

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GREEN PARTY OF GEORGIA )  
and CONSTITUTION PARTY OF )  
GEORGIA, )

Plaintiffs, )

v. )

BRIAN KEMP, GEORGIA )  
SECRETARY OF STATE, )

Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO.  
1:12-CV-1822-RWS

Plaintiffs' Brief In Response to Defendant's Motion for Summary Judgment

I. A "Modicum of Support" is Not the Equivalent of "Substantial Support"

Defendant quotes *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986), that "States may condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office." Defendant Brian Kemp's Br. in Supp. of Mot. for Summ. J., Doc. 75-2 ("Def.'s Br."), p. 8. In a footnote, however, and in an effort to equate "modicum of support" with "substantial support," Defendant quotes *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983), that States have an "undoubted right to require candidates to make a preliminary showing of

*substantial support* in order to qualify for a place on the ballot . . . .” Def.’s Br., p. 8 n.8 (emphasis added by Defendant). However, Defendant omits the remaining part of the sentence, which provides that substantial support is required “because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates.” *Anderson*, 460 U.S. at 788 n.9. Thus, a “lack of substantial support” is the equivalent of “frivolous” and a candidate with a modicum of support is by definition not frivolous.<sup>1</sup>

*Munro* involved a special election for U.S. Senate in which the candidate of the Socialist Workers Party got only 596 votes in the primary election and did not meet the requirement of receiving at least 1% of the votes cast in the primary to be placed on the general election ballot. 479 U.S. at 192 & n.9. There is a substantial difference in the support the Socialist Workers Party candidate received and the support Plaintiffs’ candidates have received. In 2000, Georgia held a special election for U.S. Senate in which any candidate who paid the filing fee could appear on the general election ballot with no petition needed. The Green Party U.S. Senate candidate, Jeff Gates, appeared on the November ballot and received 21,249 votes.

---

<sup>1</sup> “Modicum” is defined as “a small amount or portion: bit.” *Webster’s New World Dictionary of the American Language* (The World Publishing Co.: New York & Cleveland, 1970). To equate “modicum” with “substantial” would thus be contrary to the dictionary’s definition of modicum.

Aff. of Richard Winger, May 21, 2012, Doc. 7-4 (“2012 Winger Aff.”), ¶ 6. Gates thus received a modicum of support and his candidacy was clearly not frivolous. For this and other reasons discussed below, Defendant is erroneous in concluding that “Plaintiffs, political bodies, have failed to demonstrate anything more than a handful of adherents.” Def.’s Br., p. 8.

## II. A Challenge to Georgia’s Petition Requirement Is not Barred by Prior Court Decisions

Defendant, citing *Jenness v. Fortson*, 403 U.S. 431 (1971); *McCrary v. Poythress*, 638 F.2d 1308 (5th Cir. 1981); *Cartwright v. Barnes*, 304 F.3d 1138 (11th Cir. 2002); and *Coffield v. Kemp*, 599 F.3d 1276 (11th Cir. 2010), claims that Georgia’s petition statute “has been repeatedly upheld” by federal courts. Def.’s Br., p. 10. The court of appeals, however, in reversing and remanding the decision of the district court in this case, held that “this case is distinguishable from our past decisions.” *Green Party of Ga. v. Georgia*, 551 F. App’x 982, 984 (11th Cir. 2014). Instead of applying a “litmus-paper test,” a court must apply the three-step test laid out in *Anderson*, 460 U.S. at 789, and *Bergland v. Harris*, 767 F.2d 1551, 1553-54 (11th Cir. 1985).

[It] must first “evaluate the character and magnitude of the asserted injury to rights protected by the First and Fourteenth Amendments. Second, it must identify the interests advanced by the State as justifications for the burdens imposed by the rules. Third, it must

evaluate the legitimacy and strength of each asserted state interest and determine the extent to which those interests necessitate the burdening of the plaintiffs' rights."

*Green Party*, 551 F. App'x at 983 (quoting *Bergland*, 767 F.2d at 1553-54).<sup>2</sup> In *Bergland*, the district court dismissed an action challenging Georgia's then 2.5% petition signature requirement for Presidential candidates, but the court of appeals in vacating and remanding held that past decisions "do not foreclose the parties' right to present the evidence necessary to undertake the balancing approach outlined in *Anderson*." 767 F. 2d at 1554. Nothing in prior court decisions is a bar to Plaintiffs' present challenge.<sup>3</sup>

In addition, none of the plaintiffs in *Jenness* were Presidential candidates, but candidates for Governor and the U.S. House of Representatives. In *Cartwright* and

---

<sup>2</sup> Georgia essentially acknowledged that the 5% signature requirement for statewide offices upheld in *Jenness* was excessive by subsequently reducing it to 2.5%, *Bergland*, 767 F.2d at 1553 n.3, and then to its current 1%.

<sup>3</sup> As Plaintiffs have previously noted, courts have invalidated a variety of petition requirements, many of them far less onerous than Georgia's. *See, e.g., Citizens to Establish a Reform Party in Ark. v. Priest*, 970 F. Supp. 690, 691, 698-99 (E.D. Ark 1996) (invalidating a requirement of 21,505 signatures to form a new party); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 595 (6th Cir. 2006) (invalidating an early petition deadline requiring 32,290 signatures); *Nader v. Brewer*, 531 F.3d 1028, 1031 (9th Cir. 2008) (invalidating Arizona's independent Presidential petition procedure requiring 14,694 signatures due in June); *McLain v. Meier*, 637 F.2d 1159, 1161, 1170 (8th Cir. 1980) (invalidating a requirement of 15,000 signatures for newly qualifying parties).

*Coffield*, the challenges were to 5% petition requirements for congressional elections, and in *McCrary*, 638 F.2d at 1309, the plaintiffs were the nominees “for various Georgia elective offices.”<sup>4</sup> As the court of appeals in this case noted, “a state’s interest in regulating a presidential election is less important than its interest in regulating other elections because the outcome of a presidential election ‘will be largely determined by voters beyond the State’s boundaries’ and ‘the pervasive national interest in the selection of candidates for national office . . . is greater than any interest of an individual state.’” *Green Party*, 551 F. App’x at 984 (quoting *Anderson*, 460 U.S. at 795).<sup>5</sup> As the court of appeals held, “none of the cases Georgia referenced considered ballot access for a presidential election.” *Green Party*, 551 F. App’x at 983. That is another reason the cases relied upon by Defendant have little if any precedential value.

Defendant argues that “statements that no party or independent candidate has

---

<sup>4</sup> In *Cartwright*, 304 F.3d at 1140, the petition requirement for a congressional candidate was 14,846 signatures, significantly lower than the 50,334 signatures required for a Georgia Presidential candidate. App’x to Aff. of Richard Winger, Sept. 10, 2015, Doc. 76-3 (“2015 Winger Aff.”), p. 4.

<sup>5</sup> Defendant, citing *Pisano v. Strach*, 743 F.3d 927, 937 (4th Cir. 2014), contends that “states maintain an interest in regulating presidential elections.” Def.’s Br., p. 22. But *Pisano* also expressly provides that a state has a “less important interest in regulating Presidential elections than statewide or local elections.” 743 F.3d at 937 (quoting *Anderson*, 460 U.S. at 795).

‘successfully’ petitioned to get on the general election ballot for statewide office since 1988 must be viewed in the context of the political reality that the Libertarian Party does not *need* to file petitions.” Def.’s Br., p. 13. The argument, however, provides no evidence that having to file petitions to get on the ballot is not unduly burdensome. In addition, actually appearing on a ballot and with a party label, as do the candidates of the Libertarian Party, necessarily increases the likelihood of voter support. Candidates who can only appear on the ballot as write-ins necessarily receive far lower levels of voter support or voter recognition.

### III. Plaintiffs Do Have a Modicum of Support

Defendant argues that the Georgia Green Party and Constitution Party of Georgia “do not have a modicum of support.” Def.’s Br., p. 11. To support its argument, Defendant says no Georgia Green Party or Constitution Party of Georgia candidates, unlike Libertarian and/or Independent candidates, “have ever qualified by petition for a state legislative district.” *Id.*, p. 14. First, Plaintiffs do not challenge the petition requirement for state legislative districts, but only the petition requirement for access to the Presidential ballot.

Second, the burdens of qualifying by petition for a state legislative district are less than for the office of President. For non-statewide elections, a candidate not affiliated with a recognized political party must present a petition with signatures

from 5% of the total number of registered voters in the state eligible to vote in the particular election. O.C.G.A. § 21-2-170(b). For a Georgia senate district containing 103,043 registered voters, an independent candidate would need to submit a petition containing approximately 5,153 signatures. For a Georgia house district containing 26,884 registered voters, an independent candidate would need to submit a petition containing approximately 1,345 signatures. But a Presidential candidate not affiliated with a recognized political party must present a petition with substantially more signatures (50,334) than an independent candidate for state legislative offices. The fact that independent candidates have occasionally qualified for state legislative districts does not undermine in any way the heavy burdens imposed by Georgia's petition requirement for independent Presidential candidates.<sup>6</sup>

Third, the Georgia Green Party has in fact qualified its candidates by petition

---

<sup>6</sup> Defendant has listed 24 instances from 1988 to 2014 in which Libertarian or Independent candidates petitioned successfully to get on the November ballot for state legislative office. Def.'s Statement of Material Facts Not in Dispute, Doc. 75-1, pp. 2-7. During this period, 14 regularly scheduled elections were held to fill the 236 House and Senate seats, for a total of 3,304 seats. (There are 56 Senate seats and 180 House seats in the Georgia General Assembly, O.C.G.A. § 28-1-1, all the members of which are elected for terms of two years, Ga. Const. art. III, § II, para. V.) Thus, in 3,280 (3,304 - 24 = 3,280), or 99.3%, of these elections for legislative seats, there have been no minor party or independent candidates qualifying for the

for non-statewide offices. In 2002, the Georgia Green Party collected thousands of signatures for its Georgia slate and succeeded in placing its candidate Zack Lyde on the ballot for the Glynn County School Board and its candidate Ed Vaughn on the ballot for the Clarke County Commission. Vaughn got 8% of the votes and Lyde got 30.2% of the votes. Aff. of Hugh Esco, May 24, 2012, Doc. 7-1 (“2012 Esco Aff.”), ¶ 15; Aff. of Hugh Esco, Oct. 20, 2015, Doc. 76-6 (“2015 Esco Aff.”), ¶ 41. The Green Party and its candidates clearly have received a modicum of voter support.

That Plaintiffs have a modicum of support is further evident from their collection of signatures. The Georgia Green Party has been reasonably diligent in seeking signatures and has participated in ballot access petition drives to place its candidates on Georgia ballots in 1998, 2000, 2002, 2004, 2008, 2010, and 2012. 2012 Esco Aff., Doc. 7-1, ¶ 4; Green Party of Ga.’s Answers to Def.’s 1st Interrogs., Doc. 75-15 (“Green Party Answers”), pp. 6, 8-9. In 1998, the Party, using 30-50 circulators and educating the public about the Party, set out on a concerted effort to collect signatures for four of its candidates for statewide offices. It collected more than 13,000 signatures, but having failed to collect the required

---

ballot by petition. Petitioning in Georgia, even for legislative seats, is not as easy as Defendant suggests.

39,000 valid signatures, the four candidates had no option but to run as write-ins. 2015 Esco Aff., Doc. 76-6, ¶¶ 2-4. Green Party activists began circulating nominating petitions for the 2000 elections by the summer or fall of 1999. *Id.*, ¶ 21. The Party collected some 9,000 signatures to place their Presidential candidate on the ballot, but fell short of the nearly 39,094 required. *Id.*, ¶ 51; 2015 Winger Aff., Doc. 76-3, App'x p. 4. For the 2002 election, the Green Party collected nearly 7,000 signatures. Green Party Answers, Doc. 75-15, p. 6. For the 2004 election, the Green Party collected nearly 3,000 signatures. *Id.*, p. 8. For the 2008 election, the Green Party collected nearly 2,000 signatures. *Id.* For the 2010 election, the Green Party collected nearly 3,000 signatures, and for the 2012 election, the Green Party collected about 4,000 signatures. *Id.*, p. 9.

Hugh Esco says the chairman of the Green Party this year has been active for months getting a commitment of out-of-state resources to assist the Green Party with its efforts for securing a statewide ballot line for the party's 2016 Presidential slate. According to Esco: "We are now preparing to mount our most vigorous ballot access petition drive in years in preparation for the 2016 Presidential election." 2015 Esco Aff., Doc. 76-6, ¶ 51.

Nationwide, the Green Party of the United States has run more than 400 candidates in a single year and approximately 150 of its candidates hold office at

any one time. As of 2012, 133 served in 22 states and the District of Columbia.

2012 Esco Aff., Doc. 7-1, ¶ 6.

In further support of its argument that Plaintiffs do not have a modicum of support, Defendant claims that the Constitution Party of Georgia “has never submitted a nomination petition to the Secretary of State’s Office.” Def.’s Br., p. 16. However, Defendant concedes that the “U.S. Taxpayer’s Party, the predecessor to the Constitution Party, did collect approximately forty thousand (40,000) signatures in three weeks during a 1996 ballot effort.” *Id.*, p. 16 n.18. Defendant further concedes that: the Constitution Party of Georgia collected 1,000 signatures in 2000 in support of its nominating petition; collected some 2,000 signatures in 2004 in support of its nominating petition; and collected approximately 1,000 signatures in 2008 in support of its nominating petition. *Id.*, pp. 16-17; *see* Constitution Party of Ga.’s Answers to Def.’s 1st Interrogs., Doc. 75-16, pp. 2-3. The facts that the Georgia Green Party has collected signatures and placed its candidates on local election ballots and that the Constitution Party of Georgia’s has collected signatures demonstrate that Plaintiffs do have a modicum of support.

Defendant seeks further to support its argument by saying that “the Georgia Green Party is having an internal struggle on how to grow its party.” Def.’s Br.,

p. 15. But as past and current Presidential debates dramatically demonstrate, political parties have always had internal “struggles” about their party’s goals and how to advance them, including the candidates they should support. The fact that such internal debates exist among political parties and bodies does not hamper Plaintiffs’ efforts to collect signatures but instead it is the burdens imposed upon Plaintiffs by Georgia’s Presidential petition requirement. As Esco explained, the Green Party “has suffered significantly from a phenomena known in the field as ‘petitioning-fatigue’, which describes the tendency of an independent political party which year after year is more often than not unable to successfully place its candidates on the ballot and before the voters finds it ever more difficult to summon up the energy to collect the required signatures.” 2012 Esco Aff., Doc. 7-1, ¶ 22.

Defendant also says an additional example of the Constitution Party’s lack of support is that “average attendance at the Constitution Party of Georgia’s annual conventions has been fifty people or less.” Def.’s Br., p. 17. But the number of people attending a party’s annual convention is irrelevant to its claim that the State’s petition requirement imposes undue burdens. In *Williams v. Rhodes*, 393 U.S. 23, 28 (1968), the co-plaintiff was the Socialist Labor Party which had a membership of 108 people. Despite that small number, the Court held Ohio’s restrictive ballot access laws “imposes a burden on voting and associational rights

which we hold is an invidious discrimination, in violation of the Equal Protection Clause.” *Id.* at 34. In addition, one of the critical reasons a party may have a modest size is because of the burdens imposed by a state’s restrictive ballot access laws. If a party can’t get on the ballot, it will necessarily not get broad recognition and support. It is not the size of a party but the restrictions placed on its participation in the political process that is important. In *Moore v. Ogilvie*, 394 U.S. 814, 815 (1969), the plaintiffs were a slate of independent candidates for Presidential electors. They obviously had little or no support since they were unpledged to any candidate. The Supreme Court, however, invalidated the Illinois petition requirement the plaintiffs challenged as violating the Fourteenth Amendment because of the burdens it imposed. Again, it is the burdens imposed by restrictions, and not the size of the group affected, that is critical.

The national support of the Green Party and the Constitution Party is evident from the vote totals they have received in Presidential elections. In 2008, the Green Party total for its candidate Cynthia McKinney was 161,797, and the Constitution Party total for its candidate Chuck Baldwin was 199,750. Federal Election Commission, *Federal Elections 2008* (July 2009), p. 5, <http://www.fec.gov/pubrec/fe2008/federalelections2008.pdf>. In 2012, the Green Party total for its candidate Jill Stein was 469,627, and she came in fourth. Federal

Election Commission, *Federal Elections 2012* (July 2013), p. 5,

<http://www.fec.gov/pubrec/fe2012/federalelections2012.pdf>. The 2012

Constitution Party candidate Virgil Goode received 122,389 votes and came in fifth. *Federal Elections 2012*, p. 5.

#### IV. Independent Parties Have Played Significant Roles in Our Nation's History

In resolving issues of ballot access, a court should take into account the important role third parties have played in our development as a country.

According to *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S.

173, 185-86 (1979): “The States’ interest in screening out frivolous candidates must be considered in light of the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success.” Plaintiffs in ballot access challenges have an importance beyond themselves and demonstrate the problems future parties and candidates will have in being blocked from the ballot by burdensome state laws. In this case, it is apparent that Georgia’s strategy is to attack the individual Plaintiffs as lacking support because it knows the State has no real or independent interest in requiring so many signatures for access to the Presidential ballot.

V. Georgia's Presidential Petition Requirement is Not Narrowly Tailored to Advance Compelling State Interests

Defendant contends that Georgia's Presidential petition requirement was "enacted . . . to limit ballot confusion and overcrowding in the general election." Def.'s Br., p. 20. The evidence, however, shows conclusively that a requirement of 50,334 signatures is not necessary to limit ballot confusion and overcrowding in the general election.

Plaintiffs have addressed this issue in their brief in support of their motion for summary judgment, Doc. 76-1, pp. 33-39, which is incorporated herein by reference thereto, and is briefly summarized below. In the 21 years (1922-1943) in which an independent or minor party candidate could get on the ballot in Georgia without any petition, there were no Presidential elections in Georgia with more than five candidates on the general election ballot. The 1924, 1932, and 1936 ballots had five Presidential candidates. The 1928 and 1940 ballots had four Presidential candidates. 2012 Winger Aff., Doc. 7-4, ¶ 7. Georgia has never suffered from an overcrowded general election ballot for President or resulting voter confusion.<sup>7</sup>

Not counting the Democratic and Republican nominees, the average number

---

<sup>7</sup> As Justice Harlan noted in his concurrence in *Williams*, 393 U.S. at 47, "the presence of eight candidacies cannot be said, in light of experience, to carry a significant danger of voter confusion."

of Presidential candidates in Georgia from 1968-1988 was eight-tenths (0.8) of a candidate, and the average number from 1992-2012 was 1.5 candidates. No state had fewer candidates on its ballot from 1968-1988, and only Oklahoma had fewer candidates from 1992-2012. Suppl. Aff. of Richard Winger, Doc. 34-1 (“Winger Suppl. Aff.”), ¶ 6. The burdens imposed upon Plaintiffs by Georgia’s petition signature requirement are severe.<sup>8</sup>

The State’s signature requirement is not necessary to prevent ballot overcrowding. During the four Presidential elections between 2000 and 2012, there were 21 states plus the District of Columbia with a petition requirement of between 2,500 and 10,000 signatures. In only one case during this period did any of these states have more than seven candidates on the general election ballot. The average number of candidates on the ballot for each of these states between 2000 and 2012 ranged between 3.75 and 6.5, and the overall average for these states during the same period was 5.3 candidates. Aff. of Tom Yager, Nov. 9, 2015, Doc. 76-4 (“Yager Aff.”), ¶ 5. According to Richard Winger, “[i]t is obvious from the

---

<sup>8</sup> Defendant contends “the burden of collecting petition signatures” is lessened by the fact that “a political body has *fifteen (15) months* to collect petition signatures. O.C.G.A. § 21-2-182.” Def.’s Br., pp. 17-18 (footnote omitted). But Defendant fails to add that independent and political body candidates submitting a petition pursuant to O.C.G.A. § 21-2-170(b) have only six (6) months to collect petition

extensive historical record that if the state interest in a petition requirement is to keep the ballot from being too crowded, the 50,000 requirement is wildly excessive.” 2015 Winger Aff., Doc. 76-3, ¶ 6.

It is only when petition requirements are 2,000 or fewer signatures that the number of Presidential candidates on the general election ballot increases significantly. Even in the 11 states with a requirement of between 275 and 2,000 signatures, the overall average number of candidates is 7.5, and the number of candidates never exceeds 10 on any general election ballot between 2000 and 2012. Yager Aff., Doc. 76-4, ¶ 7.

Because Georgia’s petition signature requirement imposes heavy constitutional burdens, that application must be narrowly tailored to advance “a compelling state interest.” *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969); accord, *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (when a law places “severe” burdens on First and Fourteenth Amendment rights, “the regulation must be ‘narrowly drawn to advance a state interest of compelling importance.’” (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992))); *Ill. State Bd. of Elections*, 440 U.S. at 184; *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

---

signatures. O.C.G.A. § 21-2-170(e). The burdens imposed by O.C.G.A. § 21-2-170(e) are not lessened in any way by O.C.G.A. § 21-2-182.

The Supreme Court has further made it clear that “if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose ‘less drastic means.’” *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972) (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)); accord, *Ill. State Bd. of Elections*, 440 U.S. at 185 (“we have required that States adopt the least drastic means to achieve their ends . . . . where restrictions on access to the ballot are involved”). Georgia, by the same token, must choose a signature requirement that has a less drastic impact upon independent or political body Presidential candidates.

A court may not accept at face value any justification a state may give for a practice that significantly impinges on constitutionally protected rights. *See Williams*, 393 U.S. at 33 (no “theoretically imaginable” or “remote danger” of overcrowding “can justify the immediate and crippling impact on the basic constitutional rights involved in this case”). Rather: “When we consider constitutional challenges to specific provisions of a State’s election laws, we cannot speculate about possible justifications for those provisions. The court ‘must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by the rule.’” *Reform Party of Allegheny Cty. v. Allegheny Cty. Dep’t of Elections*, 174 F.3d 305, 315 (3d Cir. 1999) (quoting *Anderson*, 460

U.S. at 789); *accord*, *Libertarian Party of Ohio*, 462 F.3d at 593 (“Reliance on suppositions and speculative interests is not sufficient to justify a severe burden on First Amendment rights.”); *McLain*, 637 F.2d at 1165 (“The remote danger of multitudinous fragmentary groups cannot justify an immediate and crippling effect on the basic constitutional right to vote for a third party candidate.”). Defendant’s justification of its signature requirement is not based upon facts or actual need but on speculation and does not meet the test of constitutionality.<sup>9</sup>

Defendant also contends, citing the concurring opinion of Justice Rehnquist in *Bush v. Gore*, 531 U.S. 98, 112 (2000), that Article II, section 1, clause 2 of the U.S. Constitution “‘leaves it to the legislature exclusively to define the method’ of appointment [of Presidential electors].” Def.’s Br., p. 23. But nothing in Article II, section 1, clause 2 or the rest of the Constitution give states the power to unduly burden the constitutional rights of political bodies and independent candidates to access the ballot. *Bush* also provides that: “When the state legislature vests the right to vote for President in its people, the right to vote as

---

<sup>9</sup> Defendant also argues that because “Plaintiffs have brought a facial challenge, the State’s interest in minimizing run-off elections is relevant.” Def.’s Br., p. 23 n.29. But as Plaintiffs make clear in their complaint, the challenge is to the petition requirement for Presidential elections for which no runoff is required. Complaint, Doc. 1, p. 5, ¶ B (seeking a declaration “that the Georgia statutory requirements impose an unjustifiable burden on minor party presidential candidates”).

the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.” 531 U.S. at 104. Since Georgia has vested the right to vote for President in its people, that right is fundamental and may not be unduly burdened by onerous ballot access requirements imposed upon certain voters. In a related case, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832-33 (1995), the Court held: “The Framers intended the Elections Clause to grant States authority to create procedural regulations, not to provide States with license to exclude classes of candidates from federal office.” By the same token, nothing in Article II, section 1, clause 2 gives Georgia the right to exclude classes of candidates from Presidential office or unduly burden their access to the Presidential ballot.

### CONCLUSION

Defendant’s motion for summary judgment is without merit and should be denied.

This 2d day of February 2016.

Respectfully submitted,

s/M. Laughlin McDonald

---

M. Laughlin McDonald  
Georgia Bar #489550

American Civil Liberties Union  
Foundation  
2700 International Tower  
229 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
Lmcdonald@aclu.org

J. M. Raffauf  
Georgia Bar #591762  
248 Washington Avenue  
Marietta, Georgia 30060  
RaffaufMike@gmail.com

Attorneys for Plaintiffs

Certificate of Service

I hereby certify that on this 2d day of February, 2016, I electronically filed the foregoing brief with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

Julia B. Anderson  
Senior Assistant Attorney General  
janderson@law.ga.gov

Cristina Correia  
Assistant Attorney General  
ccorreia@law.ga.gov

s/ M. Laughlin McDonald  
M. Laughlin McDonald  
Attorney for Plaintiffs

Certificate of Compliance

I hereby certify that this brief was prepared in Microsoft Word 2010 using 14-point Times New Roman font in compliance with Local Rule 5.1(C).

s/ M. Laughlin McDonald  
M. Laughlin McDonald  
Attorney for Plaintiffs