

Case No. 14-1873

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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MATT ERARD,

Plaintiff-Appellant,

vs.

MICHIGAN SECRETARY OF STATE  
RUTH JOHNSON,

Defendant-Appellee.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

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**APPELLANT'S PETITION FOR PANEL REHEARING  
AND PETITION FOR REHEARING EN BANC**

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June 3, 2015

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## INTRODUCTION

The central question raised in this case is one of profound national importance not only to the associational rights of independent-minded voters and political minority groups, but also to the health and integrity of the political process in fostering “diversity and competition in the marketplace of ideas.” *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983). Namely, that question is whether a state can condition the opportunity for one “identifiable political group” to “associate in the electoral arena” (*id.* at 793-94) upon having to demonstrate a far greater quantum of voter support than that applied to another political group with which it seeks to compete.

Although this case is not the first to ever present that question to a United States court, it has currently resulted in the first ever United States court decision to answer that question in the affirmative. Moreover, in affirming the conclusion that Plaintiff-Appellant’s (“Plaintiff”) fails to even state a cognizable claim in challenging Michigan’s requirement of new party supporters to demonstrate approximately twice the numerical strength as established parties for the same election, the Court’s decision not only stands for the assumption that a State wields unfettered discretion to impose such palpably unequal burdens on the voting and associational rights of minority groups, but also that it may do so without even attempting to proffer any explanation for how “the criterion for differing treatment [] bear[s] [any] relevance to the object of the legislation.” *Bullock v. Carter*, 405 U.S. 134, 145 (1972)

In addition to involving questions of exceptional importance, the Court’s Order di-

rectly conflicts with the Supreme Court’s decisions in *Williams v. Rhodes*, 393 U.S. 23 (1968) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983), as well as this Court’s decision in *Green Party of Tenn. v. Hargett*, 767 F.3d 533 (6th Cir. 2014). Consequently, in the absence of panel rehearing, consideration by the full Court will be needed to ensure and maintain the uniformity of the Court’s decisions.<sup>1</sup>

**I. THE COURT’S ORDER ERRONEOUSLY CONSTRUES PLAINTIFF’S DISCRIMINATION CLAIM AS A STAND-ALONE EQUAL PROTECTION CHALLENGE.**

In mischaracterizing Plaintiff-Appellant’s (“Plaintiff”) challenge to the statute’s disparate voter-support threshold test for new political parties, relative to established political parties, as a stand-alone equal protection challenge, the Court’s decision overlooks the heart of its constitutional and precedential grounding. Although additionally implicating case law resting on the fundamental rights strand of equal protection analysis, both dimensions of Plaintiff’s challenge to the statute’s voter-support threshold disparity for new political parties center foremost upon its infringement of voters’ First and Fourteenth Amendment associational rights<sup>2</sup> by functioning to “unfairly [and] un-

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<sup>1</sup> Plaintiff also respectfully notes that another case involving similar questions concerning discrimination between political parties is currently on appeal and awaiting decision in this Court. That case is *Green Party of Tenn. v. Hargett*, No. 14-5435, *on appeal from*, 7 F. Supp. 3d 772 (M.D. Tenn. 2014). Although having the same case name, that pending appeal is from a separate judicial action than the one for which this Court issued its decision in *Green Party of Tenn. v. Hargett*, 767 F.3d 533 (6th Cir. 2014).

<sup>2</sup> *See* (Dist. Doc. 44, Am. Compl., ‘Count 2: Violation of the First Amendment’ ¶¶ 186-87, pp. 85-86, Pg.-ID#’s 991-92); *see also id.* ¶ 161 n. 196, p. 77, Pg.-ID# 983. Accordingly, Plaintiff has repeatedly objected to the pigeonholing of this claim as an equal protection challenge throughout this case’s proceedings.

necessarily burden[] the availability of political opportunity.” *Anderson*, 460 U.S. at 793.

The first of those two dimensions of this challenge is Plaintiff’s argument that that the statute’s content-based debasement to the comparatively measured weight of specifically “those voters whose political preferences lie outside the existing political parties” (*id.* at 794) thereby subjects those voters to “substantially unequal burdens on both the right to vote and the right to associate”<sup>3</sup> upon the very basis of their “associational choices protected by the First Amendment.” *Id.* at 793-94. And at the same time, it functions to categorically disfavor “independent-minded voters” favoring new partisan “challenges to the status quo.” *Id.* at 794.

The second such dimension of this challenge is Plaintiff’s argument that the statute’s literal double-standard for new political parties “*unnecessarily* burdens the availability of political opportunity.” *Id.* at 793. Thus, Michigan’s need to have at least 31,566 voters declare their support for placing a new party on the election ballot is belied by the fact that the Michigan “Legislature has determined that its interest in avoiding overloaded ballots in [] elections is served” by having only 16,491 indicate support for placing an established party on the ballot for the same election cycle. *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979).

## **II. THE COURT’S ORDER DIRECTLY CONFLICTS WITH THE SUPREME COURT’S *WILLIAMS* AND *ANDERSON* DECISIONS.**

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<sup>3</sup> *Williams v. Rhodes*, 393 U.S. 23, 31 (1968).



As the Supreme Court outlined in *Anderson*:

A burden that falls unequally on new or small political parties . . . impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and — of particular importance — against those voters whose political preferences lie outside the existing political parties.

460 U.S. at 793-94.<sup>4</sup> Accordingly, in striking down Ohio’s party ballot access scheme in *Williams*, 393 U.S. 23, the Supreme Court unequivocally declared that whereas the challenged statute “requires a new party to obtain petitions signed by qualified electors totaling 15% of the number of ballots cast in the last preceding gubernatorial election,” the State’s established parties “face substantially smaller burdens because they are allowed to retain their positions on the ballot simply by obtaining 10% of the votes in the last gubernatorial election and need not obtain any signature petitions.”<sup>5</sup> *Id.* at 24-26 (emphasis added).<sup>6</sup>

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<sup>4</sup> Correspondingly, in the context of restrictions affecting access to the political process, the constitutional concern with equal opportunity between associational choices derives most centrally from “the primary values protected by the First Amendment” because unequal burdens “limiting the opportunities of independent-minded voters to associate in the electoral arena” consequently “threaten to reduce diversity and competition in the marketplace of ideas.” *Anderson*, 460 U.S. at 794. *Accord, e.g., Reform Party v. Allegheny Cnty. Dep’t of Elections*, 174 F.3d 305, 316 n. 12 (3d Cir. 1999) (*en banc*) (“Because the Pennsylvania laws discriminate against [new] minor parties, they are not politically neutral.”).

<sup>5</sup> *See also Williams*, 393 U.S. at 55 (Stewart, J. dissenting) (declaring his disagreement with the Court majority’s conclusion that a legislative choice to require a greater support exhibition “for getting on [than] staying on the ballot” necessarily constitutes an “invidiously discriminatory” classification).

<sup>6</sup> Although the percentage formulas for both new and established parties were much greater than those at issue here, that fact is wholly irrelevant to the *Williams* Court’s determination as to whether such a nature of disparity constitutes ‘a burden that falls unequally on new political parties,’ for which the Court relied exclusively on the fact

Consequently, this Court’s Order’s unfounded assertion that “it is not inherently more burdensome” for a new party to gather signatures of approximately twice as many voters as the number from whom an established party must receive candidate-votes (Cir. Doc. 29-1, Order on Appeal) is in direct contradiction to *Williams*, which makes no caveats in declaring the very opposite. *See DeBoer v. Snyder*, 772 F.3d 388, 401 (6th Cir. 2014) (noting that this Court may not “com[e] to opposite conclusions on the precise issues presented and necessarily decided by” the Supreme Court).<sup>7</sup>

Under *Williams* and its progeny, the standard of review that must be applied to this precise form of “unequal burden[] on minority groups” (393 U.S. at 31) is that of strict scrutiny. *See id* at 31. As summarized by the Second Circuit (including Sixth Circuit Judge Keith sitting by designation):

The Supreme Court has said that if state law grants ‘established parties a decided advantage over any new parties struggling for existence and thus place[s] substantially unequal burdens on both the right to vote and the right to associate’ the Constitution has been violated, absent a showing of a compelling state interest. *Williams*, 393 U.S. at 31. . . . Where the state’s classification ‘limit[s] the access of new parties’ and inhibits this development, the state must prove that its classification is necessary to serve a compelling government interest. *See Norman v. Reed*, 502 U.S. 279, 288-89 (1992). . . . [And it must also] show that the means it adopted

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that the petition-threshold compelled new parties to exhibit a greater quantum of support. And the disparity between Michigan’s new and established party thresholds is nearly twice as wide as that applied under the Ohio scheme at issue in *Williams*.

<sup>7</sup> Additionally, in so far as this Court’s Order’s assumption is implicitly bottomed on the premise that a candidate-vote-based threshold of support may be more *qualitatively* burdensome than a threshold based on voter-signatures, such a premise was further directly rejected by the Supreme Court in *Munro v. Socialist Workers Party*, 479 U.S. 189, 197 (1986). *See* (Doc. 24, Br. of Pl.-Appellant at 33-34).

to achieve that goal are the least restrictive means available. *Ill. State Bd. of Elections*, 440 U.S. at 185.

*Green Party of N.Y. v. N.Y. State Bd. of Elections*, 389 F.3d 411, 419-20 (2d Cir. 2004) (internal citations abbreviated) (modifications in original). *Accord*, e.g., *Communist Party of Ind. v. Whitcomb*, 414 U.S. 441, 451 (1974) (Powell, J., joined by Burger, C.J., Blackmun, J., and Rehnquist, J., concurring) (clarifying that that the constitutional principle “that a discriminatory preference for established parties under a State’s electoral system can be justified only by a ‘compelling state interest’” was an independent holding of the Court’s *Williams* decision); *Libertarian Party of N.D. v. Jaeger*, 659 F.3d 687, 702 (8th Cir. 2011) (noting that “in the context of equal protection, we engage in further considerations, namely whether the law disadvantages one group over another so as to result in unequal treatment *and whether this unequal treatment is justified by a compelling interest.*”) (emphasis added) (citing *Williams*, 393 U.S. at 30); *Green Party of N.Y. v. Weiner*, 216 F. Supp. 2d 176, 188 (S.D. N.Y. 2002) (“Plainly, state election laws that, on their face, disproportionately burden a minority group’s right to vote and corresponding associational rights are subject to strict scrutiny.”) (citing *Ill. State Bd. of Elections*, 440 U.S. at 184; *Williams*, 393 U.S. at 31)).

Furthermore, even in the event that this Court should somehow find that *Williams* does not definitively compel a strict scrutiny standard for the disparate treatment under challenge, the mere fact that *Williams* does definitively establish that Michigan’s threshold disparity imposes a burden that falls unequally on new political parties must,

at the very least, subject it to the need for justification under the *Anderson* balancing framework. Thus, the Court must, at a minimum, ““identify and evaluate the precise interests put forward by the State as justifications”” for the disparity under challenge, and weigh the burden imposed on the associational and voting rights of new party supporters “against the state’s asserted interest and chosen means of pursuing it.” *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 546 (6th Cir. 2014) (quoting *Anderson*, 460 U.S. at 789).

Accordingly, while the Secretary has made abstract reference to generic interests in requiring new political parties to demonstrate some measure of support, “the [Secretary] has not demonstrated how these interests are served by the unequal burden imposed here.” *Reform Party v. Allegheny Cnty. Dep’t of Elections*, 174 F.3d 305, 315 (3d Cir. 1999) (*en banc*). Hence, while it can ordinarily be said that “[t]he results of this evaluation will not be automatic” (*Anderson*, 460 U.S. at 789), the disparate standard challenged here “imposes these unequal burdens on the right to vote and the right to associate without protecting any significant countervailing state interest.” *Reform Party, supra*.<sup>8</sup>

Unlike even the regulation challenged in *Anderson* itself, which only correlatively discriminated against independent Presidential candidates’ supporters by subjecting

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<sup>8</sup> See also *Baird v. Davoren*, 346 F. Supp. 515, 520 (D. Mass. 1972) (three-judge court) (declaring that “the court is unable to find any rational basis for the distinction between [established] minor parties and [new] parties” in striking down a ballot access scheme requiring a signature requirement for the latter far exceeding the vote requirement for the former).

such candidates to a distinctly early filing deadline, Michigan’s scheme directly and disparately classifies *individual voters themselves* upon the basis of their political association. See *Obama for Am. v. Husted*, 697 F.3d 423, 430 (6th Cir. 2012) (“[W]hen a state regulation is found to treat voters differently in a way that burdens the fundamental right to vote, the *Anderson-Burdick* standard<sup>9</sup> applies.”); *Ohio State Conference of the NAACP v. Husted*, 768 F.3d 524, 538 (6th Cir. 2014) (noting that “[e]ven a minimal burden” imposed on a particular class voters “must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.”). Hence, when “evaluat[ing] a law respecting the right to vote — whether it governs voter qualifications, candidate selection, or the voting process” (697 F.3d at 429), any “discriminatory treatment must be justifiable.” *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 238 n. 16 (6th Cir. 2011) (emphasis added).

### **III. THE EQUAL PROTECTION CHALLENGE AT ISSUE IN *JENNESS* IS ENTIRELY INAPPOSITE**

While entirely ignoring the *Williams* Court’s directly on-point determination as to whether the disparity challenged here is “inherently discriminatory,” the Court’s Order instead fragmentally quotes and cites *Jenness v. Fortson*, 403 U.S. 431, 440 (1971) for its contrary conclusion on that question. In apparently drawing only upon the fact that the quoted line from *Jenness* employs some relevantly-sounding language concerning the burdensomeness of signature-collection in a comparatively-framed manner, the Or-

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<sup>9</sup> See *Anderson*, 460 U.S. at 789; *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

der's precedential grounding for its conclusion on this question is in essence "a prime example of the misuse of short quotations taken out of context to establish law in different contexts." *Atlas Powder Co. v. Ireco Chems.*, 773 F.2d 1230, 1231 (Fed. Cir. 1985). Although the Order appears to have taken no cognizance of Plaintiff's extensive rebuttal of such a comparison to the allegedly disparate treatment at issue in *Jenness*, Plaintiff respectfully directs the Court's attention to Cir. Doc. 26, Reply Br. of Pl.-Appellant at 2-6, in which Plaintiff has unassailably exposed its lack of applicability on even the most abstract level.

**IV. THE COURT'S ORDER'S PREMISES REGARDING EQUAL TREATMENT BETWEEN NEW PARTIES AND RELIANCE ON PAST-ELECTION CREDENTIALS ARE UNFOUNDED AND INCONGRUOUS WITH THE SUPREME COURT'S BALLOT ACCESS JURISPRUDENCE.**

Beyond its wholly unfounded citation to *Jenness*, the Court bases its conclusion on the erroneous assumption that "[a]ll new parties seeking ballot access are subject to the same requirements, and parties that seek requalification through § 168.560a [sic, § 168.685(6)] must first qualify under § 168.685(1)." (Cir. Doc. 29-1, Order on Appeal at 4). Plainly, the first element of this assumption amounts to nothing more than the observation that the members of the class targeted for unfair treatment are similarly situated to each other. As the Eastern District of New York recently observed in response to this very same contention by the State in a similar ballot access challenge action:

Defendants further argue that, because [the challenged statute] applies equally to all [unqualified parties], it is not discriminatory. This startlingly weak argument is completely unsupported by logic or precedent. . . . Defendants' contention is analogous to an argument that equal treatment of all blacks, or of all women, would ex-

cuse discrimination against those groups in favor of white males.

*Credico v. N.Y. State Bd. of Elections*, No. 10 CV 4555, 2013 WL 3990784 at \*23 n. 19 (E.D. N.Y. Aug. 5, 2013).

Additionally, the Order's assumption that all of the State's established parties had to at some point qualify through the State's petition procedure is factually false. As Plaintiff has noted in earlier proceedings of this case, two of the State's established parties, namely the Democratic and Republican Parties of Michigan, have *never* completed any party petition whatsoever. Rather, upon having previously afforded ballot access to any party that timely filed its name and party vignette,<sup>10</sup> the legislature's 1939 Public Act 262 enactment, which originally established petition-signature and candidate-vote requirements for new and established parties, provided that "the continuance of those parties qualified as of the effective date of this act shall be governed by the percentage of votes cast at the election of Nov, 8, 1938." COMP. LAWS MICH. § 177.4 (1948). *See* Dist. Doc. 75-1, Pg.-ID#1760 (photocopy of § 177.4, *supra*).<sup>11</sup>

Furthermore, the very notion of justifying the present political advantage afforded to established political parties upon the basis of credentials shown for an election held decades or generations prior would effectively negate all meaning to the concept of a

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<sup>10</sup> *See* Dist. Doc. 75-2, Pg.-ID# 1761 (photocopy of COMP. LAWS MICH § 3061 (1929)).

<sup>11</sup> 1939 Public Act 262, as then codified under section 177.4, was enacted as an amendment to the Michigan Election Law of 1925 Public Act 351. Subsequently, the 1925 Michigan Election Law was repealed and replaced by the current Michigan Election Law of 1954 Public Act 116 (*see* Mich. Comp. Laws § 168.991), which then correspondingly replaced section 177.4 with Mich. Comp. Laws § 168.685.

burden which distinctly discriminates “against those voters whose political preferences lie outside the existing political parties.” *Anderson*, 460 U.S. at 794. Indeed not only would such a radical theory manifestly “foster[] a system which favors the status quo,” *Anderson v. Mills*, 664 F. 2d 600, 609 (6th Cir. 1981), but it appears to even envision a legitimate state interest in keeping established parties insulated from the impact of political senescence.

## **V. THE COURT’S ORDER MISCONSTRUES AND CONFLICTS WITH THIS COURT’S DECISION IN *HARGETT*.**

In relying upon *Burdick*’s dictum that state regulatory interests are “generally sufficient” to justify “reasonable, nondiscriminatory restrictions,” the Court’s Order transforms the *Anderson-Burdick* framework’s ‘severe burden’ assessment – from its status as a test for determining the invocation of strict scrutiny – into an independently dispositive ‘reasonability’ standard akin to the ‘undue burden’ standard applied to govern the validity of State abortion access restrictions.<sup>12</sup> Thereupon, the Order determines that in light of this Court’s *Hargett* decision’s “holding that requiring a new party to collect the signatures of at least 2.5% of the votes cast in the last gubernatorial election

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<sup>12</sup> As this Court recently observed with respect to that the same dictum from *Burdick* on which the Order centrally relies: “The key in that statement is the word generally; the *Burdick* Court was merely making clear that not all restrictions on voting will be struck down simply because they impose any kind of burden, as states do have the power to regulate elections generally. *Burdick* itself involved a nondiscriminatory restriction on write-in voting, and the Court still probed the state’s asserted justifications for the restriction in the manner required by *Anderson*. Indeed, in a more recent case, the Supreme Court has tied this statement’s applicability to situations in which the burden imposed is modest.” *Ohio State Conference of the NAACP*, 768 F.3d at 546 (internal citation omitted) (emphasis added).



is not unconstitutional on its face” it consequently follows that Michigan’s petition requirement “is not unreasonable.”

In erroneously conflating the question of a signature burden’s facial validity with that of the severity of the requirements of the burden imposed, the Order effectively relies upon an inverted construction of the *Hargett* Court’s holding. Rather, than having held that Tennessee’s signature requirement was not severe, this Court’s *Hargett* decision held, in remanding the case for further factual development, that the record was insufficient to enable the Court’s determination of that question because it remained unclear whether the burden actually injured the Plaintiffs’ ability to exercise their fundamental rights, as opposed to only imposing an inconvenience.<sup>13</sup>

As comparatively outlined in Plaintiff’s Appellant Brief, while Tennessee’s current 33,844 petition-signature requirement is roughly equal to that imposed under Michigan’s scheme, it contrastingly permits an entirely unlimited span of time to complete a petition, in stark contrast to Michigan’s requirement that all signatures be collected within a mere 180 days. Additionally, Tennessee’s scheme imposes no restrictions on the eligibility of petition circulators or signers, no deterrent petition language requirements, and a petition filing deadline three weeks later than Michigan’s scheme. More-

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<sup>13</sup> See *Hargett*, 767 F.3d at 545 (“[B]ecause the signature requirement ‘standing alone, is not unconstitutional on its face,’ we must consider its actual effects on the plaintiffs specifically.”); *id.* at 547-49 (“To answer this question, we evaluate the effects of the signature requirement on the plaintiff political parties . . . . [T]he record lacks the factual information we need to determine whether it actually imposes a severe burden on the plaintiffs.”).

over, Tennessee's scheme also permits parties to obtain ballot access qualification at the county level. See TENN. CODE ANN. § 2-13-107.

Consequently, because it incontestably follows that Tennessee's scheme is overwhelmingly less burdensome than the Michigan scheme challenged here, it cannot possibly follow that Plaintiff's challenge contrastingly fails to state a claim for relief, even when putting aside the threshold disparity. And in contrast to the Court's Order's inaccurate assertion that Plaintiff solely addressed the burdens imposed by the number of signatures and petition-language requirements, Plaintiff's Appellant Brief extensively addressed the central impact of both the 180 day limit for petition circulation and absence of any alternative means for a party to participate in the electoral process by either qualifying an individual candidate with its party label or qualifying for the ballot at the local level. *See* (Doc. 24, Br. of Pl.-Appellant at 20, 33 n. 30, 34-35 & n. 31, 44).

**VI. PLAINTIFF DID NOT FAIL TO ADEQUATELY PLEAD HIS CHALLENGE TO THE RESTRICTION OF MICH. COMP. LAWS § 168.685(8) AND CORRESPONDING PETITION WARNING.**

In addressing Plaintiff's challenge to the statute's criminal restriction, and corresponding petition-sheet "warning," suggesting that a voter may not legally sign a new party "organizing petition" if she has ever signed another party's petition in his or her lifetime; the Order unreasonably mischaracterizes Plaintiff's Amended Complaint's allegations concerning the deterrent impact imposed by such a restriction to be made from a merely speculative, rather than observational, standpoint. However, even beyond the fact that the express purpose of such a "warning" is to warn voters of poten-

tial legal consequences for signing the petition, Plaintiff need not plead a detailed factual narrative for purposes of charging that such a restriction and petition-declaration, as worded, is either facially invalid or void for vagueness. *See, e.g., Entm't Prods. v. Shelby Cnty.*, 588 F.3d 372, 379 (6th Cir. 2009); *see also McGlone v. Cheek*, 534 Fed. Appx. 293, 298 (6th Cir. 2013).

**VII. THE COURT'S ORDER MISCONSTRUES PLAINTIFF'S CHALLENGE TO THE MANDATORY PETITION LANGUAGE AND DIRECTLY CONTRADICTS THE FOURTH CIRCUIT'S DECISION IN *MCLAUGHLIN*.**

In further affirming the dismissal of Plaintiff's claim that the statute's mandatory petition language concerning the intent to "form" and "organize" a new party invalidly suggests "far more than just a desire to see the Party on the ballot,"<sup>14</sup> the Order simply asserts that the language "does not require a person to commit to organizing the Socialist Party." (Doc. 29-1, Order on Appeal at 6). Such a conclusion is directly contrary to the Fourth Circuit's holding in *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215 (4th Cir. 1995), in which the Court concluded that the state had "no legitimate interest" in requiring petitions to state that the signers seek to "organize a new political party to participate in the next succeeding general election" and thus that such required language would fail the *Anderson* test if the plaintiffs had proffered any evidence of it hampering their petition efforts in even the slightest degree. *Id.* at 1226-27 Here, Plaintiff has had no *opportunity* to present any such evidence.

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<sup>14</sup> *Libertarian Party of Nev. v. Swackhamer*, 638 F. Supp. 565, 568 (D. Nev. 1986).

Furthermore, while Plaintiff alleges that the deterrent impact of such language is especially severe for Plaintiff's party due to prevalent concerns about adverse repercussions from publicly signing up to "form" and "organize" a politically radical group, the Court completely misconstrues this argument as a separate challenge to the 'public nature' of a petition, rather than an element of Plaintiff's challenge to the mandatory petition language specifically. Accordingly, the Order fully ignores the great weight of precedential support presented by Plaintiff regarding both the invalidity of affiliative petition language and the distinctly chilling impact upon groups characterized by dissident political views. *See* (Cir. Doc. 24, Br. of Pl.-Appellant at 45-48); (Cir. Doc. 26, Reply Br. of Pl.-Appellant at 16-19).

### **REQUEST FOR RELIEF**

For the foregoing reasons, Plaintiff respectfully prays that this Court grant Plaintiff's request for panel rehearing or rehearing en banc of the Court's Order entered May 20, 2015. Further, Plaintiff respectfully prays that this Court reverse the District Court's Order to Dismiss Plaintiff's Complaint and remand the case for further proceedings.

Respectfully submitted,

s/Matt Erard 

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June 3, 2015

## CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2015, I served a copy of this document on the Defendant-Appellee by placing it in an envelope with proper postage fully prepaid, addressed to the Defendant-Appellee's counsel of record at her last known business address, and depositing that envelope and its contents in the United States mail.

s/Matt Erard 

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