UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LIBERTARIAN PARTY OF MAINE, INC., JORGE MADERAL, SUSAN POULIN, SHAWN LEVASSEUR, CHRISTOPHER LYONS, ERIC GRANT, AND CHARLES JAQUES, Plaintiffs v. MATTHEW DUNLAP, Secretary of State for the State of Maine, in his official capacity, JULIE FLYNN, Deputy Secretary of State for the State of Maine, in her official capacity, TRACY WILLETT, Assistant Director, Division of Elections, in her official capacity, and the MAINE DEPARTMENT OF THE SECRETARY OF STATE, Defendants	)	Civil Action No. 2:16-cv-00002-JAW

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs submit this Memorandum of Law in support of their Emergency Motion for Preliminary Injunction, compelling the Defendants to take all such actions as are necessary to allow the Libertarian Party of Maine and its supporters to enroll voters in its ranks and qualify as a political party in Maine, to participate in the primary election and nominate Libertarian Party candidates for placement on the general election ballot, to secure a place for its presidential candidate on the general election ballot, and to enjoy the litany of other rights and privileges accorded to qualified parties and their supporters in the political and electoral sphere under

Maine law. As set forth more fully below, Plaintiffs have satisfied all requirements for the emergency injunctive relief sought by way of their pending Motion.

FACTUAL BACKGROUND, STATUTORY FRAMEWORK, AND SUMMARY OF ARGUMENT

The facts upon which this Motion is based are set forth in Plaintiffs' January 4, 2016 Complaint for Declaratory and Injunctive Relief at paragraphs 1-42, and the Affidavit of Jorge Maderal that is attached hereto as Exhibit 1 (hereinafter "Maderal Affidavit"). A summary of the pertinent facts is set forth herein.

The Libertarian Party is a duly qualified and officially recognized political party in thirty-four (34) states around the nation. Maderal Affidavit at ¶ 4. Maine is one of just sixteen (16) states in which the Libertarian Party, despite efforts by its supporters over the course of many years, is not qualified to nominate candidates or otherwise participate in the electoral process. *Id*. at ¶¶4 and 6. The Plaintiffs in this case are a non-profit organization and six Maine citizens who seek to form the Libertarian Party as an officially qualified political party in Maine, express themselves through the political process, associate for the advancement of their political beliefs, and cast their votes effectively. *See* Maderal Affidavit at ¶¶1-8. The activities and interests have long been recognized as fundamental rights protected under the First and Fourteenth Amendments to the United States Constitution. *See, e.g., Williams v. Rhodes*, 393 U.S. 23, 30 (1968); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); and *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000).

The Defendant Maine Secretary of State and other named Defendants are responsible for conducting Maine's system of state and federal elections in accordance with state and federal law; implementing and executing laws and regulations governing the voter registration and party enrollment; maintaining a statewide voter registration and party enrollment database; and

implementing and executing laws and regulations governing the qualification of political parties to participate in Maine's electoral process. In the current case, Defendants denied Plaintiffs' application to form a new political party in 2015, declared them ineligible to participate in Maine's 2016 elections, and stripped several thousand Maine voters of their Libertarian Party enrollment status.

Maine Statute Governing Plaintiffs' Efforts to Qualify as a Political Party

In late December of 2014, the Plaintiffs embarked upon the difficult task of qualifying as an officially recognized political party under a rigid and burdensome set of regulations enacted by the Maine legislature in 2013. *See* 21-A M.R.S.A. § 303 and Maderal Affidavit at ¶7. The applicable provisions of the statute are as follows:

> In addition to the procedure under section 302 [of Title 21-A], a party whose designation was not listed on the general election ballot in the last preceding general election qualifies to participate in a primary election if it meets the requirements of subsections 1 and 2.
>
> **1. Declaration of intent.** Ten or more voters who are not enrolled in a party qualified under section 301 must file a declaration of intent to form a party with the Secretary of State between December 1st and December 30th of an even-numbered year. The declaration of intent must be on a form designed by the Secretary of State and must include:
>
> **A.** The designation of the proposed party; and
>
> **B.** The names, addresses, telephone numbers, if published, and signatures of the voters who file the declaration of intent.
>
> **2. Enrollment of voters.** Within 5 business days after the declaration of intent required in subsection 1 is filed, the Secretary of State shall certify whether the application meets the requirements of subsection 1 and notify the applicants that they may enroll voters in the proposed party under sections 141 to 145. On or before December 1st of the odd-numbered year following the filing of the application under subsection 1, the applicants must file a certification with the Secretary of State, on a form designed by the Secretary of State, that they have at least 5,000 voters enrolled in the proposed party. The Secretary of State shall verify the proposed party's enrollment figures within 5 business days

> of receiving the proposed party's certification and notify the applicants whether the proposed party has met the requirements to participate in a primary election in the subsequent even-numbered year.

21-A M.R.S.A. § 303(1) & (2).

As set forth more fully below, Maine's new party qualification statute impermissibly burdens the First and Fourteenth amendment rights of minor political parties and their members such as the Plaintiffs, for several reasons: (1) the law establishes an exceptionally early deadline too far in advance of the primary election, which requires that all 5000 party enrollments be collected during an off year when the public is most disengaged from the political process; (2) the law fails to allow sufficient time for the verification of enrollment figures, and provides no mechanism for challenging the rejection of individual enrollments; (3) the law fails to provide applicants with adequate notice of the precise requirements for party qualification; (4) the law places greater burdens on minor political parties and their members than it does on the two major political parties and their members; (5) Maine's statutory scheme does not provide any reasonable alternative methods for minor parties to nominate candidates and participate in elections; and (6) the burdens imposed on the rights of minor parties and their members are not necessary to further any compelling or legitimate state interest.

Under the statute in question, a minor political party and its members are required to make a declaration of intent to form a party in the last month of an even year. 21-A M.R.S.A. § 303(1). The statute then affords these citizens just 11 months during the following *odd* year – when public attention to and enthusiasm for the political process is historically lowest – to procure the enrollment of 5000 Maine voters in the new party. 21-A M.R.S.A. § 303(2). No later than December 1st of the odd year – *more than 6 months before the primary election and more than 11 months before the general election* – the citizen-applicants are required to certify in

writing to the Secretary of State that they have enrolled at least 5000 voters in their political party. *Id.* The Secretary of State is then afforded only five (5) business days to verify the number of valid enrollments, a particularly narrow time frame in view of the fact that all voter registration and change of enrollment forms are received and processed by individual towns and cities across the state—not by the Secretary of State.

The new regulations set forth in 21-A M.R.S.A. § 303 – and the burdensome requirements that must all be met in an odd-numbered year – effectively determine whether a minor political party will qualify to participate in Maine's primary election in the subsequent even-numbered year.[1] Under Maine's statutory election scheme, the primary election process is the ***exclusive*** mechanism for political parties to nominate and select candidates for federal, state and local office, with the sole exception of the office of the United States Presidency. Moreover, although presidential candidates are not nominated by primary election in Maine, only those political parties deemed "qualified" to participate in the primary election are allowed to secure a place for their presidential candidates on the general election ballot by communicating to the Secretary of State the name of the candidate duly selected at their party convention. *See* 21-A M.R.S.A. § 321(2)(C) and 331(A)(2); and 21-A M.R.S.A. § 1(28).

[1] Although the statute in question – 21-A M.R.S.A. § 303 – does not expressly limit its application to "minor" political parties, in only applies to minor political parties for the following simple reason: under a separate provision of Maine's election code, the two major parties are perpetually qualified to participate in Maine's elections and enjoy all the other benefits of qualified political parties. *See* 21-A M.R.S.A. § 301. Under this statute – which is the functional equivalent of a grandfather clause – a party's right to participate in the next election is tied to its whether it held caucuses and a convention in the preceding general election, and whether 10,000 Maine voters enrolled in the party voted in preceding general election. *Id.* In effect, therefore, the Democratic and Republican parties are guaranteed the right participate fully in Maine's elections for the rest of time, without ever having to gather a single petition signature or a single new enrollment in the party. For this reason, the hoops and hurdles laid out in 21-A M.R.S.A. § 303 apply only to new and minor parties seeking to gain official recognition from the State, and will never be imposed on the two major political parties. As set forth more fully below, this distinction has relevance not only for the equal protection analysis, but in assessing the magnitude and reasonableness of the burdens imposed by the State of Maine upon minor parties and their members.

For these reasons, the stakes are extremely high for a minor political party organization and its members seeking to fulfill the requirements necessary to qualify to participate in Maine's primary election under 21-A M.R.S.A. § 303. Unlike the vast majority of other states, Maine does not allow minor political parties to nominate candidates by convention or petition.[2] Moreover, Maine simply does not recognize any political party or organization that is not deemed "qualified" by the Secretary to participate in Maine's primary and general election. *See* 21-A M.R.S.A. § 1 (28) (defining "party" for purposes of Maine's electoral code as "a political organization which has qualified to participate in a primary or general election under chapter 5," the chapter governing nominations). For these reasons, unqualified minor parties are precluded from participation in Maine's elections and deprived of the litany of other benefits accorded to qualified political parties under Maine law.[3]

Plaintiffs' Efforts to Qualify for Participation in Maine's Electoral & Political Process

Notwithstanding the unduly rigid and burdensome nature of the requirements set forth in the new law, Plaintiffs LPME, Maderal, Poulin, Levasseur, Grant, Jacques, and several other registered Maine voters formally declared their intent to form the "Libertarian Party of Maine"

[2] As of 2006, forty-three states allowed political parties to nominate candidates by convention or petition. *See Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 589 (6th Cir. 2006). Although Maine allows individual candidates to nominate themselves by petition, and affix a designation or label after their name, that is not the same from a constitutional standpoint as allowing minor political parties to select and nominate their own candidates for office either by petition or convention. *See, e.g. Storer v. Brown*, 415 U.S. 724, 745 (1974) ("[T]he political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other.")

[3] In addition to the opportunity to nominate and select their candidates through the primary election process, political parties deemed "qualified" by the Maine Secretary of State are able to: (1) secure placement for their presidential candidates on the general election ballot by holding a convention and communicating the results thereof to the Secretary of State (see 21-A M.R.S.A. §§ 331 and 321-322); (2) ensure that only one party candidate for each elective office appears on the general election ballot, thereby strengthening that candidate's position vis a vis other party candidates and avoiding vote splitting or dilution (*see* 21-A M.R.S.A. § 354(1)); (3) register and enroll voters in their political parties as a means of strengthening their organizations and voter base; (4) obtain statewide voter registration lists from the Maine Secretary of State (*see* 21-A M.R.S.A. § 312); and (5) hold county caucuses and statewide conventions for the purposes, among others, of conducting party business, strengthening the party organization, and promoting the advancement of policies and political beliefs (*see* 21-A M.R.S.A. §§ 311-322).

by enrollment pursuant to 21-A M.R.S.A. § 303. Maderal Affidavit at ¶7. Two fully executed declarations were filed with the Secretary of State – the first on December 22, 2014 and the second on December 29, 2014 – containing in total the names of ten (10) or more Maine voters who were not yet enrolled in a qualified party. *Id.* at ¶7 and Exhibit A thereto.

In particular, but by no means exclusively, LPME and the individual Plaintiffs seek to qualify as a political party in Maine so that the Libertarian Party can nominate its own candidates for federal, state and local office, and secure a place for its duly nominated presidential candidate on Maine's 2016 general election ballot in the same manner as the two major parties (that is, by communicating to name of the candidate selected at the Party's national convention to the Secretary of State). Maderal Affidavit at ¶9. LPME and the individual Plaintiffs also seek to secure for the Party and its supporters the following other rights and privileges accorded only to qualified parties in Maine: to ensure that only a single candidate for any given elective office (including the office of President) would appear on Maine's general election ballot with the Libertarian Party designation; and to be able to enroll voters in the Libertarian Party as a means of building support for Libertarian Party candidates and ideas; and to obtain from the Secretary of State a statewide list of registered voters with party designation to facilitate political association and organization among like-minded voters, and for use in candidate campaigns and get-out-the-vote efforts. *Id.*

During the period from January through May, 2015, the LPME engaged in organizational and fundraising activities to get ready for the daunting task of collecting the enrollments of at least 5000 Maine voters in the Libertarian Party no later than December 1, 2015. Maderal Affidavit at ¶ 10. During the period from June 1, 2015 through November 30, 2015, the Plaintiffs procured the enrollment of 6,482 Maine voters in the Libertarian Party of Maine

consistent with the requirements of Maine law, and submitted valid registration and enrollment forms for all 6,482 enrollees to the Department and to local election officials throughout the state. *Id*. Throughout this process, Plaintiffs LPME and Maderal kept careful records of the total number of enrollments submitted as well as the exact number of enrollments for each municipality (determined by the town or city of residence of each enrollee). *Id*. In total, the 6,482 Libertarian Party enrollees represented 356 different Maine towns and cities across the state. *Id*.

On December 1, 2015, Plaintiff Maderal filed a certification with the Secretary of State pursuant to 21-A M.R.S.A. § 303(2), stating that the Libertarian Party of Maine had enrolled at least 5,000 Maine voters as of that date. Maderal Affidavit at ¶ 11 and Exhibit B thereto. On or about December 8, 2015, at a meeting with Deputy Flynn and her assistant, Melissa Packard, at the Department's offices in Augusta, Plaintiff Maderal was told that the unofficial "verified" number of Maine voters enrolled in the Libertarian Party according to the Department's records was only 4489, falling below the 5000 threshold for qualification under 21-A M.R.S.A. § 303. Maderal Affidavit at ¶ 12. Deputy Flynn and Ms. Packard told Plaintiff Maderal that an official verification would be prepared and provided to him in writing at a later date. *Id*.

The unofficial "verified" number of enrollments verbally reported to Maderal on December 8th raised numerous discrepancies and concerns, when compared with the 6,482 voter registration and enrollment forms submitted to the Department and all the various town and cities prior to December 1st. Maderal Affidavit at ¶ 13. Of particular concern was the unusually high rejection/failure rate for the enrollments (amounting to some 31% of all enrollments submitted), and LPME's inability to verify whether the towns and cities actually received and processed all the forms submitted to them and to the Department. *Id*.

Based on inquiries with Deputy Flynn and Ms. Packard, Plaintiff Maderal learned that many of the enrollment applications were rejected for mere technical deficiencies, such as a box that should have been check that was not (for example, to confirm U.S. citizenship and that the applicant would be at least 18 years old on election day), or a failure to provide a previous address if the voter was still registered to vote in the town of former residence, or a failure to sign the application.[4] Maderal Affidavit at ¶ 14. Despite Plaintiff Maderal's best efforts to get documentation of the purported grounds for rejection of some 2000 Libertarian party enrollment applications – and whether the registrars had complied with their legal duty to provide written notice to the voter before rejecting the application – no records or documentary information were ever provided to him by the local election officials or the Department. *Id*.

In a letter to Deputy Flynn dated December 14, 2015, Plaintiff LPME requested that the Secretary of State continue and extend the verification process under to Title 21-A M.R.S.A. § 303(2), so as to allow time for the Party and the Secretary to investigate, address and resolve these problems and irregularities. Maderal Affidavit at ¶ 15 and Exhibit C thereto.

Defendants' Disqualification of the Libertarian Party and its Members

On December 18, 2015, thirteen (13) days after its December 1st certification pursuant to 21-A M.R.S.A. § 303(2), Plaintiff LPME received a letter from Deputy Flynn announcing that the Secretary was only able to verify 4,513 enrollments in the Libertarian Party of Maine, falling short of the 5,000 required to form a new political party and participate in the 2016 primary

[4] Under Maine law, a local registrar may investigate and reject an application for voter registration or change of party enrollment for failure to comply with the provisions of Maine's voter registration and enrollment statute, *but only after the registrar sends written notice thereof to the voter to the last known address provided by the voter*. *See* 21-A M.R.S.A. § 152(3).

election. Maderal Affidavit at ¶ 16 and Exhibit D thereto.[5] Deputy Flynn further notified Plaintiff LPME that all Maine voters enrolled in the Libertarian Party would be "unenrolled" and that municipal election officials would be notified that the Libertarian Party is no longer an "acceptable" enrollment option. *Id.*[6] Despite Plaintiffs' submission of 6,482 valid applications listing the Libertarian Party as the enrollment of choice, the Secretary recognized only 4,513 Libertarian Party enrollees in its database and declared the Libertarian Party to be disqualified from participation in the 2016 elections. *Id.*[7]

The Secretary's December 18th determination meant that the Libertarian Party of Maine would be barred from nominating candidates for federal, state or local office through Maine's primary election in 2016, precluded from securing a place for its duly selected presidential candidate on the general election ballot, precluded from enrolling Maine voters in the Libertarian Party, and precluded from getting access to the statewide lists of registered Maine voters with enrollment information that the established political parties are entitled to. *See* 21-A M.R.S.A. § 331; 21-A M.R.S.A. §§ 321-322; 21-A M.R.S.A. § 306. *See also* Maderal Affidavit at ¶ 18. It also meant that the individual Plaintiffs and many thousands of others would be barred from

[5] As reflected in Deputy Flynn's December 18th letter, the Department was able to verify a number additional Libertarian Party enrollees subsequent to its December 8th meeting with Plaintiff Maderal by following up with several of the larger cities and towns, but did not have sufficient time to follow up all 356 different cities and towns across the state that received enrollment applications. Maderal Affidavit at ¶ 17 and Exhibit D thereto.

[6] Plaintiffs Maderal, Poulin, Levasseur, Lyons, Grant and Jacques are among no fewer than 4513 registered Maine voters who were summarily stripped of their Libertarian Party enrollment status by the Secretary of State and the other Defendants in December of 2015. This figure does not include an additional 1969 Libertarian Party enrollments submitted to the Secretary of State and local election officials no later than December 1, 2015 that were either rejected or never fully or properly processed. Maderal Affidavit at ¶ 21.

[7] In her December 18th letter, Deputy Flynn also denied Plaintiff LPME's request for additional time to allow more enrollments to be processed and verified, and to address any irregularities and wrongfully rejected enrollments, stating, *inter alia*, that the governing statute (21-A M.R.S.A. § 303) does not allow the Secretary to extend the verification process. Maderal Affidavit at ¶ 21 and Exhibit D thereto.

enrolling as members of the Libertarian Party and voting for party-nominated candidates in federal, state or local elections. *Id*.

As set forth more fully below, the actions and omissions of the Secretary of State and other named Defendants in failing to allow the Plaintiffs to nominate, vote for, and otherwise support Libertarian Party candidates in the coming general election year violates their constitutional rights under the First and Fourteenth Amendments to the United States Constitution. The violation of Plaintiffs' constitutional rights arises not only from a new statutory scheme governing participation in Maine's electoral and political process that itself is unconstitutional, both on its face and as applied to the Plaintiffs in this circumstance, but also from the arbitrary and capricious actions and omissions of Defendants and their agents complained of herein. This Motion focuses principally on the unconstitutional provisions of Maine's new law that are most easily addressed and resolved in the context of this Motion for a Preliminary Injunction, because they provide a basis for the relief requested without requiring the Court to resolve any disputed issues of fact.

ARGUMENT

I. STANDARD FOR GRANTING PRELIMINARY INJUNCTION.

To obtain emergency injunctive relief under Rule 65 of the Federal Rules of Civil Procedure, the moving party must demonstrate: "(1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships; and (4) a fit (or lack of friction) between the injunction and the public interest." *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 120 (1st Cir. 2003) (*citing McGuire v. Reilly*, 260 F.3d 36, 42 (1st Cir.2001). *See also Hoffman v. Secretary of State of Maine*, 574 F.Supp.2d 179, 186 (D. Me. 2008).

The Plaintiffs in this case – The Libertarian Party of Maine, Inc. (hereinafter "LPME") and six Maine citizens and registered voters who are affiliated with LPME – have met the foregoing standard for injunctive relief, as set forth more fully below. Accordingly, the Court should grant Plaintiffs' emergency request for an injunction to compel the Defendants to take all such actions as are necessary to allow Plaintiffs to enroll as members of the Libertarian Party and to nominate, vote for, and seek elective office as Libertarian Party candidates in Maine's current general election year.

II. PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF.

A. LEGAL STANDARD GOVERNING PLAINTIFFS' CHALLENGES TO THE CONSTITUTIONALITY OF VARIOUS PROVISIONS OF 21-A M.R.S.A. § 303.

The Supreme Court of the United States has articulated the proper legal standard for assessing the constitutionality of a state election law in several cases, best summarized by as follows:

> A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Burdick v. Takushi, 504 U.S. 428, 434 (1992) (*quoting Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). *See also Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 213-214 (1986).

As the High Court has held, "under this standard, 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." *Anderson*, 460 U.S. at 789. If the regulation

in question imposes severe burdens or restrictions on plaintiffs' constitutional rights, "the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Burdick,* 504 U.S. at 434 (quoting *Norman v. Reed,* 502 U.S. 279, 289 (1992)). If, on the other hand, the regulation imposes only "reasonable, nondiscriminatory restrictions" upon the constitutionally protected rights, the interests of the state in regulating elections is "generally sufficient to justify" the restrictions. *Id.* (quoting *Anderson,* 460 U.S. at 788)

In evaluating whether the restrictions imposed by an election law are "reasonable" and "nondiscriminatory" so as to pass constitutional muster, courts must assess the extent to which the restrictions are *necessary* to further the state's articulated interest in the regulation, and whether they impose greater burdens on one group of citizens – such as minor parties and their members – than another. *Anderson*, 460 U.S. at 789-794. Regardless of the *severity* of the burdens imposed by a statute on plaintiffs' constitutionally protected rights, state election laws that are unfairly discriminatory, or which unnecessarily restrict First and Fourteenth Amendment rights, are unconstitutional. *Id.*[8]

In determining whether the statute imposes an impermissible burden upon Plaintiffs' constitutionally protected liberties, the Court should consider the combined effect of all applicable regulations of Maine's election code. *See Libertarian Party of Ohio v Blackwell*, 462 F.3d 579, 591 (6th Cir. 2006) ("Our inquiry is not whether each law individually creates an impermissible burden but rather whether the combined effect of the applicable election regulations creates an unconstitutional burden on First Amendment rights.") (*citing See Williams*

[8] *See also Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185 (1979) ("[E]ven when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberties") (*quoting Kusper v. Pontikes*, 414 U.S. 51, 58-59 (1973)). In that case, the Supreme Court elaborated as follows: "[W]e have required that States adopt the least drastic means to achieve their ends. This requirement is particularly important where restrictions on access to the ballot are involved." *Illinois State Bd. of Elections*, 440 U.S. at 185.

v. Rhodes, 393 U.S. 23, 34 (1968)).

As set forth more fully below, Plaintiffs have a strong likely of success on the merits of their constitutional challenge to various provisions of the Maine statute regulating the formation of new political parties eligible to participate in Maine's elections, for three simple reasons: they impose severe burdens on constitutionally protected rights; they unfairly discriminate against minor parties and their supporters; and the restrictions imposed upon Plaintiffs constitutional rights are not necessary to further any governmental interest, whether compelling or legitimate.

B. THE CONSTITUTIONALLY-PROTECTED RIGHTS AT ISSUE

As set forth above, the Maine election laws at issue in this case regulate the ability of citizens to band together to form a new political party; to nominate and promote a slate of candidates who share a common political platform; to ensure that no more than one party candidate for each office will appear on the general election ballot; to register and enroll voters in its ranks; to hold caucuses and conventions; to enjoy the same political privileges accorded by law to the two major parties; and to cast effective votes. The election laws in question also hold the key to whether all eligible Maine voters – regardless of political persuasion – are allowed to support minor party candidates or enroll in a minor political party.

The rights of free expression and association in the political sphere enjoy especially sacred constitutional protection. Freedom of expression and association safeguarded by the First and Fourteenth Amendments includes partisan political organization and efforts by political parties and their supporters to promote the election of candidates who share their political views. *See Norman v. Reed, 502 U.S. at 288* ("For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties."); *Storer v. Brown*, 415 U.S. 724, 746 (1974) ("[T]o comply with the First and

Fourteenth Amendments the State must provide a feasible opportunity for new political party organizations and their candidates to appear on the ballot); *Elrod v. Burns,* 427 U.S. 347, 357 (1976); *Buckley v. Valeo,* 424 U.S. 1, 15, (1976); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 213-214 (1986); and *Kusper v. Pontikes,* 414 U.S. 51, 57 (1973) ("The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom."). As the Unites States Supreme Court has held, "representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." *California Democratic Party v. Jones,* 530 U.S. 567, 574 (2000).[9]

The right to vote is inextricably intertwined with the fundamental rights or expression and association in the political sphere. As the High Court noted in another ballot access case, the right to cast an effective vote "is of the most fundamental significance under our constitutional structure." *Burdick v. Takushi,* 504 U.S. 428, 433 (1992). "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.'" *Anderson* 460 U.S. at 787 (quoting *Lubin* v. *Panish*, 415 U.S. at 716, and *Williams v. Rhodes*, 393 U.S. 23, 31 (1968)). "There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms." *Id*. at 802.[10]

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[9] *See also Colorado Republican Federal Campaign Commission v. Federal Election Commission*, 518 U.S. 604, 616 (1996) ("The independent expression of a political party's views is "core" First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees.") (*citing Eu v. San Francisco County Democratic Central Commission,* 489 U.S. 214 (1989)).

[10] *See also Wesberry* v. *Sanders*, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."); and *Lubin* v. *Panish*, 415 U.S. 709, 716 (1974) ("The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.").

State election laws such as 21-A M.R.S.A. § 303 therefore "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." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). *See also Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983) ("A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment").

C. THE DECEMBER 1ST DEADLINE SET FORTH IN 21-A M.R.S.A. § 303(2) IS UNCONSTITUTIONALLY EARLY

As set forth in Count I of their Complaint, Maine's December 1st qualification deadline for a newly declared political party places severe, unreasonable and unnecessary burdens on Plaintiffs' rights to express themselves, to associate politically, and to cast their votes effectively, among others, which rights are guaranteed to them under the First and Fourteenth Amendments. The December 1st deadline means that a minor political party must obtain at least than 5,000 enrollments more than 6 months before the primary election – and more than 11 months before the general election – in order to be deemed qualified to nominate candidates and otherwise participate in those elections.

Maine's unusually early qualification deadline also means that all 5000 enrollments must be gathered during an odd-numbered year when public attention to and enthusiasm for the political process is historically lowest, when the issues for the coming general election year are not yet full formed, and when candidates are not yet declared. There is no justification or purpose – compelling or legitimate – that can be gleaned from Maine's statutory scheme for this unusually early party qualification deadline. On its face, and as applied to the Plaintiffs in this

case, the December 1st deadline unnecessarily restricts the rights of minor political parties and their members under the First and Fourteenth Amendments.

In assessing the constitutionality of state election laws regulating the qualification of new and minor political parties, courts in no fewer than ***ten*** jurisdictions have struck down as too early deadlines substantially ***less early*** than Maine's.[11] If party qualification deadlines occurring 120 days, 90 days or even 2 months before the primary election have all been invalidated as being too early, then, *a fortiori*, Maine's deadline requiring new parties to qualify ***more than 6 months*** before the primary cannot pass constitutional muster. Moreover, Plaintiff's undersigned counsel found no reported or unreported case *upholding* a party qualification deadline that was anywhere near this far in advance of a primary election. The sheer volume of federal cases

[11] *See, e.g., Libertarian Party of Ohio v Blackwell*, 462 F.3d 579 (6th Cir. 2006) (deadline in Ohio law requiring new political parties to file primary election qualifying petitions 120 days before the primary election – and 364 days in advance of the general election – was held to be unconstitutionally early, when viewed together with separate Ohio law requiring political parties to nominate all their candidates via primary election); *New Alliance Party v Hand*, 933 F 2d 1568 (11th circuit 1991) (Alabama law setting April deadline for minor parties to submit nominating petitions to the Secretary of State – seven months before the general election – was struck down as unconstitutionally early); *McLain v. Meier*, 637 F.2d 1159, 1161-1165 (8th Cir. 1980) (North Dakota requiring new political parties to file qualifying petitions more than 90 days before the primary election and more than 150 days before the general election was struck down as unconstitutionally early); *MacBride v. Exon*, 558 F.2d 443, 448-450 (8th Cir. 1977) (Nebraska law requiring new political parties to file qualifying petitions 90 days before the primary election and 9 months before the general election – in order to place a presidential candidate on the ballot – was struck down as unconstitutionally early, when viewed together with a separate statute requiring political parties to nominate their presidential candidates by primary election); *Libertarian Party of Nevada v. Swackhamer*, 638 F.Supp. 565 (D. Nev. 1986) (Nevada law requiring new political parties to file qualifying petition 90 days before the primary election was struck down as unconstitutionally early, when viewed in combination with a statutory verification requirement that had the effect of requiring the qualifying petition to be submitted some 140 days before the primary election); *Libertarian Party of Tennessee v. Goins*, 793 F.Supp.2d 1064, 1085-1090 (M.D. Tenn. 2010) (Tennessee law requiring new political parties to file qualifying petitions 120 days before the primary election, and 8 months before the general election, was struck down as unconstitutionally early); *Citizens to Establish a Reform Party v. Priest*, 970 F.Supp. 690, 694-701 (E.D. Ark. 1996) (Arkansas law requiring new political parties to file qualifying petitions 5 months before the primary election and 10 months before the general election was struck down as unconstitutionally early); *California Justice Committee v. Bowen*, 2012 WL 5057625 *3-10 (C.D. Cal. 2012) (California law requiring new political parties to submit qualifying affidavits from registered voters 154 days before the primary election – and some 10 months in advance of the general election – was struck down as unconstitutionally early); *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 879-884 (court granted motion for preliminary injunction after finding New Jersey's April 10th deadline for minor political parties to file nominating petitions – nearly 2 months before the primary election and 7 months before the general election – was unconstitutionally early); and *Constitution Party of New Mexico v. Duran* (D. N.M. 2013—unreported case—Civ. No. 1:12-325 KG/LFG) (New Mexico law requiring new parties to submit qualifying petitions in April – two months before the primary election – struck down as unconstitutionally early) (a true and correct copy of the Memorandum Opinion and Order is attached hereto as Exhibit 2).

striking down party qualification deadlines less early than Maine's – and the absence of any reported contrary holdings – compels the conclusion that Plaintiffs have demonstrated a substantial likelihood of success on the merits of Count I.

All of the above-cited cases striking down party qualification deadlines as too early highlight the same constitutionals problems that are present in the case at bar: (1) the unusually early deadline places severe burdens on the constitutionally protected rights of the Plaintiffs; (2) the burdens imposed by the unusually early deadline fall unequally on minor parties and their supporters; and (3) the unusually early deadline is not necessary to further any governmental interest, whether compelling or legitimate.

1. <u>The Burdens Imposed on Plaintiff's Constitutionally Protected Rights are Severe</u>.

Just as with the early deadline struck down by courts in ten different jurisdictions, Maine's early deadline requires minor parties to generate support and recruit members during a stage of the election cycle when the public is not yet fully engaged or paying attention, and before the issues for the next election are fully formed. *See, e.g.*, *Libertarian Party of Ohio*, 462 F.3d at 586 ("Deadlines early in the election cycle require minor political parties to recruit supporters at a time when the major party candidates are not known and when the populace is not politically energized . . . Early deadlines also have the effect of ensuring that any contentious issue raised in the same year as an election cannot be responded to by the formation of a new political party. The combination of these burdens impacts the party's ability to appear on the general election ballot, and thus, its opportunity to garner votes and win the right to govern").[12] As the Sixth Circuit held in that case, "[t]he requirement that a fledgling political

[12] *See also Anderson*, 460 U.S. at 790-794 (an early filing deadline "may have a substantial impact on independent-minded voters . . . In election campaigns, particularly those which are national in scope, the candidates and the issues simply do not remain static over time . . . Volunteers are more difficult to recruit and retain, media publicity

party rally support more than a year before the general election, when the major party candidates are not known and the majority of the country is not focused on the election, is an exceedingly difficult task." *Libertarian Party of Ohio*, 462 F.3d at 591 (noting that such requirement could "easily mute the party's message and limit its ability to recruit new members").

In the Sixth Circuit case, as in this one, the same two election regulations combined to imposed what were found to be "severe" burdens on the constitutionally rights of the Libertarian Party (and minor parties generally): (1) an unusually early deadline to qualify for the primary election; and (2) a rule that parties may only nominate candidates by primary election. *See Libertarian Party of Ohio*, 462 F.3d at 586, 593 (in combination with requirement that parties nominate by primary, early primary qualification deadline for political parties was unconstitutional). Because Maine's December 1st deadline is so unusually and extraordinarily early – *and because it holds the key to whether a minor party such as Plaintiff LPME will be allowed to participate in Maine's elections* – Plaintiffs urge this this Court to conclude, as the Sixth Circuit did in a similar case, that the resulting burdens imposed on the rights of minor parties and their supporters are "severe," thereby requiring the state to demonstrate that the regulation is "narrowly drawn to advance a state interest of compelling importance." *Libertarian Party of Ohio*, 462 F.3d at 593 (citing *Burdick,* 504 U.S. at 434). Under this analysis, the December 1st deadline set forth in 21-A M.R.S.A. § 303(2) is unconstitutional

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and campaign contributions are more difficult to secure, and voters are less interested in the campaign"); *Council of Alternative Political Parties,* 121 F.3d at 880 (April qualification deadline that fell 60 days before the primary required minor parties to rally support "when the election is remote and voters are generally uninterested in the campaign"); *Citizens to Establish a Reform Party of Arkansas,* 970 F. Supp. at 697–98 (E.D.Ark.1996) (January deadline 5 months before the primary hampered minor party's efforts to locate volunteers, attract media coverage and recruit supporters, all of which impacted its ability to appear on the ballot); and *Stoddard v. Quinn*, 593 F. Supp. 300, 304 (D. Me. 1984) (this Court struck down Maine's April 1st ballot access deadline for non-party candidates as unconstitutionally early, noting, *inter alia*, that it required signatures to be gather during the period from January 1 through April 1 "when election issues are undefined and the voters are apathetic").

because it is not narrowly drawn to serve a compelling governmental interest. *See Burdick*, 504 U.S. at 434 (*citing Norman v Reed,* 502 U.S. at 286).

As set forth more fully below, even if this Court declines to find the burdens on Plaintiffs' rights to be sufficiently "severe" so as to apply strict scrutiny under *Burdick*, the remaining factors governing the constitutionality of ballot access regulations nonetheless compel a finding that Maine's unusually early deadline is unconstitutional: (1) the early party qualification deadline is discriminatory in that the burdens imposed fall unequally on minor parties and their supporters; and (2) the early party qualification deadline unnecessarily burdens the Plaintiffs' constitutionally protected rights, in that the state cannot identify any legitimate interest that makes it necessary to burden Plaintiffs' rights in the manner and to the extent articulated herein. *See Anderson*, 460 U.S. at 793-794, 806.

2. <u>The Burdens Imposed by Maine's Unusually Early Deadline Fall Unequally on Minor Parties and Their Supporters</u>.

The burdens imposed by Maine's unusually early party qualification deadline fall unequally on minor parties and their members, and therefore are neither "reasonable" nor "nondiscriminatory." *See Anderson,* 460 U.S. at 788-794. In *Anderson,* the High Court struck down an early ballot access deadline for independent candidates <u>*without*</u> applying strict scrutiny, based on a finding that the statute unfairly burdened one class of candidates more than another, and was not necessary to further any legitimate governmental interest. The *Anderson* Court summarized the constitutional problems associated with statutes that unfairly burden new or small political parties:

> "Our ballot access cases ... focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens 'the availability of political opportunity.' " *Clements v. Fashing,* 457 U.S. ——, ——, 102 S.Ct. 2836, 2844 (1982) (plurality opinion),

> quoting *Lubin v. Panish, supra*, 415 U.S., at 716, 94 S.Ct., at 1320. A burden that falls unequally on new or small political parties or on independent candidates 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. *Clements v. Fashing, supra*, 457 U.S., at ——, 102 S.Ct., at 2844 (plurality opinion). 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.

Anderson, 460 U.S. at 793-794

Because the two major parties are perpetually qualified to participate in Maine's elections pursuant to a separate provision of Maine's election code amounting to a grandfather clause – 21-A M.R.S.A. § 301 – the burdens associated with Maine's early party qualification deadline fall unequally and unfairly on minor parties and their supporters. The Democratic and Republican Parties will never have to gather 5000 new party enrollments – by December 1st or any other deadline – in order to participate in Maine's primary election and enjoy every other privileged accorded to a "qualified" political party in Maine. Only those Maine citizens seeking to gain official recognition for alternative political parties are required to launch and complete a campaign for public support during an off year when enthusiasm for and attention to the political process is at its lowest.

3. Maine's Unusually Early Deadline Unnecessarily Restricts the Plaintiffs' Constitutionally Protected Rights.

Maine's unusually early party qualification deadline also unnecessarily restricts the Plaintiffs' constitutionally protected liberties under the First and Fourteenth Amendments. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185 (1979) ("[E]ven when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberties") (*quoting Kusper v. Pontikes*, 414 U.S. at 58-59). *See also*

Anderson, 460 U.S. at 789 (in reviewing the constitutionality of specific provisions of a state's election laws, court must always consider the extent to which the interests of the state, whether compelling or legitimate, make it necessary to burden the plaintiff's rights).[13]

The Supreme Court in *Anderson* summarized its jurisprudence with regard to this constitutional imperative as follows:

> For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty. *Dunn v. Blumstein*, 405 U.S., at 343 [92 S.Ct., at 1003]. 'Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.' *NAACP v. Button*, [371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963).] If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties." *Kusper v. Pontikes*, 414 U.S. 51, 59, 94 S.Ct. 303, 308, 38 L.Ed.2d 260 (1973).

For the foregoing reasons set forth in subsections I(C)(2) and (3) hereof, regardless of this Court's assessment of the severity of the burdens imposed by the early deadline – and the corresponding level of scrutiny to be applied to the statute – Maine's unusually early party qualification deadline fails to pass constitutional muster because it is unfairly discriminatory and burdens the First and Fourteenth Amendment rights of Plaintiffs in a manner that is not necessary to serve any legitimate governmental interest. For all these reasons, Plaintiffs have demonstrated a substantial likelihood of success on the merits of its claims set forth in Count II for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, and the First and Fourteenth Amendments to the United States Constitution.

[13] Although the state does not need to demonstrate that the precise ballot access deadline it chooses is necessary to further its stated governmental interest(s) – or that *only* that precise deadline will further its interest(s) – the Constitution does require that the deadline chosen does not *unnecessarily* restrict the First Amendment rights of the affected minor party, its members or the voters at large. Suffice it to say that not even the most thorough review of 21-A M.R.S.A. § 303(2) – or Maine's entire electoral code – evidences any legitimate explanation or justification for a p qualification deadline that is so many months before the primary election.

D. THE 5-DAY VERIFICATION DEADLINE SET FORTH IN 21-A M.R.S.A. § 303(2) IS TOO SHORT

As demonstrated by circumstances of this case, the 5-day verification deadline set forth in 21-A M.R.S.A. § 303(2) places severe and unnecessary burdens on Plaintiffs' rights to express themselves politically, to associate politically, and to cast their votes effectively, among others, which rights are guaranteed to them under the First and Fourteenth Amendments. Under the statute, the Secretary of State has only five (5) business days from the time the prospective political party declares the enrollment of at least 5,000 voters to verify the total number of enrollees in that party.

The 5-day deadline does not afford the Secretary and the Department sufficient time to verify all the enrollments that were submitted to towns and cities across the state in the final weeks leading up to the December 1st deadline, nor does it afford the local election officials sufficient time to finish processing all the forms submitted by the deadline. As set forth in the fact section, the Secretary in this case failed to complete the verification process within 5 business days of LPME's December 1st enrollment declaration, and was not able to follow up with every single town or city that may still have been in possession of unprocessed or wrongly rejected enrollment applications. Maderal Affidavit at ¶ 16-17 and Exhibit D thereto (evidencing that the Secretary "completed" (perhaps "ended" is a better word) the verification of enrollments on December 18th, thirteen (13) business days after the LPME's declaration under 21-A M.R.S.A § 303(2).

Under Maine law, the local election officials processing such forms are required to notify individual applicants of any problems or technical deficiencies prior to rejecting an enrollment applicant. *See* 21-A M.R.S.A. § 152(3). For this reason, the statute fails to allow time for this process to be completed, and fails to provide the prospective political party with adequate notice

that enrollments submitted too close to the December 1st deadline may not be counted when the Secretary "verifies" enrollment figures.[14] The statutes also provides no mechanism for contesting rejected enrollments or correcting technical deficiencies therein, and no meaningful notice of what constitutes and "enrollment" for purposes of the qualification process.

The 5-day verification deadline set forth in Section 303(2) thus burdens Plaintiffs' constitutionally protected rights in at least four different respects: (1) if fails to provide adequate notice of the need to submit its enrollment forms to local elections officials around the state substantially in advance of the December 1st deadline, so that local election officials around the state can finish processing the forms, and technical deficiencies can be remedied, before the Secretary is required to verify the number of enrollments; (2) it forces a minor party and its members to finish collecting and submit not less than 5000 enrollments several weeks if not months before the December 1st deadline, which has the effect of making an unusually early qualification deadline even earlier; (3) it fails to provide applicants with adequate notice of defects in enrollment applications that are capable of being corrected, or any recourse if enrollment applications are wrongfully rejected by local election officials; and (4) it fails to define when an "enrollment" occurs for purposes of compliance with the 5000-enrollment threshold by the December 1st deadline, and likewise fails to provide adequate notice to the applicants of what must occur in order for the Secretary to count an enrollment when it "verifies" the party's enrollment numbers.

[14] As demonstrated by the experience of the Plaintiffs in this case, five business days would only be a sufficient amount of time if the prospective political party and its members collected and submitted the necessary number of enrollments several weeks if not months before making a declaration under Section 303(2), which declaration must be made no later than December 1st of the year before the general election. This has the effect of making a deadline that is already unusually and unnecessarily early even earlier, thereby forcing new and minor parties to generate public support and collect enrollments during a period of time than is even further removed from the general election year at issue.

The combined effect of each of these burdens, compounded and exacerbated by an already early December 1st party qualification deadline, compel the conclusion that the 5-day verification deadline places severe burdens on Plaintiffs' rights to freedom of expression and association in the political sphere, and that these burdens fall unequally on minor parties seeking to gain entry to Maine's political and electoral system. *See Libertarian Party of Ohio*, 462 F.3d at 593 (citing *Burdick*, 504 U.S. at 434); and *Anderson*, 460 U.S. at 788-794.

Furthermore, most of the above-described burdens imposed by the 5-day verification deadline relate to the lack of adequate and meaningful notice in the statute as to precisely what must be accomplished, and when, in order to qualify as a new political party, and the statute's failure to define terms and phrases critical to the qualification effort (such as "enrolled in the proposed party" and "enrollment") that are vague and capable of more than one interpretation. For this reason, as it relates to the Secretary's "verification" of the "enrollment figures" of the new political party, the statute is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment. *See, e.g., Hynes v. Mayor of Oradell*, 425 U.S. 610, 621-622 (1976) (noting three different ways in which a statute can be unconstitutionally vague in violation of the right to due process of law: (1) the statute is unclear because of an undefined or insufficiently precise term or phrase; (2) statute fails to sufficiently specify what must be done in order to comply with its terms; or (3) statute fails to set forth explicit standards for those governmental officials who must apply it, thereby giving the government officials what amounts to unreviewable discretion in enforcing the statute). As outlines above, and as exemplified by the experience of the Plaintiffs in this case, all three problems outlined by the Supreme Court in *Hynes* – any of which is alone sufficient to support a finding that the statute is unconstitutionally

vague in violation of Plaintiffs' rights under the due process clause of the Fourteenth Amendment – are present here.

Moreover, the severe burdens imposed on the fundamental constitutional rights and liberties of the Plaintiffs by the 5-day verification deadline set forth in 21-A M.R.S.A. § 303(2) are not necessary to further any compelling or legitimate state interest. This is demonstrated, *inter alia*, by the fact that Maine's statutory scheme includes no similar provision in any other section of the election code where the Secretary must verify petitions and petition signatures, and that there is no pressing other deadline requiring the verification to be completed in early December. *See, e.g.*, 21-A M.R.S.A. §§ 335 and 337 (statute requires Secretary of State to verify the primary petitions of party candidates to ensure they meets the statutory requirements – including the requisite number of petition signatures from eligible signers – without imposing any verification deadline on the Secretary). As set forth above, Maine's primary does not occur until the second week of June (21-A M.R.S.A. § 339).

Again, Plaintiffs urge the Court to look to the combined effect on Plaintiffs' constitutionally protected rights of all applicable provisions of Maine's election code, including but not limited to the unusually early party qualification deadline, the 5-day verification deadline, the requirements that all political parties including new and minor parties nominate candidates through the primary election, and the fact that only those parties qualified to participate in the primary election are entitled to enjoy the litany of special privileges and rights accorded to political parties under Maine law. *See Libertarian Party of Ohio v Blackwell,* 462 F.3d 579, 591 (6th Cir. 2006) ("Our inquiry is not whether each law individually creates an impermissible burden but rather whether the combined effect of the applicable election regulations creates an unconstitutional burden on First Amendment rights.") (*citing See Williams*

v. Rhodes, 393 U.S. 23, 34 (1968)). For all these reasons, Plaintiffs have demonstrated a substantial likelihood of success on the merits of its claims set forth in Count II for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, and the First and Fourteenth Amendments to the United States Constitution.

III. IN THE EVENT THAT THE UNCONSTITUTIONAL PROVISIONS OF 21-A M.R.S.A. § 303 ARE APPLIED TO THE PLAINTIFFS, PLAINTIFFS WILL SUFFER IRREPARABLE INJURY.

Assuming that Plaintiffs' legal position is correct, it is clear that irreparable injury would flow from the denial of the pending Motion for a Preliminary Injunction. Plaintiffs first direct the Court's attention to the exhaustive description of their constitutionally-protected rights at issue in this ballot access case set forth in Section II(B) hereof, and the stakes associated with their efforts to qualify as a political party under Maine law as set forth in the introductory section at pages 3-6 hereof.

Absent the relief sought herein, Libertarian Party and its members will be denied the opportunity to nominate and place party candidates on the ballot for Maine's 2016 primary and general elections, and enjoy the litany of other rights accorded to political parties, including but not limited to the following: (1) the ability to secure a place for its duly nominated presidential candidate on Maine's 2016 general election ballot in the same manner as the two major parties (that is, by communicating to name of the candidate selected at the Party's national convention to the Secretary of State); (2) the ability to ensure that only a single candidate for any given elective office (including the office of President) would appear on Maine's general election ballot with the Libertarian Party designation; and to be able to enroll voters in the Libertarian Party as a means of building support for Libertarian Party candidates and ideas; and (3) the ability to obtain from the Secretary of State a statewide list of registered voters with party designation to facilitate

political association and organization among like-minded voters, and for use in candidate campaigns and get-out-the-vote efforts.

Maine's deadline for a political party's candidates to gather signatures and file petitions to secure a place on the June primary election ballot is March 15, 2016 (see 21-A M.R.S.A. § 334). Furthermore, in order to be able to organize effectively and mobilize support in Maine for the Libertarian Party, its ideas and its future presidential candidate in advance of the 2016 general election in November, the Plaintiffs need to be able to register and enroll voters in the Libertarian Party. Because of direct instructions given by the Secretary of State to all local election officials around the state (see Maderal Affidavit at ¶¶16-20 and Exhibits D and E thereto), no Maine voter is allowed to register or enroll as a member of the Libertarian Party absent intervention from this Court. Likewise, the several thousand Maine voters once duly enrolled in the Libertarian Party – and stripped of that status by the Defendants in December of 2015 (Maderal Affidavit at ¶¶16-20 and Exhibits D and E thereto) will not regain their status absent direct intervention by this court. Moreover, such judicial intervention will do the Plaintiffs little good unless it occurs sufficiently in advance of this year's primary and general elections. Suffice it to say the harm to the Plaintiffs and their constitutionally protected rights described at length herein is not yet irreparable, but within a matter of a few months will become irreparable.

As the United State Supreme Court has held, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976). Absent the injunctive relief sought by the Plaintiffs, the exclusion of the Libertarian Party from participation in Maine's 2016 elections would serve to

unconstitutionally deprive the Party, thousands of its members, and the Maine electorate at large of fundamental first amendment freedoms which cannot be restored thereafter.

IV. THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST COUNSEL IN FAVOR OF GRANTING PLAINTIFFS INJUNCTIVE RELIEF.

Prudential considerations also weigh heavily in favor of granting Plaintiffs injunctive relief. In the absence of a preliminary injunction, Plaintiffs' rights of expression and association will be "heavily burdened" by their inability to band together to nominate, promote and vote for candidates who reflect their policy preferences on contemporary issues in the 2016 general election. *See Anderson* v. *Celebreeze*, 460 U.S. at 787-88 (citations omitted). By contrast, none of the Defendants will be unduly burdened by the injunctive relief enabling the Libertarian Party to qualify for full participation in Maine's 2016 elections. The balance of hardships thus weighs in favor of granting the injunctive relief sought herein. *Nieves-Marquez, supra*, 353 F.3d at 120

For this reason as well, there is no "friction" between the granting of injunctive relief and the public interest in this case. *Nieves-Marquez*, 353 F.3d at 120. To the contrary, the public interest weighs strongly in favor of granting such relief for the reasons, among others, that the removal of unconstitutional barriers facing the Libertarian Party of Maine and its supporters will serve protect "diversity and competition in the marketplace of ideas." *Delaney v. Bartlett*, 370 F. Supp. 2d 373, 377 (M.D.N.C. 2004) (*citing Anderson*, 460 U.S. at 794). In *Anderson*, the Supreme Court articulated the profound public interest at stake in ballot access cases:

> 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. *Illinois Elections Bd. v. Socialist Workers Party, supra,* 440 U.S., at 186, 99 S.Ct., at 991; *Sweezy v. New Hampshire,* 345 U.S. 234, 250–251, 77 S.Ct. 1203, 1211–1212, 1 L.Ed.2d 1311 (1957) (opinion of Warren, C.J.). In short, the primary values protected by the First Amendment —"a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan,* 376 U.S. 254, 270, 84 S.Ct. 710, 720, 11 L.Ed.2d 686

(1964)—are served when election campaigns are not monopolized by the existing political parties.

Anderson, 460 U.S. at 793-794.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that this Court grant their Motion for a Preliminary Injunction, compelling the Defendants to take all such actions as are necessary to allow the Libertarian Party of Maine and its supporters to enroll voters in its ranks and qualify as a political party in Maine, to participate in the primary election and nominate Libertarian Party candidates for placement on the general election ballot, to secure a place for its presidential candidate on the general election ballot, and to enjoy the litany of other rights and privileges accorded to qualified parties and their supporters in the political and electoral sphere under Maine law.

Dated at Portland, Maine this 27th day of January, 2016.

/s/ John H. Branson

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