

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRYAN E. GREENE,
JORDON M. GREENE, and
TODD MEISTER,

Plaintiffs,

VS.

CIVIL ACTION NO. 5:08cv0088

GARY O. BARTLETT, LARRY
LEAKE, GENEVIEVE SIMS,
LORRAINE SHINN, CHARLES
WINFREE, and ROBERT CORDLE,

Defendants.

**MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION**

FACTS

The facts are straightforward and uncontested. In 2008, plaintiff Bryan Greene attempted to run as an unaffiliated candidate for Congress in North Carolina's Tenth Congressional District. The Tenth District comprises Avery, Caldwell, Burke, Mitchell Catawba, Cleveland, and Lincoln Counties and parts of Iredell, Rutherford, and Gaston Counties. Plaintiffs Jordon Greene and Todd Meister supported Bryan's candidacy and sought to vote for him.

North Carolina General Statute § 163-122(a)(2) provides that a qualified voter may appear on the general election ballot as an "unaffiliated candidate," which is the statute's term for an

independent candidate. An unaffiliated candidates runs on his or her own and not as a candidate of a “political party,” as that term is defined by North Carolina General Statutes §§ 163-96. To qualify to appear on the general election ballot as an unaffiliated candidate for the House of Representatives under the strictures of § 163-122(a)(2), the candidate must submit to the State Board of Elections petitions supporting his or her candidacy signed by at least four percent of the District’s registered voters. For the Tenth District in 2008, the four percent figure would have required submission of 16,457 valid signatures. Complaint ¶ 13 and Answer ¶ 13. The deadline for the submission of petitions is the last Friday in June, which in 2008 fell on the 27th of June and in 2010 will be the 25th.

As of the 2008 deadline, Mr. Greene had submitted petitions endorsed by 899 persons, which yielded 607 valid signatures. Defendants’ Supplemental Responses to Plaintiffs’ First Set of Interrogatories at 1; Complaint ¶ 14.¹ By the terms of § 163-122(a)(2), then, Mr. Greene’s name did not appear on the general election ballot. Plaintiff Bryan Greene intends to petition to qualify to run for Congress in North Carolina’s Tenth Congressional District in future elections, and plaintiffs Jordon Greene and Todd Meister intend to support his candidacy. Complaint ¶ 22.

Although unaffiliated candidates for the House of Representative must submit signatures from four percent of their districts’ voters, unaffiliated candidates for the United States Senate can qualify for the general election ballot by submitting petitions endorsed by just two percent of the number of voters who participated in the most recent gubernatorial election. N.C. Gen. Statutes § 163-122(a)(1). In addition, Congressional candidates who are nominated by a political party will appear on the general election if their party either received two percent of the vote in the preceding gubernatorial election or if the party submitted petitions endorsed by two percent of the number of

¹The complaint has been verified by Jordon Greene. *See* Affidavit of Jordon Greene.

voters who voted in the most recent gubernatorial election. N.C. Gen. Statutes §§ 163-96 & -98.

The defendants include the Executive Director and members of the State Board of Elections. As such, they are responsible for the general supervision of elections in North Carolina, including the preparation and distribution of ballots.

ISSUES

This case challenges the constitutionality of the four percent requirement in § 163-122(a)(2) and seeks permanent injunctive relief barring enforcement of that provision. The issues are:

- (1) whether the four percent requirement imposes an undue and unjustified burden on the First and Fourteenth Amendment rights of citizens seeking to run as unaffiliated candidates for the United States House of Representatives and on those voters who support their candidacies;
- (2) whether North Carolina violates the Equal Protection Clause of the Fourteenth Amendment by requiring unaffiliated candidates for the United States House of Representatives to submit as a condition of ballot access signatures from four percent of registered voters while granting ballot access to unaffiliated candidates for the United States Senate who submit voters' signatures equal in number to two percent of the last gubernatorial vote.
- (3) whether requiring unaffiliated House of Representative candidates to submit signatures from four percent of their districts' registered voters to qualify for the ballot while granting ballot access to political party nominees for Congress whose party has filed petitions endorsed by voters equal in number to two percent of the last gubernatorial vote.

ARGUMENT

- I. THE REQUIREMENT IN N.C. GENERAL STATUTE § 163-122(a)(2) THAT UNAFFILIATED CANDIDATES IN NORTH CAROLINA FOR THE UNITED STATES HOUSE OF REPRESENTATIVES MUST, TO QUALIFY FOR THE GENERAL ELECTION BALLOT, SUBMIT PETITIONS ENDORSED BY AT LEAST FOUR PERCENT OF THE CONGRESSIONAL DISTRICT'S VOTERS UNDULY BURDENS THE FIRST AMENDMENT RIGHTS OF AFFECTED CANDIDATES AND THEIR SUPPORTERS.

At stake for plaintiffs are their fundamental rights to participate in an electoral process that is fair and impartial, to advocate their views, and to promote Bryan Greene's candidacy. The Supreme Court has repeatedly held that unjustified restrictions on the ability of minor political party and independent candidates to secure access to the general election ballot impair the First and Fourteenth Amendment rights of such candidates and their supporters. *E.g.*, *Norman v. Reed*, 502 U.S. 279 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Williams v. Rhodes*, 393 U.S. 23 (1968). Unduly heavy ballot access restrictions "place burdens on two different, although overlapping, kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Anderson*, 460 U.S. at 787, *quoting Williams*, 393 U.S. at 30-31.

The United States Supreme Court has also repeatedly recognized the enormous importance to a candidate to be included on the general election ballot and the corresponding inadequacy of the alternative to run as a write-in. *E.g.*, *Anderson*, 460 U.S. at 788, n. 8 & 799, n. 26; *Illinois Elections Board v. Socialist Workers Party*, 440 U.S. 173, 186 (1979); *Lubin v. Panish*, 415 U.S. 709, 719, n. 5 (1974) ("realities of the electoral process . . . strongly suggest that 'access' via write-in votes falls far short of access in terms of having the name of the candidate on the ballot"); *Williams v.*

Rhodes, supra, 393 U.S. at 31 (the right to advance political goals “means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes”). Without ballot status, plaintiff Bryan Greene will be burdened with a lack of credibility, reduced media coverage, and disadvantages on election day through dependence on write-in votes. Similarly, his supporters’ political rights will be seriously compromised if he is not on the ballot:

The right to vote is heavily burdened if that vote may be cast only for major-party candidates at a time when other parties or other candidates are clamoring for a place on the ballot. The exclusion of candidates also burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.

Anderson, 460 U.S. at 787-88 (internal quotation marks and citations omitted).

Since *Williams v. Rhodes*, 393 U.S. 23 (1968), the United States Supreme Court has consistently held that electoral restrictions imposed on political candidates implicate fundamental constitutional rights of the candidates, their supporters, their affiliated associations, and voters. These rights are grounded in the First Amendment's freedoms of speech and association and the First and Fourteenth Amendment's guarantee of equal participation in the political process. *E.g.*, *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Illinois Elections Board v. Socialist Workers Party*, 440 U.S. 173 (1979). To protect the assorted rights, the Supreme Court has used the analysis first set forth in *Anderson*. In assessing the legitimacy of a ballot regulation, a 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. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

460 U.S. at 789. Later cases have made clear that the analysis adjusts according to the degree of

interference with the individual rights – the greater the imposition on candidates’ and voters’ interests, the weightier must be the state’s justification – with due consideration given to less burdensome alternatives. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). As stated in *Burdick*, “the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to ‘severe’ restrictions, the regulation must be ‘narrowly drawn to advance a state interest of compelling importance.’ *Norman v. Reed*, 502 U.S. 279, 289 (1992).” *Burdick*, 504 U.S. at 434;² accord, e.g., *Dixon v. Maryland State Administrative Board of Election Laws*, 878 F.2d 776 (4th Cir. 1989).

Application of the foregoing analysis to § 163-122(a)(2) will lead to its invalidation. As described above, that section burdens valuable rights of political participation protected by the First and Fourteenth Amendments. And the magnitude of the burden that § 163.122(a)(2) places on those rights is extreme. To assess the severity of a restriction on ballot access, a court should examine its nature, extent, and impact. *Storer v. Brown*, 415 U.S. 724, 738 (1974); see also *Crawford v. Marion County Election Board*, 553 U.S. 181, ___, 128 S.Ct. 1610, 1624-25 (2008) (Scalia, J., concurring).

The principal inquiry is:

“[I]n the context of [North Carolina] politics, could a reasonably diligent independent candidate be expected to satisfy the signature requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot? Past experience will be a helpful, if not always an unerring, guide; it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not.”

Storer, 415 U.S. at 742; accord, *Mandel v. Bradley*, 432 U.S. 173, 177 (1977); *Delaney v. North*

²See also, e.g., *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214 (1989); *Illinois Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 186 (1979).

Carolina Board of Elections, 370 F. Supp. 2d 373, 377 (M.D.N.C. 2004).

Here, the historical record speaks for itself. Since North Carolina adopted printed ballots in 1901, it has *never* had an unaffiliated candidate appear on its ballots for any congressional seat, including in the years since 1991 when the four percent requirement has been in place. Declaration of Richard Winger ¶ 4.³ Moreover, no independent candidate for the House of Representatives in the history of the United States has overcome a petition requirement greater than 12,919, which was last met in 1954. *Id.* ¶ 3. That figure, of course, is considerably less than the 16,457 signatures that was needed to get on the ballot in North Carolina’s Tenth Congressional District⁴ or the 17,541 that will be needed in 2010.⁵ The State’s hostility to candidates from outside the two major parties is demonstrated by the accompanying chart, “Most Crowded Election Ballot for U.S. House.”⁶ Its “most crowded” race was in its Ninth District in 2000 when all of four candidates were on the ballot – the second lowest “record” in the country. Because of the severity of the burden imposed by § 163-122(a)(2), it “may be upheld as a legitimate restriction on ballot access only if it is narrowly drawn to advance a compelling state interest.” *Delaney*, 370 F. Supp. at 378-79.

The State has legitimate interests in limiting access to the ballot to prevent ballot clutter and

³*Accord*, Congressional Quarterly’s Guide to U.S. Elections 1095-1326 (3rd ed. 1994) (House elections 1904-1993); <http://www.sboe.state.nc.us/content.aspx?id=69> (N.C. election results 1994-2008).

⁴The 20,131 signatures required to qualify for the ballot in North Carolina’s Fourth District was the highest in the country in 2008 for a congressional race. Winger Declaration at 2.

⁵The number was calculated from data obtained from defendants’ website at: <http://www.sboe.state.nc.us/content.aspx?id=41>.

⁶The chart was created by Richard Winger, *see* Vita of Richard Winger, and appeared in the August 1, 2009, issue of *Ballot Access News*, which can be retrieved at <http://www.ballot-access.org/2009/080109.html#10>.

avoid voter confusion and to insist that candidates be serious and enjoy a modicum of support. *See Libertarian Party of North Carolina v. State of North Carolina*, 2009 N.C. App. LEXIS 1681 at 18-19; Deposition of Gary Bartlett at 46-47 (stating his opinion that those were the principal purposes for the petitioning requirement for unaffiliated candidates). Whether those interests rise to the level of compelling need not be determined because § 163-122(a)(1) is not narrowly drawn. It is overkill.

Across the country, the number of signatures needed for independent congressional candidates to qualify in 2008 for the ballot varied between zero in a number of states and 20,131 in North Carolina's Fourth District.⁷ The median requirement was 2,750 signatures, and in 318 districts the number was less than 5,000. Winger Declaration ¶ 5. Only Georgia and North Carolina require more than three percent of the number of registered voters. *Id.* ¶ 6. The accompanying chart, "Highest Signature Requirements Ever Met by a U.S. House Candidate,"⁸ includes on it information about what each state requires for ballot status for independent House candidates and demonstrates how severe North Carolina's burden is. Despite the much more modest requirements maintained by forty-eight of North Carolina's sister states, they have not been in any way overwhelmed by independent or third party candidates for Congress cluttering their systems or causing voter confusion. That the State in § 163.122(a)(1) provides ballot access to unaffiliated statewide candidates upon submission of petitions signed by only voters numbering only two percent of the votes cast in the last gubernatorial election – *less than half* the percentage required for Congressional

⁷To qualify for North Carolina's Fourth District in 2010 will require 22,549 signatures. *See* defendants' website at <http://www.sboe.state.nc.us/content.aspx?id=41>.

⁸The chart was created by Richard Winger, *see* Vita of Richard Winger, and appeared in the July 1, 2009, issue of *Ballot Access News*, which can be retrieved at <http://www.ballot-access.org/2009/07/>.

candidates – provides powerful evidence that the four percent requirement goes well beyond what the State needs to accomplish its goals. *See* Part II, *infra*.

Moreover, a candidate’s seriousness and evidence of support is wholly satisfied by North Carolina’s hefty filing fee, which N.C. General Statute § 163-107 sets at one percent of the annual salary of the office being sought. Congressional salaries in 2008 were \$169,300 a year⁹ and are \$174,000 in 2010 .¹⁰ Thus, to run for Congress in North Carolina, a candidate in 2008 had to put down \$1,693 and this year will have to pay \$1,740. As shown on the accompanying chart, “2010 Filing Fees for Independent U.S. House Candidates,”¹¹ North Carolina has the third highest filing fee for candidates for the House in the country. So, it has the second highest signature requirement and the third highest filing fee. It is no wonder that, as shown on the “Highest Signature Requirement” chart that accompanies this memorandum, North Carolina is the only State that has *never* had a candidate meet the petitioning requirement. The State cannot add on to its onerous filing fee by imposing the four percent signature requirement without unnecessarily and unduly burdening plaintiffs’ rights.

The State has also stated some nebulous goal in “the orderly and fair administration of elections” to justify its petition requirements. Brief of the State in *Libertarian Party of North Carolina v. State of North Carolina*, 2009 NC App. Ct. Briefs LEXIS 278 at 30 (referring to North

⁹That figure was obtained at:
http://www.usatoday.com/news/washington/2008-01-09-Raise-me_N.htm.

¹⁰That figure was obtained from defendants’ website at:
<http://www.sboe.state.nc.us/content.aspx?id=64>.

¹¹The chart was created by plaintiff’s counsel, updating an earlier chart prepared by Richard Winger. *See* Richard Winger Vita.

Carolina’s unusually long ballot with ten statewide candidates running for office in presidential election years); Bartlett Deposition at 54-55. The State, however, cannot use its long ballot – which is entirely within its control – to completely stifle the opportunity for unaffiliated candidates to seek Congressional office and to so heavily burden the First Amendment rights of its citizens. To insist that the State has so many offices to fill that it therefore has to strictly limit the ability of candidates to seek those offices is really to allow the tail to wag the dog. The argument is also contradicted by the fact that North Carolina does not limit, other than through its filing fee requirement, the number of candidacies in its primary elections. All of those Democrats and Republicans willing to pay the State’s filing fee can seek Congressional office. It is only in the general election, when candidates from outside the two mainstream parties seek to join in the fracas, that North Carolina is concerned with the length of the ballot. It is also nonsensical for the State to use its ten statewide elected offices (admittedly a lot) as a basis for requiring signatures from four percent of registered voters for a Congressional district candidacy when it requires only two percent of the last gubernatorial vote for those statewide candidacies. N.C. Gen. Stat. § 163-122(a)(1).

Nor can the State find solace in *Jenness v. Fortson*, 403 U.S. 431 (1971), which upheld a Georgia ballot access requirement that independent candidates must file petitions endorsed by five percent of the number of voters registered to vote in the preceding election to fill the office in question. The opinion in that case did not undertake the careful sifting of individual and state interests and less restrictive alternatives required by the subsequent rulings in *Anderson*, *Storer*, and *Burdick*. It did not provide any assessment of the impact of the Georgia requirement other than to say that it did not “operate to freeze the political status quo” in the state. 403 U.S. at 438. In this case, of course, North Carolina’s law *has* frozen the political status quo. The State cannot escape

“the inexorable zero”¹² that the four percent requirement has imposed for unaffiliated candidates for the House of Representatives. As shown on the “Highest Signature Requirement” chart, North Carolina is one of only two states that has never had an independent candidate appear on its general election ballots.

As in *Anderson*, “[u]nder any realistic appraisal, the ‘extent and nature’ of the burdens [the State] has placed on the voters’ freedom of choice and freedom of association . . . unquestionably outweigh” the State’s interests.

The stakes in this controversy are not insignificant. As Chief Justice Warren observed in *Sweezy v. New Hampshire*, 354 U.S. 234, 250-51 (1954) (plurality opinion):

"All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, which innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. . . . The absence of such voices would be a symptom of grave illness in our society."

The *Anderson* Court also recognized the value and importance of having a diverse field of candidates:

By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Historically political figures outside the two major parties 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. . . . In short, the primary values protected by the First Amendment . . . are served when election campaigns are not monopolized by the existing political parties.

Accord Libertarian Party of Ohio v. Blackwell, 462 F.3d 579, 594 (6th Cir. 2006).

II. THE STATE HAS NO RATIONAL BASIS FOR REQUIRING UNAFFILIATED CANDIDATES FOR THE HOUSE OF REPRESENTATIVES TO PRODUCE SIGNATURES FROM FOUR PERCENT OF REGISTERED VOTERS TO QUALIFY FOR

¹²See *Teamsters v. United States*, 431 U.S. 324, 342 n.23 (1977).

THE BALLOT WHILE REQUIRING PETITION SIGNATURES FROM ONLY TWO PERCENT OF THE LAST GUBERNATORIAL VOTE FROM UNAFFILIATED SENATORIAL AND OTHER STATEWIDE CANDIDATES TO QUALIFY FOR THE BALLOT.

Section 163-122(a)(1) sets forth the petitioning requirements for unaffiliated candidates who run statewide, which would include, of course, candidates for the United States Senate. The section provides that those candidates need submit petitions with signatures of voters that number only two percent of the preceding vote for governor. North Carolina's congressional districts range in size between 404,075 voters (First District) and 563,707 voters (Fourth District).¹³ Unaffiliated candidates for the House must therefore submit between 16,163 and 22,549 signatures. Plaintiff Greene will have to gather and file at least 17,541 valid signatures to qualify in the Tenth District. Meanwhile, a candidate for the United States Senate can appear on the ballot if he or she files 85,379 signatures, which is two percent of the 4,268,941 votes cast in the 2008 gubernatorial election.¹⁴

There is simply no basis for requiring well over twice the percentage of signatures from candidates seeking a seat in the lower house of Congress than is required from candidates seeking a seat in the upper house of Congress. While a statewide petitioning drive requires more resources and effort, that fact is also more than offset by the reality that petitioning in congressional districts is made more difficult because of voters' uncertainties about which district they live. Winger Declaration ¶ 2; Bartlett Deposition at 44-45. Voters do know which state they live in, which makes it easier on canvassers to collect valid signatures in a statewide petition drive.

The resultant discrimination is like that invalidated in *Illinois State Board of Elections v.*

¹³<http://www.sboe.state.nc.us/content.aspx?id=41/>

¹⁴The figure was taken from defendants' website at: <http://results.enr.clarityelections.com/NC/7937/14537/en/summary.html#>.

Socialist Workers Party,, 470 U.S. 173 (1979). In that case, the Court unanimously held that Illinois's more stringent requirements to ballot access for elections in Chicago than in elections held statewide were unsupported by any reason, let alone the compelling state interest needed to sustain the significant incursion on fundamental individual rights. *See also id.* at 190-91 (Rehnquist, J., concurring in the judgment) (disparity between the state and local signature requirements bore no rational relationship to any state interest); Bartlett Deposition at 18-19, 27-28 (stating he does not know any explanation for the four percent requirement for unaffiliated Congressional candidates).

III. SECTION 163-122(a)(2)'S FOUR PERCENT SIGNATURE REQUIREMENT CREATES AN IMPERMISSIBLE DISCRIMINATION BETWEEN UNAFFILIATED CANDIDATES AND CANDIDATES OF NEW POLITICAL PARTIES.

North Carolina's disparate treatment of unaffiliated candidates for House of Representatives compared to affiliated candidates is indistinguishable from that discrimination found unconstitutional in *Delaney v. Bartlett*, 370 F. Supp. 2d 373 (M.D.N.C. 2004) – except that the degree of discrimination in this case is much worse.

Under North Carolina General Statutes § 163-96, a new political party can place its candidates for the House of Representatives on the ballot if the party submits petitions endorsed by voters numbering at least two percent of the number of votes cast in the preceding gubernatorial election. *Delaney* held that the requirement in § 163.122(a)(1) that an unaffiliated candidate for the United States Senate had to file petitions signed by at least two percent of the State's registered voters discriminated against the unaffiliated candidate because he had to file over 90,000 valid signatures compared to the 58,800 signatures that a party was required to submit to satisfy § 163-96. The Court's inquiry focused on "whether the State may permit unaffiliated candidates to conform to significantly greater requirements than new party candidates for a place on the general election

ballot.” *Id.* at 377. Its answer was that “unaffiliated candidates’ ballot access should be ‘reasonable’ and ‘similar in degree’ to party candidates’ requirements.” *Id.* at 378, quoting *Wood v. Meadow*, 207 F.3d 708, 712 (4th Cir. 2000); accord, *Anderson v. Morris*, 636 F.2d 55, 58-59 (4th Cir. 1980) (affirming district court ruling that Maryland's imposition of harsher filing deadline on independent candidates *vis-a-vis* major party candidates was unconstitutional because it failed to achieve the State's objectives); *Greaves v. State Bd. of Elections of North Carolina*, 508 F. Supp. 78, 82 (E.D.N.C. 1980) (striking previous version of North Carolina General Statute § 163-122 in part because it "grossly discriminates against those who choose to pursue their candidacies as independents rather than by forming a new political party" without a rational basis).

The *Delaney* Court concluded that the requirement that new parties submit valid voter signatures equal to or greater than the number that had voted in the preceding gubernatorial election adequately served the state’s interests in preventing ballot clutter and voter confusion. The additional requirements imposed on the unaffiliated candidates were therefore unjustified and unconstitutional. “If the State’s goal is to ensure that a candidate has a modicum of support for his platform, the new party signature requirement is a less restrictive means of meeting that goal.” 370 F. Supp. 3d at 379. In this case, the discrimination against the unaffiliated candidates for the House of Representative is even greater. Rather than having to gather signatures from two percent of the registered voters in their districts, as in *Delaney*, plaintiff Greene must collect signatures from four percent of the voters in the Tenth District. The State cannot justify more than doubling the percentage required for unaffiliated House candidates than it requires of new political parties on a statewide basis. The two requirements are simply not “similar in degree.” *Delaney*, 370 F. Supp. 2d at 379.

CONCLUSION

For the foregoing reasons, the Court should grant plaintiffs' motion for summary judgment and permanently enjoin the defendants from enforcing the requirement in N.C. Gen. Statute § 163-122(a)(2) that conditions an unaffiliated candidate's access to the general election ballot upon the submission of signatures from four percent of the voters in a congressional district.

s/ Kris V. Williams

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CERTIFICATE OF SERVICE

I have served a copy of the foregoing Memorandum on Susan K. Nichols and Alexander M. Peters, Special Deputy Attorneys General, through the EM/ECF electronic filing system on this the 15th of February, 2010.

s/ Robert M. Bastress, Jr.
