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Attorney for Plaintiffs Arizona Libertarian Party and Michael Kielsky

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The Arizona Libertarian Party and Michael Kielsky,	)	**No. 2:16-cv-01019-DGC**
Plaintiffs,	)	**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**
v.	)	
Michele Reagan,	)	
Defendant.	)	**Oral Argument Requested** **Oral Argument By Telephone Requested**

Pursuant to Fed. R. Civ. P. 65(a) and (b), Plaintiffs Arizona Libertarian Party ("AZLP") and Michael Kielsky (together, "the Libertarians") respectfully move the Court for a Temporary Restraining Order and Preliminary Injunction to enjoin Defendant Michele Reagan ("Secretary Reagan") from enforcing A.R.S. §§ 16-321 and 16-322, as amended in 2015 by the enactment of HB 2608, against AZLP and its nominees in the 2016 election cycle. The Libertarians further request that the Court order Secretary Reagan to place AZLP's nominees on Arizona's August 30, 2016 primary election ballot, provided that they comply with all other applicable laws and timely submit nomination petitions with the number of valid signatures that Sections 16-321 and 16-322 would have required prior to their amendment in 2015. Finally, the Libertarians request that the Court order Secretary Reagan to issue letters declaring nomination to their write-in

candidates in the primary election pursuant to A.R.S. § 16-345(E), provided that such candidates receive at least as many votes as the number of signatures that Sections 16-321 and 16-322 would have required them to submit on nomination petitions prior to their amendment in 2015.

In support of this motion, the Libertarians submit the attached Memorandum of Law, and state that all relevant factors weigh in favor of granting the relief requested. The Minor Parties also submit the Second Declaration of Michael Kielsky, attached hereto as Exhibit A. Finally, the Minor Parties incorporate by reference Exhibits A, B, C, D, and E attached to their Complaint (Dkt. No. 1), which include public records and nine additional Declarations submitted pursuant to 28 U.S.C. § 1746.

The relief requested herein is urgent because the deadline for filing nomination petitions is **June 1, 2016**. The deadline for filing as a write-in candidate is not until **July 21, 2016**, but candidates who file nomination petitions that are rejected because they lack the required number of valid signatures may not run for the same office as write-in candidates.

Dated: May 12, 2016

Respectfully submitted,

/s/Oliver B. Hall
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The Arizona Libertarian Party and Michael Kielsky,	)	**No. 2:16-cv-01019-DGC**
Plaintiffs,	)	**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**
v.	)	
Michele Reagan,	)	
Defendant.	)	

INTRODUCTION

In this action, the Libertarians seek relief from two provisions of Arizona law, A.R.S. §§ 16-321 and 16-322, which establish the requirements that qualified political parties must meet to place their candidates on Arizona's primary election ballot. Prior to their amendment in 2015, these provisions enabled candidates to appear on the primary ballot by submitting nomination petitions with a number of signatures defined as a percentage of their party's registered voters in the relevant jurisdiction. As amended, however, the provisions define the signature requirements as a percentage of all "qualified signers" in the relevant jurisdiction – a pool that includes independent and unaffiliated voters, even though they are not permitted to vote in AZLP's closed primary. As applied to the Libertarians – though not to the major parties – this drastically increased the number of signatures required. The new requirements for the Libertarians are generally at least 20 times greater than the old ones, depending on the office, and in many cases much greater. The requirements for Republicans and Democrats, by contrast, have increased only slightly for most offices, if at all, and in many cases they decreased.

The signature requirements that Sections 16-321 and 16-322 now impose on the Libertarians are unconstitutional under the settled precedent of the Supreme Court of the United

States and lower federal courts. To comply with them in 2016, Libertarian candidates must obtain signatures amounting to as much as 30.53 percent of the registered Libertarians in the jurisdiction. Among the candidates actively seeking access to AZLP's 2016 primary election ballot, several must obtain signatures amounting to more than 20 percent of the registered Libertarians in their jurisdiction, and all must obtain signatures amounting to at least 11 percent of the registered Libertarians in their jurisdiction. Yet the Supreme Court has never upheld a signature requirement amounting to more than 5 percent of the pool of eligible voters. Federal courts have thus treated any requirement in excess of that figure as constitutionally suspect, if not facially invalid, and no statute imposing such a requirement has survived scrutiny.

The Libertarians are permitted to obtain signatures from independent and unaffiliated voters as well, of course – in fact, as a practical matter they must do so, because the increased signature requirements that Sections 16-321 and 16-322 now impose are otherwise all but impossible to meet. But such compelled association with voters who choose not to join the AZLP, and who are not permitted to vote in its primary, is also unconstitutional. In fact, less than a decade ago, this Court struck down Arizona's previous statutory scheme precisely because it allowed non-members to vote in the AZLP primary, over the objections of the Libertarians themselves. *See Arizona Libertarian Party v. Brewer*, No. 02-144-TUC-RCC (D. Az. Sept. 27, 2007) (unpublished order) (permanently enjoining Arizona's Secretary of State from requiring the AZLP to allow non-members to vote in its primary elections).

The statutory scheme challenged herein violates the clear purpose, if not the precise letter, of the permanent injunction granted in *Brewer*. Although the Libertarians are not required to permit non-members to vote in their primary, they must rely on non-members to place their

candidates on the primary ballot in the first instance. This forces the Libertarians to grant non-members a substantial if not dispositive role in determining which candidates the AZLP may nominate, because candidates who fail to obtain support from independent and unaffiliated voters will not appear on the AZLP's primary ballot. Consequently, as in *Brewer*, "the Arizona primary system 'forces [the Libertarians] to associate with … those who, at best, have refused to affiliate with the party, and at worst, have expressly affiliated with a rival.'" *Id.* (quoting *California Democratic Party v. Jones*, 530 U.S. 567, 577 (2000)). And as the Supreme Court made clear in *Jones*, there is "no heavier burden on a political party's associational freedom" than forcing it "to adulterate [its] candidate-selection process … by opening it up to persons wholly unaffiliated with the party." *Jones*, 530 U.S. at 581-82.

Secretary Reagan cannot assert any compelling state interest that justifies the severe burdens Sections 16-321 and 16-322 impose on the Libertarians. The AZLP's primary election ballot was not overcrowded or confusing to voters prior to the amendment of these provisions in 2015. On the contrary, candidates typically run unopposed in the AZLP primary. Arizona simply has no interest – compelling or legitimate – in raising these candidates' signature requirements exponentially, thus forcing them to obtain support from non-members, who are not eligible to vote in the AZLP primary, as a condition of their appearance on the AZLP primary ballot.

Accordingly, the Libertarians respectfully request that the Court award them preliminary injunctive relief, as necessary to enable their participation in Arizona's August 30, 2016 primary election. Specifically, the Libertarians respectfully request that the Court:

1. Order Secretary Reagan to place their candidates on the primary election ballot if they timely submit nomination petitions containing the number of signatures that Sections 16-321 and 16-322 would have required prior to their amendment in 2015; and

2. Order Secretary Reagan to place their primary election write-in candidates on the general election ballot pursuant to Section 16-645(E) if the candidates receive at least as many votes in the primary election as the number of signatures that Sections 16-321 and 16-322 would have required on a nomination petition prior to their amendment in 2015.

The deadline for Libertarian candidates to submit nomination petitions is **June 1, 2016**, but the deadline for Libertarians to file as write-in candidates is not until **July 21, 2016**. Ample time therefore exists for the Court to grant the relief necessary to enable the Libertarians' participation in Arizona's 2016 election cycle, free from the unconstitutional burdens imposed by Arizona's newly enacted statutory scheme. Furthermore, as set forth below, all relevant factors weigh decisively in favor of granting such relief.

FACTUAL AND PROCEDURAL BACKGROUND

The Libertarians commenced this action on April 12, 2016, by filing their Complaint for declaratory and injunctive relief from Sections 16-321 and 16-322. (Dkt. No. 1) ("Comp."). The relevant facts are alleged in the Complaint and incorporated herein by reference. Comp. ¶¶ 6-47. Based on those allegations, the Complaint asserts four claims for relief from the challenged provisions: Count I asserts that the signature requirements they impose are unconstitutional; Count II asserts that the compelled association they necessitate is unconstitutional; Count III asserts that their interference with the Libertarians' effort to establish a political party is unconstitutional; and Count IV asserts that they violate the Equal Protection Clause by imposing severe burdens that fall on the Libertarians alone. Comp. ¶¶ 48-66. Each of these claims warrants the preliminary relief requested herein.

LEGAL STANDARD

A plaintiff seeking a temporary restraining order or preliminary injunction must establish "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the

absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1115 (9th Cir. 2011) (citation omitted). A plaintiff also may obtain such relief by showing that there are "serious questions going to the merits," the balance of hardships tips sharply in his favor, there is a likelihood of irreparable injury, and the injunction is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Under this "sliding scale approach," a plaintiff may make a lesser showing of likelihood of success provided he will suffer substantial harm in the absence of relief. *Id*. at 1133.

In the First Amendment context, once the plaintiff "bears the initial burden of making a colorable claim that its First Amendment rights have been infringed, or are threatened with infringement … the burden shifts to the government to justify the restriction." *Thalheimer*, 645 F.3d at 1116 (citation omitted). To determine whether the Libertarians have carried their burden, the Court may rely on the sworn Declarations submitted in support of their Complaint and the instant motion. *See id.* (citing *Ross-Whitney Corp. v. Smith Kline & French Labs.*, 207 F.2d 190, 198 (9th Cir. 1953) (explaining that "a requirement of oral testimony would in effect require a full hearing on the merits and would thus defeat one of the purposes of a preliminary injunction which is to give speedy relief from irreparable injury")). The Court also may rely on the public records submitted as Exhibits A, B and C to the Complaint. *See Dudum v. Arntz*, 640 F.3d 1098, 1101 n.2 (9th Cir. 2011) (taking judicial notice of elections records available on governmental websites); *see also Santa Monica Food Not Bombs v. Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (citation omitted); *American-Arab Anti-Discrimination v. Reno*, 70 F.3d 1045, 1070 (9th Cir. 1995) (citation omitted).

ARGUMENT

I. All Relevant Factors Weigh in Favor of Granting the Libertarians Preliminary Injunctive Relief.

A. The Libertarians Are Likely to Prevail on the Merits, Because Arizona's Statutory Scheme Imposes Severe and Unequal Burdens on Them But Does Not Further Any Compelling or Legitimate State Interest.

The Supreme Court has recognized that constitutional challenges to state election laws "cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). It therefore established an analytical process that courts must follow in deciding such cases. Specifically, a reviewing court "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule.'" *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008) (quoting *Anderson*, 460 U.S. at 789). The severity of the burdens the election law imposes on the plaintiff's rights dictates the appropriate level of scrutiny. *See id.* (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). An election law that imposes severe burdens "is subject to strict scrutiny and will be upheld only if it is narrowly tailored to serve a compelling state interest," *see id.*, whereas an election law that imposes "reasonable, nondiscriminatory restrictions" is subject to a lesser standard of review. *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. At 788). Under this analysis, Arizona's statutory scheme cannot be sustained.[1]

1. Arizona's Statutory Scheme Imposes Severe and Unequal Burdens on the Libertarians' First and Fourteenth Amendment Rights.

1 The Ninth Circuit has construed the *Anderson-Burdick* analysis to apply to both First Amendment and Fourteenth Amendment Equal Protection claims. *See Dudum*, 640 F.3d at 1106 n.15.

a. The Signature Requirements Established By Sections 16-321 and 16-322 Violate the Limits Established By Supreme Court Precedent.

It is well-settled that states may require that candidates demonstrate a "modicum of support" among the electorate before placing them on the ballot. *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Most states do so by requiring that candidates submit a nomination petition with a specified number of signatures from eligible voters. *See id.* The number of signatures that states may require is limited, however, by the First and Fourteenth Amendment rights of the candidates and their supporters. *See id.* at 440. And while there may be no "litmus-paper test" for determining the constitutionality of ballot access statutes, *Storer*, 415 U.S. at 730, the Supreme Court has never upheld a statute that required a showing of support from more than 5 percent of the pool of eligible voters. *See id.* at 739 (citing *Jenness*, 403 U.S. 431).

In *Jenness*, the Supreme Court upheld Georgia's requirement that minor party and independent candidates submit nomination petitions with signatures equal in number to 5 percent of the eligible voters in the last election. *See Jenness*, 403 U.S. at 432. The Court made clear, however, that this "somewhat higher" percentage was permissible because it was "balanced" by the fact that Georgia's law did not impose many other restrictions, and allowed any registered voter to sign the petitions. *Id*. at 438, 442. *Jenness* thus established that states may not require candidates to show support from substantially more than 5 percent of the pool of eligible voters in order to access the ballot. *See id.* at 442.

The Supreme Court recognized and reaffirmed that limit in *Storer*. *See Storer*, 415 U.S. at 739. *Storer* involved a challenge to California's requirement that independent candidates obtain signatures equal in number to 5 percent of the total vote in the last general election. *See id.* The Court acknowledged that this percentage did not appear to be unconstitutional on its face, but

remanded for a determination of whether the requirement was impermissibly burdensome, given that partisan primary voters were ineligible to sign the candidates' petitions. *See id.* Exclusion of those voters might make California's signature requirement "substantially more than 5% of the eligible pool," the Court reasoned, which "would be in excess, percentagewise, of anything the Court has approved." *Id.*

Three Justices dissented in *Storer* on the ground that remand was unnecessary, because the record demonstrated that the exclusion of primary voters resulted in a requirement that independent candidates demonstrate support from 9.5 percent of the eligible pool. *See id*. at 764 (Brennan, J. dissenting). Thus, Justice Brennan wrote, the available evidence left "no room for doubt that California's statutory requirements are unconstitutionally burdensome." *Id*. at 763. Despite dividing on the need for remand, however, both the majority and dissent in *Storer* reaffirmed what the Court had previously established in *Jenness*: states may not require that candidates seeking ballot access show support from substantially more than 5 percent of the pool of eligible voters. *See id*. at 739, 763-64; *Jenness*, 403 U.S. at 442.

Even prior to *Storer* and *Jenness*, the Supreme Court had made clear that the First and Fourteenth Amendments limit the showing of support that states may require of candidates seeking ballot access. *See Williams*, 393 U.S. 23 (striking down Ohio statute requiring signatures equal in number to 15 percent of the vote in the preceding gubernatorial election). In *Williams*, the Court held Ohio's entire ballot access scheme unconstitutional on equal protection grounds, because in its totality, it practically guaranteed a monopoly to the two major parties. *See id.* at 32, 34. Justice Harlan wrote separately, however, to emphasize that Ohio's 15 percent signature requirement also "violates the basic right of political association assured by the First

Amendment." *Id.* at 41 (Harlan, J. concurring). Both Justice Harlan and the majority observed that 42 states imposed relatively lenient signature requirements of 1 percent or less of the pool of eligible voters, whereas only four states imposed a requirement of 3.1 to 5 percent, while Ohio's draconian 15 percent requirement was in a class by itself. *See id.* at 33 n.9, 47 n.10. "Even when regarded in isolation," Justice Harlan therefore concluded, Ohio's 15 percent requirement "must fall." *Id.* at 46 (Harlan, J. concurring).

Following *Jenness*, *Storer* and *Williams*, federal courts have routinely invalidated ballot access schemes such as Arizona's, which require a showing of support from more than 5 percent of the pool of eligible voters. *See*, *e.g.*, *Lee v. Keith*, 463 F.3d 763 (7th Cir. 2006) (striking down Illinois law requiring showing of support equal to 10 percent of last vote); *Obie v. North Carolina State Bd. of Elections*, 762 F. Supp. 119 (E.D.N.C. 1991) (striking down North Carolina law requiring showing of support equal to 10 percent of registered voters); *Greaves v. State Bd. of Elections of North Carolina*, 508 F. Supp. 78 (E.D.N.C. 1980) (striking down North Carolina law requiring showing of support equal to 10 percent of last gubernatorial vote); *Lendall v. Jernigan*, 424 F. Supp. 951 (E.D. Ark. 1977) (striking down Arkansas law requiring showing of support equal to 10 percent of last gubernatorial vote); *American Party of Arkansas v. Jernigan*, 424 F. Supp. 943 (E.D. Ark. 1977) (striking down Arkansas law requiring showing of support equal to 7 percent of last gubernatorial vote); *Lendall v. Bryant*, 387 F. Supp. 397 (E.D. Ark. 1974) (striking down Arkansas law requiring showing of support equal to 15 percent of last gubernatorial vote); *Socialist Labor Party v. Rhodes*, 318 F. Supp. 1262 (S.D. Oh. 1970) (striking down Ohio law requiring showing of support equal to 7 percent of last gubernatorial vote). By contrast, no court has upheld a statute that requires a showing of support from more than 5

percent of the pool of eligible voters.

The foregoing precedent thus makes clear that Arizona's signature requirements violate the limits established by the Supreme Court's ballot access jurisprudence, as uniformly applied by the lower federal courts. In order to access the AZLP primary election ballot in 2016, a Libertarian candidate in Legislative District ("LD") 18, for example, must obtain signatures equal in number to 30.53 percent of the registered Libertarians – who are the only eligible voters – in that district. Comp. ¶ 36. A Libertarian candidate in Congressional District ("CD") 4 must obtain signatures equal in number to 28.10 percent of the registered Libertarians in that district. Comp. ¶ 38. Libertarian candidates in several other jurisdictions must obtain signatures equivalent to more than 20 percent of the eligible Libertarian voters. Comp. ¶¶ 33, 39, 40. In fact, every candidate actively seeking access to the AZLP 2016 primary ballot faces a signature requirement equal to at least 11.18 percent of the pool of eligible voters. Comp. ¶¶ 33-40. Such excessive burdens are constitutionally suspect, if not facially invalid.

b. Compelling the Libertarians to Obtain Signatures From Independent and Unaffiliated Voters Violates Their Freedom of Association.

Because the signature requirements imposed by Sections 16-321 and 16-322 are all but insurmountable when measured as a percentage of Libertarians alone, candidates seeking to appear on the AZLP primary ballot have no choice but to obtain signatures from both Libertarians and independent and unaffiliated voters. But this does not lessen the burden that Arizona's statutory scheme imposes on the Libertarians. It just exposes them to another burden – opening their candidate-selection process to non-members – that is even more severe. *See Jones*, 530 U.S. at 581-82 ("We can think of no heavier burden on a political party's associational freedom" than forcing it "to adulterate [its] candidate-selection process … by opening it up to

persons wholly unaffiliated with the party").

This Court relied squarely on *Jones* when it struck down Arizona's previous statutory scheme, which forced the Libertarians to allow independent voters to participate in the AZLP primary. *See Brewer*, No. 02-144-TUC-RCC (unpublished order entered Sept. 27, 2007). The facts in this case differ from *Brewer*, in that the AZLP primary remains closed to non-members, but the concerns implicated remain the same. As the Supreme Court explained in *Jones*:

> a corollary of the right to associate is the right not to associate. Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being. … In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views.

Jones, 530 U.S. at 574-75 (citations and quotation marks omitted). These concerns are implicated here because candidates cannot realistically appear on the AZLP primary ballot unless they obtain support from voters who do not belong to the AZLP. Arizona's primary system thus "encourages candidates … to curry favor with persons whose views are more 'centrist' than those of the party base." *Id.* at 580.

In the appeal that preceded this Court's decision on remand in *Brewer*, the Ninth Circuit identified two potential "outcomes" of Arizona's primary system that would raise constitutional concern under *Jones*: that non-members of a party could "influence the choice of the nominee," or that they could "cause partisan candidates to change their message to appeal to a more centrist voter base." *Arizona Libertarian Party v. Bayless*, 351 F.3d 1277, 1282 (9th Cir. 2003). Minor parties such as the AZLP "are at a greater risk" of suffering both harms, the Court found. *Id.* But the Court concluded that whether the AZLP actually faces such a risk is "a factual issue, with

[the Libertarians] having the burden of establishing that risk."

The Libertarians have carried that burden. In their Complaint, and the Declarations attached thereto, they have provided substantial evidence to prove that independent and unaffiliated voters in fact wield significant influence over the process by which the AZLP chooses its nominees. Comp. ¶¶ 42-43 (citing Declarations). Specifically, Libertarian candidates who formerly obtained ballot access are now finding it impossible to do so, and their efforts are hindered by their difficulty in obtaining support from independent and unaffiliated voters. *See id.* Plaintiff Kielsky, for example, received a letter from a supporter who reported that "I couldn't interest any independents (other than my family) to sign" his nomination petitions. *See* Second Kielsky Dec. ¶¶ 7-8. Such evidence demonstrates that candidates seeking access to the AZLP primary ballot have a strong incentive "to change their message to appeal to a more centrist voter base." *Bayless*, 351 F.3d at 1282. This "potential distortion forced on the Libertarian party" by Arizona's statutory scheme thus "imposes a severe burden on the [AZLP]," in violation of the Libertarian's freedom of association. *Brewer*, No. 02-144-TUC-RCC (Sept. 27, 2007).

c. The Severe Burdens Imposed By Sections 16-321 and 16-322 Fall on the Libertarians Alone.

The 2015 amendments to Sections 16-321 and 16-322 generally caused little or no increase to the signature requirements that Republican and Democratic candidates must meet, and in many cases, it lowered them. Comp. ¶¶ 25-29 (citing public records available from the Secretary of State's website). Additionally, the only other politically party formally recognized under Arizona law, the Arizona Green Party ("AZGP"), is not subject to the signature requirements imposed by the provisions challenged herein. Comp. ¶ 30. The severe burdens identified above – the unconstitutionally burdensome signature requirements, and the compelled

association with non-members – thus fall on the Libertarians alone.

2. The Severe and Unequal Burdens Imposed By Arizona's Statutory Scheme Are Not Necessary to Further Any Compelling or Legitimate State Interest.

The interests typically asserted by states to justify regulations limiting the number of candidates that may appear on the ballot are not implicated in this case. The Supreme Court has recognized, for example, that a state properly may seek "to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections," and also that a state has "an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock v. Carter*, 405 U.S. 134, 145 (1972). None of these interests are implicated, however, for the simple reason that Libertarian candidates almost always run unopposed in the AZLP primary. This may be confirmed by the consulting the public records available on the Secretary of State's website, which list every primary election candidate on the ballot dating at least to 1996. *See* Arizona Secretary of State, *Historical Election Information*, available at http://www.azsos.gov/elections/voter-registration-historical-election-data/historical-election-information (last visited May 12, 2016). Consequently, the foregoing interests, which might otherwise justify a state's decision to increase signature requirements, cannot do so here.

B. The Libertarians Will Suffer Irreparable Harm in the Absence of Preliminary Relief.

The Ninth Circuit has recognized the "long line of precedent establishing that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury'" for purposes of a preliminary injunction. *Thalheimer*, 645 F.3d at 1128 (citing

Klein v. City of San Clemente, 584 F.3d 1196, 1208 (9th Cir.2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). "The harm is particularly irreparable" in the context of an election, because "'timing is of the essence in politics' and '[a] delay of even a day or two may be intolerable.'" *Id.* (quoting *Long Beach Area Peace Network v. City of Long Beach*, 522 F.3d 1010, 1020 (9th Cir.2008)). The Libertarians will therefore suffer irreparable harm in the absence of the relief requested herein.

C. The Balance of Equities Weighs in Favor of Granting the Libertarians Relief.

The balance of equities in this case also weighs in favor of granting the Libertarians relief. Whereas the Libertarians will suffer serious harm to their voting rights, *see Williams v. Rhodes*, 393 U.S. 23, 30 (1968), associational rights, *see Bullock*, 405 U.S. at 143, and their right to establish and build support for their party, *see Norman v. Reed*, 502 U.S. 279, 288 (1992), the foregoing discussion demonstrates that Secretary Reagan cannot assert any countervailing concern. Arizona's legitimate interests were adequately protected prior to the 2015 amendments to Sections 16-321 and 16-322. Enjoining their enforcement in 2016 will therefore do the state no harm.

D. Granting an Injunction Is in the Public Interest.

Finally, the public interest also weights in favor of granting the Libertarians relief, because "courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles." *Thalheimer*, 645 F.3d at 1129 (citation omitted); *see Collins v. Brewer*, 727 F. Supp. 2d 797, 814 (D. Az. 2010) ("It would not be in the public's interest to allow the State to violate the plaintiffs' rights … when there are no adequate remedies to compensate plaintiffs for the irreparable harm caused by such violation.

CONCLUSION

For the foregoing reasons, Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction should be granted.

Dated: May 12, 2016

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2016, I filed the foregoing Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction, by means of the Court's CM/ECF system, which will effect service upon all counsel of record.

/s/Oliver B. Hall
Oliver B. Hall

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The Arizona Libertarian Party and Michael Kielsky,	)	
Plaintiffs,	)	**No. 2:16-cv-01019-DGC**
v.	)	**ORDER**
Michele Reagan,	)	
Defendant.	)	

AND NOW, this _____ day of May, 2016, upon consideration of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction, and any Opposition filed thereto, IT IS HEREBY ORDERED that the motion is GRANTED.

IT IS FURTHER ORDERED that Defendant Michele Reagan and her agents are hereby ENJOINED from enforcing A.R.S. §§ 16-321 and 16-322, as amended in 2015, against Plaintiffs Michael Kielsky, the Arizona Libertarian Party, and their candidates who submit nomination petitions for inclusion on the August 30, 2016 primary election ballot of the Arizona Libertarian Party.

IT IS FURTHER ORDERED that Defendant Michele Reagan shall place candidates on the August 30, 2016 primary election ballot of the Arizona Libertarian Party provided that the candidates timely submit nomination petitions containing the number of signatures that A.R.S. §§ 16-321 and 16-322 would have required prior to their amendment in 2015.

IT IS FURTHER ORDERED that Defendant Michele Reagan shall place write-in candidates who run in the August 30, 2016 primary election of the Arizona Libertarian Party on Arizona's November 8, 2016 general election ballot pursuant to A.R.S. § 16-645(E), provided that the candidates receive at least as many votes in the primary election as the number of

signatures that A.R.S. §§ 16-321 and 16-322 would have required on a nomination petition prior to their amendment in 2015.

EXHIBIT A

Second Declaration of Michael Kielsky

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE ARIZONA LIBERTARIAN PARTY, et al.	)	
Plaintiffs,	)	
v.	)	**No. 2:16-cv-01019**
MICHELE REAGAN,	)	
Defendant.	)	

SECOND DECLARATION OF MICHAEL KIELSKY
(pursuant to 28 U.S.C. § 1746)

I, Michael Kielsky, hereby declare as follows:

1. I am 51, and competent to state the following.

2. I currently serve as Chair of the Arizona Libertarian Party ("AZLP").

3. AZLP is actively engaged in efforts to place our candidates on Arizona's 2016 primary election ballot, but the 2015 amendments to A.R.S. §§ 16-321 and 16-322 have severely impeded those efforts.

4. Gregory Kelly, who seeks to appear on AZLP's ballot for Justice of the Peace in Highland, has informed me that he believes he will obtain the 436 valid signatures required by Section 16-322. To do so, however, he wrote in an email on May 4, 2016 (attached as Exhibit A), "I've had to suspend my life for 45 days simply to get on the ballot. I'm getting on the ballot, but I can't imagine that most people can take off 45 days from work to do this."

5. In the last election cycle for Higland Justice of the Peace, in 2012, Section 16-322 required a Libertarian candidate for that office to obtain only 18 valid signatures. *See* Complaint,

Ex. C (Dkt. No. 1).

6. I am also attempting to obtain the 1,881 signatures I need to appear on AZLP's primary ballot as a candidate for Maricopa County Attorney. I ran for that office as the Libertarian nominee in 2008, 2010 and 2012, and received more than 25 percent of the vote in both the 2010 and 2012 general elections. To appear on AZLP's primary ballot in 2012, I was required to submit 72 valid signatures, and I successfully did so. In this election cycle, however, it is unlikely that I will be able to comply with the excessive signature requirement that Section 16-322 now imposes. If that happens, I will be denied ballot access despite my demonstrated support among a substantial proportion of the electorate.

7. A major impediment to our efforts to comply with Section 16-322, in addition to the excessive signature requirements it imposes, is that independent voters have little or no interest in signing nomination petitions for partisan candidates. That has been true both in my own experience, and in the experience of those working to support my campaign.

8. For example, on April 26, 2016, one of my petition circulators, C.D. Tavares, wrote me a letter (attached as Exhibit B), in which he stated that "I couldn't interest any independents (other than family) to sign" my petitions. He also stated that "I got a signature from every Libertarian in Morristown, which as it turns out isn't many. About half of those registered have apparently moved away."

9. Many Libertarian candidates who may be unable to obtain the signatures required by Section 16-322 to appear on AZLP's primary election ballot intend to run in that election as write-in candidates instead. To do so, they must file a nomination paper by July 21, 2016. They

will then be entitled to appear on the general election ballot pursuant to A.R.S. § 16-645(E), provided that they win the primary election and receive at least as many write-in votes as the number of signatures they would have been required to obtain pursuant to Section 16-322.

10. In past elections, Libertarian candidates have frequently used the write-in provision of Section 16-645(E) as an alternative path to the general election ballot, and have done so successfully. We seek to do so again in 2016. That is why the preliminary injunctive relief requested in this action is urgently needed. The excessive signature requirements imposed by Section 16-322 are blocking our candidates' access to AZLP's primary election ballot, and they are also blocking our alternative path to the general election ballot, as write-in candidates in the primary election.

11. The statements and matters alleged herein are within my personal knowledge, and true and correct to the best of my knowledge and belief, except as to those allegations stated upon information and belief, and, as to those allegations, I believe them to be true.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 05-10-2016

Michael Kielsky

EXHIBIT A

Email From Gregory Kelly to Michael Kielsky (May 4, 2016)

---------- Forwarded message ----------

From: "Gregory Kelly" [redacted]

Date: May 4, 2016 00:57

Subject: Missed Email

To: "Arizona Libertarian Party" [redacted]

Cc:

Gentlemen:

My wife received an email this morning about running for political office from the Party, but I didn't receive it.

Could you please send that to me, because I think I can help you out with the objective.

If the goal is to show damages from HB2608, I can definitely show that, as I've had to suspend my life for 45 days simply to get on the ballot.

I'm getting on the ballot, but I can't imagine that most people can take off 45 days from work to do this.

IT'S PREPOSTEROUS!

HB2608 is designed to restrict voter choice, and needs to be ABOLISHED.

ALL INDEPENDENT VOTERS ARE IN FULL SUPPORT OF CHOICE, AND THIS IS BEING DENIED BASED ON HB2608!

Cheers,

GK

[redacted]

EXHIBIT B

Letter From C.D. Tavares to Michael Kielsky (April 26, 2016)

[redacted]

April 26, 2016

Mr. Michael Kielsky

[redacted]

Dear Mike:

I'm embarrassed at how little I was able to accomplish with this petition.

I couldn't interest any independents (other than family) to sign — they didn't know you or understand why you would be a better choice than the Usual Suspects, and frankly I didn't know enough about the county attorney race to be more convincing.

I got a signature from every Libertarian in Morristown, which as it turns out isn't many. About half of those registered have apparently moved away.

I never got any response from you to my request for Libertarian registrations in Wickenburg and Wittmann, so those people never got visited.

Having performed so poorly at the basic duty of a PC, I'm frankly reconsidering relinquishing my position at the end of this term.

I apologize for this showing.

Sincerely,

C D Tavares