Solicitor General, Judith N.
Vale, Deputy Solicitor General, *on the brief*), for
Letitia James, Attorney General for the State of New
York, New York, NY.

* Because the third judge originally assigned to this panel is recused from this case, the remaining two judges, who are in agreement, issue this order in accordance with Second Circuit Internal Operating Procedure E(b).

Appeal from a judgment of the United States District Court for the Southern District of New York (Dale Ho, *District Judge*) entered on April 9, 2025.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Lewis Y. Liu, proceeding *pro se*, appeals from a judgment dismissing his complaint. Liu sued Governor Kathleen Hochul, the New York State Board of Elections (“NYS BOE”), and various NYS BOE officials. He alleged that New York’s use of a “winner-take-all” (“WTA”) system for choosing electors for presidential elections violated the First and Fourteenth Amendments. The district court dismissed Liu’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), concluding that he failed to state a claim because Supreme Court precedent foreclosed his WTA challenge. On appeal, the defendants argue that Liu’s appeal should be dismissed as moot because the 2024 election has passed. We assume the parties’ familiarity with the case.

“[W]e review *de novo* a district court’s dismissal of a complaint pursuant to Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff’s favor.” *Moreira v. Société Générale, S.A.*, 125 F.4th 371, 387 (2d Cir. 2025).¹

I. Mootness

First, we conclude that Liu’s appeal is not moot. “A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *Tann v. Bennett*, 807 F.3d 51, 52 (2d Cir. 2015). “An action not moot at its inception can become moot on appeal

¹ Unless otherwise indicated, in quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

if an event occurs during the course of the proceedings or on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party.” *Westchester v. U.S. Dep’t of Hous. & Urb. Dev.*, 778 F.3d 412, 416 (2d Cir. 2015).

To the extent Liu seeks relief with respect to the 2024 election, the appeal is moot because we cannot grant any effectual relief for an election that has passed. However, Liu also seeks prospective relief: a declaration that the WTA system is unconstitutional and an injunction prohibiting its use in future elections. And although Liu’s allegations were not detailed as to whether he intends to vote for the minority candidate in future elections, this case falls within the “capable of repetition yet evading review” exception to the mootness doctrine. In the absence of a class action, a controversy is capable of repetition yet evading review when “(1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.” *Van Wie v. Pataki*, 267 F.3d 109, 113–14 (2d Cir. 2001).

“[M]ere speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation or demonstrated probability of recurrence.” *Dennin v. Conn. Interscholastic Athletic Conf., Inc.*, 94 F.3d 96, 101 (2d Cir. 1996). But it is reasonably likely that this dispute will recur given Liu’s allegation that he is a registered Republican and New York’s recent history of casting its electoral college votes for the Democratic presidential candidate. *Cf. Baten v. McMaster*, 967 F.3d 345, 353–60 (4th Cir. 2020) (considering the merits of a challenge to South Carolina’s WTA system brought by voters who alleged they had voted and intended to vote for Democratic presidential candidate in that state). And it is unlikely that a challenge to the WTA system could be fully litigated between the general election and the seating of electors. *Cf. Meyer v. Grant*, 486 U.S. 414, 417 n.2 (1988) (challenge to a law limiting the use

of paid circulators to gather signatures for ballot initiative was not mooted by the election where a state had a six-month period to gather signatures and “[t]he likelihood that a proponent could obtain a favorable ruling within that time . . . is slim at best”).

II. Merits

Turning to the merits, we agree that Liu has failed to state a claim for relief. In *Williams v. Virginia State Board of Elections*, the Supreme Court summarily affirmed a district court decision rejecting an identical equal protection challenge to Virginia’s WTA system. 393 U.S. 320, 320 (1969). Although summary affirmances are “not [to] be understood as breaking new ground,” such decisions “do prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions.” *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). Several other circuits have held that *Williams* bars vote-dilution challenges to state WTA systems. *See, e.g., Lyman v. Baker*, 954 F.3d 351, 366 (1st Cir. 2020) (holding that *Williams* decides the issue of whether the WTA system “undermines the ‘one person, one vote’ principle”); *Baten*, 967 F.3d at 355–56 (applying *Williams* and holding that the WTA system does not violate one person, one vote); *League of United Latin Am. Citizens v. Abbott*, 951 F.3d 311, 314–15 (5th Cir. 2020) (holding that *Williams* foreclosed a vote dilution challenge to a WTA system); *Rodriguez v. Newsom*, 974 F.3d 998, 1002 (9th Cir. 2020) (holding that “under *Williams*, a [s]tate’s use of WTA to select its presidential electors is consistent with the Constitution’s guarantee of equal protection”). We agree. Accordingly, Liu’s equal protection challenge to New York’s WTA is foreclosed by *Williams*.

Liu’s First Amendment and due process challenges to the WTA system were also properly dismissed. As the district court concluded, Liu’s First Amendment claim—that the WTA system violates freedom of speech rights by depriving minority votes of their value in determining the

outcome of presidential elections—was in substance identical to his equal protection claim. On appeal, Liu argues that the WTA system violates the First Amendment by “penalizing dissenting political expression and association.” Appellant Br. 24. However, this is a different theory than advanced in the district court, so Liu cannot raise it for the first time on appeal. *See Green v. Dep’t of Educ. of N.Y.C.*, 16 F.4th 1070, 1078 (2d Cir. 2021) (“It is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal.”). And in any event, Liu does not allege that he was prevented from or punished for associating with others, voting, or advocating for his preferred candidate. *See Smith v. Ark. State Highway Emps., Loc. 1315*, 441 U.S. 463, 464–65 (1979) (“The First Amendment right to associate and to advocate provides no guarantee that a speech will persuade or that advocacy will be effective.”). Liu’s due process claim was similarly duplicative of his equal protection claim. And to the extent that he asserted a distinct due process claim by alleging that the WTA system deprives voters of representation without constitutional or statutory authorization, that claim is meritless because the Constitution authorizes states to select their method of appointing electors, U.S. Const. art. II § 1, cl. 2, and New York State election law authorizes the WTA system, N.Y. Elec. Law § 12-100.

We have considered all of Liu’s remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court