UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 15-2068

LIBERTARIAN PARTY OF NEW HAMPSHIRE,

Plaintiff – Appellant,

v.

WILLIAM M. GARDNER, NH Secretary of State, in his official capacity,

Defendant – Appellee.

On Appeal from the U.S. District Court for the District of New Hampshire

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BRIEF OF AMICI CURIAE LIBERTARIAN ASSOCIATION OF MASSACHUSETTS, GREEN-RAINBOW PARTY, UNITED INDEPENDENT PARTY, MAINE GREEN INDEPENDENT PARTY AND MODERATE PARTY OF RHODE ISLAND

IN SUPPORT OF APPELLANT LIBERTARIAN PARTY OF NEW HAMPSHIRE AND REVERSAL OF THE JUDGMENT

LIBERTARIAN ASSOCIATION OF MASSACHUSETTS, GREEN-RAINBOW PARTY, UNITED INDEPENDENT PARTY, MAINE GREEN INDEPENDENT PARTY and MODERATE PARTY OF RHODE ISLAND

By their Attorneys,
Mark W. Freel
LOCKE LORD LLP
2800 Financial Plaza
Providence, RI 02903
Tel: (401) 276-6681

Dated: February 25, 2015

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the Libertarian Association of Massachusetts ("LAMA") states that it is a Massachusetts affiliate of the national Libertarian Party. LAMA promotes the designation "Libertarian" in Massachusetts in accordance with M.G.L. ch. 50 §1. The Federal political action committee ("PAC") is recognized by the Federal Election Commission as a qualified party committee, and the LAMA state PAC is operated in accordance with Massachusetts law. LAMS has achieved political party status in Massachusetts in numerous past general elections, and has maintained political designation status at other times. LAMA is governed by a state committee, the members of which serve solely in their personal capacities. LAM does not issue stock or any other form of securities, and does not have a parent corporation except for its national party affiliation, as set forth above.

Pursuant to Fed. R. App. P. 26.1, the United Independent Party ("UIP") states that it is one of four (4) officially recognized political party organizations in Massachusetts in accordance with M.G.L. ch. 50 §1. Under that law, a qualified political party is a party which "at the preceding biennial state election polled for any office to be filled

by all the voters of the commonwealth at least three percent of the entire vote cast in the commonwealth for such office, or which shall have enrolled, according to the first count submitted under section thirty-eight A of chapter fifty-three, a number of voters with its political designation equal to or greater than one percent of the entire number of voters registered in the commonwealth according to said count." UIP earned political party status in Massachusetts upon the certification of the election results from the 2014 statewide election when its gubernatorial candidate earned 3.3% of the "entire vote cast in the commonwealth" for that office. UIP is governed by a state committee under Massachusetts law. The members of that committee serve solely in their personal capacities. UIP does not issue any stock or any other form of securities, and does not have a parent corporation.

Pursuant to Fed. R. App. P. 26.1, the Green-Rainbow Party ("GRP") states that it is a political party formed under M.G.L. ch. 50, § 1. As the Massachusetts affiliate of the Green Party of the United States, it has Federal legal status under FEC Advisory Opinion 2015-01 and the Federal Election Campaign Act, 52 U.S.C. 30101-46. GRP is governed by an active state committee, and a State Convention that

meets annually. The members of the State Committee serve solely in their personal capacities. GRP does not issue stock or any other form of securities, and does not have a parent corporation.

Pursuant to Fed. R. App. P. 26.1, the Maine Green Independent Party of Maine ("MGIP") states that it is a political party organized and existing in accordance with Maine law, particularly Me. Rev. Stat., Title 21-A, § 301. MGIP is governed by a state committee, the members of which serve solely in their personal capacities. MGIP does not issue stock or any other form of securities, and does not have a parent corporation.

Pursuant to Fed.R.Civ.P. 26.1, the Moderate Party of Rhode Island ("MPRI") states that it is a political party organized and existing under the laws of the State of Rhode Island. MPRI has appeared on the statewide general election ballot in Rhode Island, and has qualified for such inclusion, since 2010 pursuant to R.I. Gen Laws § 17-1-2(9). MPRI is governed by a state committee, the members of which serve solely in their personal capacities. MPRI does not issue stock or any other form of securities, and does not have a parent corporation.

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INTEREST OF AMICI CURIAE

As set forth above in the Corporate Disclosure Statement, all of the Amici participating in this brief are political parties organized and existing in accordance with the laws governing such parties in their respective states. All of them are so-called "third" political parties in the sense that they are neither Republican nor Democratic. Rather, they are competing with those traditional political parties, and are attempting to provide the electorate with alternatives. The Amici named herein are organized in accordance with governing law in the states of Massachusetts, Rhode Island and Maine, respectively, all of which are jurisdictions situated within the First Circuit.

This appeal is of concern to the Amici because the underlying decision of the U.S. District Court for the District of New Hampshire, if adopted by this Circuit, would make it more difficult for political parties other than the established Republican and Democratic parties to secure places on the electoral ballots in their respective states, and would place them at a distinct competitive disadvantage when vying for votes, funding and recognition. The Amici contend that the Judgment of the District of New Hampshire is inconsistent with certain fundamental rights of petition and association inherent in the

right to participate in the electoral process, as embodied in the First and Fourteenth Amendments to the U.S. Constitution.

Moreover, the Amici seek to file this brief to alert this Court to a contrary decision in this Circuit issued by the U.S. District Court for the District of Rhode Island in 2009. *See Block v. Mollis,* 618 F. Supp. 2d 142 (D.R.I. 2009). The Amici contend that *Block* represents an approach to the subject ballot access issue that is far more consistent with the constitutional principles at risk, and which provides competing political parties with a greater and more reasonable competitive advantage in the political arena. Accordingly, Amici submit this brief to urge this Court to reverse the Judgment of the U.S. District Court for the District of New Hampshire, and instead to embrace an approach comparable to that adopted by the U.S. District Court for the District of Rhode Island in *Block* as the law of this Circuit.

ISSUES PRESENTED

Amici address the issues of (1) whether the time-based restrictions on the collection and submission of documentation to secure party inclusion on the statewide general election ballot set forth

in N.H. Rev. Stat. Ann. § 655:40-a (the "New Hampshire Statute")[1] are constitutional and consistent with certain rights of petition and association embodied in the First and Fourteenth Amendments to the U.S. Constitution, and (2) whether the First Circuit should instead adopt the approach set forth in the *Block* decision of the U.S. District Court for the District of Rhode Island as the governing standard for such requirements throughout this Circuit.

SUMMARY OF THE ARGUMENT

The U.S. Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), articulated the analysis to be employed in considering the constitutionality of state election laws and their impact on the fundamental rights of political parties, candidates and voters.

> [A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider

[1] As noted by the Appellant, the specific time-based restriction at issue here, *i.e.*, that "[n]omination papers shall be signed and dated *in the year of the election,*" was added to the statute in 2014 by New Hampshire House Bill ("HB") 1542.

> the extent to which those interests make it necessary to burden the plaintiff's rights.

Id. at 789. This is a balancing test, or sliding scale, in which the degree of scrutiny varies with the "extent of the asserted injury." *Green Party of Arkansas v. Priest*, 159 F. Supp. 2d 1140, 1143 (E.D. Ark. 2001).

At one end of that sliding scale, if the law "imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 788)). But when First and Fourteenth Amendment rights "are subjected to 'severe' restrictions, 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)); *see also Price v. New York State Bd. Of Elections*, 540 F.3d 101, 108-09 (2d Cir. 2008) (outlining the difference between pure rational basis review and the *Anderson/Burdick* sliding scale applicable here).

In *Block*, the U.S. District Court for the District of Rhode Island struck down a virtually identical statutory requirement that signatures submitted by a prospective political party seeking inclusion on a

statewide ballot had to be collected on or after January 1 of the election year. *See Block*, 618 F. Supp. 2d at 144-45, 152-56 (striking down the time-based restrictions in R.I. Gen Laws § 17-1-2(9)(iii)).[2] The *Block* Court concluded that the State of Rhode Island had offered no sufficient justification for the time limitations and that "[s]ociety is best served when political parties outside the two existing major parties play an active, 'robust' role in the entire campaign process." *Id.* at 153-54 (quoting *Anderson*, 460 U.S. at 794).[3]

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[2] In the same decision, the *Block* Court, deferring to state legislative discretion and authority, upheld a requirement that Rhode Island political parties seeking a place on the ballot submit signatures equal to 5% of the turnout from the last preceding general election, even though that threshold is higher than the one at issue in the instant appeal, and even though the *Block* Court acknowledged that the 5% barrier "is among the most difficult in the United States." *Id.* at 149-50. Amici respectfully submit that this reflects a careful balancing of legitimate state regulatory interests against the impact of unjustifiable burdens on compelling constitutional rights.

[3] The undersigned counsel for Amici represented the plaintiff Moderate Party of Rhode Island in the *Block* case, and was acting in that case as a Cooperating Attorney for the Rhode Island affiliate of the American Civil Liberties Union ("ACLU"). Although the New Hampshire affiliate of the ACLU sponsored the underlying litigation in the instant case, the undersigned counsel is acting independently in this action on behalf of the Amici named herein. Those Amici include the same Moderate Party of Rhode Island that was a plaintiff in the *Block* case. Neither the Appellant in this appeal, nor its counsel, nor any other individual or entity other than the Amici and their counsel, have authored this brief or participated in its preparation. Moreover,

-Continued on next page-

Conversely, the District of New Hampshire in the instant case reached a diametrically opposite result on virtually the same facts – and certainly with the same compelling constitutional principles at stake. Unlike the *Block* Court, the District of New Hampshire found an attenuated and indefensible link between an arbitrary time line that eliminates an entire calendar year and the "sufficient modicum of support" required by the Supreme Court's jurisprudence. *See Jenness v. Fortson*, 403 U.S. 431, 442 (1971); s*ee also* Add. at 95-96. The practical effect is to place political parties other than the Democratic and Republican parties on the sidelines for a full calendar year between election cycles, and to impermissibly infringe upon their ability to gain needed recognition and compete on a level playing field. The District of New Hampshire struck the critical balance between ballot access and state regulation in the wrong way, and thereby denied Appellant and other similarly situated groups – such as Amici and their actual and prospective supporters – certain fundamental constitutional rights.

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no other parties have made any monetary contribution toward the preparation and submission of this brief. The foregoing statement is made in satisfaction of Fed. R. App. P. 29(c)(5).

ARGUMENT

I. Fundamental Rights Are At Stake

The U.S. Supreme Court has specifically held that fundamental rights of association and voting extend to political parties:

> The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. In determining whether the State has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that (only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms.)

Williams v. Rhodes, 393 U.S. 23, 31 (1968) (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)); see also *Norman v. Reed*, 502 U.S. 279, 288 (1992) ("For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties."); *Block* 618 F. Supp. 2d at 148. Hence, constitutional rights of the highest order are at stake in the political process and where access to the ballot is at issue.

The Supreme Court has also made clear third political parties have played a "significant role … in the political development of the

Nation." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-186 (1979). Thus, where "an election campaign is a means of disseminating ideas as well as attaining political office[,] ... [o]verbroad restrictions on ballot access jeopardize this form of political expression." *Id.* Indeed, as the U.S. Supreme Court explained in *Anderson v. Celebrezze*, any arguable governmental interest in the stability of our political system does not extend so far as to permit a state to protect existing parties from competing with independent or third-party candidates. 460 U.S. at 801-02. Rather, "[s]ociety is best served when political parties outside the two existing major parties play an active, 'robust' role in the *entire* campaign process—not simply appear on the final election ballot." *Block* 618 F. Supp. 2d at 153-54 (quoting *Anderson*, 460 U.S. at 794) (emphasis added).

II. The New Hampshire Statute Imposes Severe Burdens on Those Fundamental Rights, Thereby Triggering Strict Scrutiny

The time-based restriction on the collection of signatures for inclusion on the statewide election ballot at issue in this case, as reflected in the New Hampshire Statute, places severe burdens on any aspiring political party and could cripple that party's ability to qualify

for placement on the ballot. Thus, strict scrutiny should apply. *See Blackwell*, 462 F.3d at 593 ("There are few greater burdens that can be placed on a political party than being denied access to the ballot. In this case, the combination of the laws challenged by the LPO acted to impose just such a burden."). In *Block*, the MPRI challenged a virtually identical January 1 start date for collecting signatures. *Block*, 618 F. Supp. 2d at 144. That start date would have given MPRI just 201 days to gather the required 23,588 signatures of registered voters, which prompted the party to bring a declaratory judgment action similar to the one filed in the instant case below. *Id.* at 147.[4]

Although the *Block* Court did not formally decide whether the law before it imposed a "severe" burden, it did find that the virtually identical start date embodied in Rhode Island law created an "enormous speedbump on the path to party recognition" that could not

[4] The "Rhode Island scheme is probably the most onerous in the nation," *Block*, 618 F. Supp. 2d at 151 n. 11, and nearly identical—201 days versus 210 days—to the time restrictions embodied in the New Hampshire Statute. *See* 50-State Survey (JA 189-92) (indicating that the New Hampshire law is also among the most burdensome in the nation concerning the start date for obtaining party-wide ballot access).

pass muster under any level of scrutiny." *Id.* at 151. The same is true here for multiple reasons.

A. The January 1 Start Date Severely Burdens the Party By Compressing the Time Frame to Collect Nomination Papers and by Forcing Third Parties to "Sit on the Sidelines For a Full Year.

The January 1 start date imposed by the New Hampshire Statute severely burdens Appellant and other aspiring third parties, such as Amici, by compressing the time period for collection of signatures from 21 months down to as little as seven (7) months. But, in reality, this compressed time period is even much shorter than seven (7) months. For example, given New Hampshire's harsh winter months, petitioning cannot begin in earnest until mid-March at the earliest because the more efficient places for successful, high-volume petitioning are outside. *See Jones v. McGuffage*, 921 F. Supp. 2d 888, 897, 900 (N.D. Ill. 2013) ("plaintiffs have made a credible case that the 15,682 signature requirement could not be met in this 62-day period" for a special election where "the signature-gathering period encompassed December and January—months during which weather in the Chicago area is particularly inclement and in which there are a dearth of large scale, outdoor, public events during which signature drives are most successful"); *Kelly v. McCulloch*, No. CV–08–25–

BU–SHE, 2012 WL 1945423, at *5 (D. Mont. May 25, 2012) (deadline to submit petitions burdensome where it, in part, required individuals "to do their signature gathering and early campaigning in late fall and winter, when the weather in Montana is often inclement"); *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F. Supp. 690, 698 (E.D. Ark. 1996) ("Even the influence of inclement weather is recognized as a rationale for finding early petition filing deadlines unconstitutional.").

Arbitrary time restrictions like those at issue here, and in *Block*, also force aspiring third political parties to "sit on the sidelines" for the entire odd-numbered year before a general election year. *Block*, 618 F. Supp. 2d at 150 (noting that the analogous Rhode Island law requires the Moderate Party to "sit on the sidelines" for a full calendar year before the collection period commences on January 1). Instead, those parties should be able to use that time to organize, build support, fund-raise, and engage in other "off-season" activities. *See Anderson*, 460 U.S. at 792 ("When the primary campaigns are far in the future and the election itself is even more remote, the obstacles facing an independent candidate's organizing efforts are compounded. Volunteers are more difficult to recruit, retain, media publicity and

campaign contributions are more difficult to secure, and voters are less interested in the campaign."); *see also Kelly*, 2012 WL 1945423, at *5-6 (deadline to submit petitions burdensome, in part, where it required party "to begin campaigning prior to the March petition deadline when voters are less interested, while the qualified party candidates 'do virtually all of their campaigning in the Spring and Summer' prior to the primary and general elections, when voter interest is higher").

B. The January 1 Start Date Severely Burdens the Party's Ability to Campaign and Electioneer During the General Election Year.

The artificial January 1 trigger date also puts third, or non-traditional, political parties at a distinct disadvantage during the general election year. The law effectively compels the Party to complete the petitioning process in months that are critical to the general election, when the major parties are already engaged in fundraising and electioneering. *See Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 592 (6th Cir. 2006) ("The LPO does not aspire simply to assemble in public meeting places and engage in speech activities that further their beliefs .... *[T]he goal of a political*

party and its supporters is to govern. A party cannot lead if not elected and cannot be elected if not on the ballot.") (emphasis added).

In *Block*, the District of Rhode Island concluded that the Rhode Island law "hamper[ed] the ability of a political organization to compete in a meaningful way in an election year leading up to the actual election date." *Block*, 618 F. Supp. 2d at 152 (noting the "minor" party's contention that "Plaintiffs will be collecting signatures during this crucial period; by the time they get done, it will be too late to do much recruiting, fundraising and electioneering"). "Historically, so much of the value of a minor party lies in what it can do *before an election*: spark debate, introduce new ideas, educate voters, and challenge the status quo." *Id.* at 153 (emphasis added).

The petitioning process is neither a replacement for nor an equivalent to campaigning. While campaigning often requires time-consuming interactions with voters in which candidates can answer policy questions, petitioning for ballot access is a quicker and more superficial interaction in which the petitioner simply asks a registered voter for support or a signature. By forcing these organizational burdens on an aspiring third political party during the election year, the New Hampshire Statute, and other laws like it, place those parties

at a distinct competitive advantage when the major political parties already enjoy so many other substantial advantages.

C. The Severe Burdens Imposed By the New Hampshire Statute Are Not Lessened By The Existence of Alternatives.

Finally, the existence a process whereby an individual candidate can collect a lower threshold of nomination papers in the hope of establishing "party" status in a future election does not insulate the New Hampshire Statute from constitutional scrutiny. Courts have repeatedly rejected any such argument. *See, e.g., McLain v. Meier*, 637 F.2d 1159, 1165 (8th Cir. 1980) ("A candidate who wishes to be a party candidate should not be compelled to adopt independent status in order to participate in the election process."); *Blackwell*, 462 F.3d at 592 (same); *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F. Supp. 690, 699 (E.D. Ark. 1996) ("Such an arbitrary classification makes it unreasonably difficult for proponents to advance new political parties while allowing independent candidates to be placed on the ballot with even less public support."); *Block,* 618 F. Supp. 2d at 152-54 (dismissing this argument and noting that a path to ballot inclusion for individual

independent candidates is not a substitute for providing a constitutional path for party recognition).

III. There Is No Legitimate State Interest Justifying The Onerous Impact of the New Hampshire Statute.

In the case below, the State did not show any sufficiently compelling interest to justify the onerous time-based restrictions imposed by the New Hampshire Statute, nor has it shown that the law is tailored to effectuate any such regulatory interest. Rather, the District Court accepted generalized assertions about "ballot clutter," and applied the *Jenness* standard on "sufficient modicum of support," 403 U.S. at 442, in a way that is unjustified and unsupportable under the great weight of authority in this context. *See* Add. 98-101. Accordingly, under any standard of review, the District Court erred in upholding the statute. *See Block*, 618 F. Supp. 2d at 151.

Although, as Appellant notes, the State's justification for the law has been a "moving target" at times, *see* Appellant's Brief at 49, most of the proffered justifications have focused on cleaning up voter registration rolls and attempting to eliminate the risk of invalid nomination papers. *See* Add. 98-101. But, this rationale was correctly rejected in *Block*, where the Court held that this interest was

"nonsensical" because any risk associated with lower "verification rates" is borne by the party, not the State. *See* 618 F. Supp. 2d at 151-52.

The sole justification provided by the State in *Block* was "its interest in ensuring that petition signatures are valid; for example, that the signatories are not voters who have moved or died." *Id.* at 151. The State claimed that allowing collection of signatures in an off-year would result in a third party "working off the outdated list—so the likelihood that signatures are invalid is increased." *Id.* at 152. The Court correctly noted that the real impact of this risk would fall in the aspiring parties and not the State.

> First, what is described as the so-called State interest is really a Moderate Party interest—if anyone is to be harmed by use of a 'stale' voter list in the collection process prior to January 1, 2010, it is putative party seeking the signatures. If an organization wishes to work off data that may not be current, it does so at its own risk. Moreover, using the old list *simply means some greater margin may be needed to cover the potentially larger number of invalid signatures. But that is the party's problem, not the Board of Elections'* .... In other words, the process is self-regulating: if the new party is worried that it will get stale signatures by starting too early, then it will wait. It does not need an artificial statutory date to make it do so.

Id. (emphasis added).

A similar regime was challenged and found unconstitutional in *Green Party of Arkansas v. Priest*, 159 F. Supp. 2d 1140 (E.D. Ark. 2001), where the plaintiffs sought recognition to participate in a special election in an odd-numbered year. Arkansas allowed petitions by parties seeking official recognition to be filed only in even-numbered, general election years. *Id.* at 1142. The District Court concluded:

> The burdens imposed by Arkansas's party recognition scheme are sufficiently severe as to require the application of strict scrutiny. Indeed, these burdens make it impossible for new and emerging political parties to gain recognition in odd-numbered years in time to participate in any special elections that might occur. As a result, Arkansas's party recognition scheme must be narrowly drawn to advance a compelling state interest.

Id. at 1144. Despite the Arkansas Secretary of State invoking the talismanic "significant modicum of support" rationale from *Jenness*, the Court found the scheme unconstitutional under strict scrutiny, noting that "[s]uch arbitrary restrictions on political association fail even the test of rationality," and held that no compelling or even legitimate state interest was served. *Id.*

IV. The *Block* Case Represents the Better and Sounder Approach, and Should Be Adopted by this Circuit

For all of the reasons outlined above, and by the Appellant in its Brief submitted to this Court, Amici respectfully submit that this Circuit should adopt the rationale in *Block* as the law of this Circuit, and thereby reject the Judgment of the District of New Hampshire. Existing and aspiring third political parties throughout this Circuit, such as Amici and others, should not face the burden of arbitrary, time-based restrictions on their ability to satisfy state regulatory requirements associated with inclusion on general election ballots. Those time-based restrictions serve no legitimate state interest and instead impose a severe and unfair burden on those parties. When fundamental rights of petition and association are at issue, such restrictions must be struck down under any level of scrutiny. *See Block*, 618 F. Supp. 2d at 150-52. The District of New Hampshire dismissed the impact of *Block* summarily, in a footnote, in a way that clearly failed to address, or give sufficient attention to, the striking similarity between that case and the instant one. *See* Add. 94-95. This Court should not follow suit.

No legitimate or defensible end is served by making a third political party "sit on the sidelines" for a full calendar year between

election cycles, particularly not when neither of the two major parties face such a barrier. Such a restriction can serve no purpose other than to entrench the existing major political parties, and further cement their already considerable competitive advantage. While the States of this Circuit should obviously be free to establish certain regulatory steps designed to satisfy the "sufficient modicum of support" permitted by the Supreme Court's jurisprudence, the *Block* Court made clear that time-based restrictions on the collection and submission of nomination papers do not help satisfy that standard or legitimize the level of support that an aspiring party brings to the table. Rather, such time-based restrictions only create an arbitrary and unwarranted procedural "speedbump" in the process that acts to the disadvantage of those attempting to compete in the marketplace of political ideas.

CONCLUSION

For the reasons set forth here, the Court should reverse the Judgment of the District Court.

Respectfully submitted,

LIBERTARIAN ASSOCIATION OF MASSACHUSETTS, GREEN-RAINBOW PARTY, UNITED INDEPENDENT PARTY, MAINE GREEN INDEPENDENT PARTY and MODERATE PARTY OF RHODE ISLAND

By their Attorneys,

/s/ Mark W. Freel
Mark W. Freel
LOCKE LORD LLP
2800 Financial Plaza
Providence, RI 02903
Tel: (401) 276-6681

Dated: February 25, 2015

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 29(d) (for an amicus) because this brief contains 4,054 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 and is written in 14-point Times New Roman.

/s/ Mark W. Freel
Mark W. Freel

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

I hereby certify that on February 25, 2016 I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

Gilles R. Bissonnette
American Civil Liberties Union of
New Hampshire Foundation
18 Low Avenue
Concord, NH 03301
gilles@aclu-nh.org

William E. Christie
Shaheen & Gordon, P.A.
107 Storrs Street
P.O. Box 2703
Concord, NH 03302
wchristie@shaheengordon.com

Stephen G. LaBonte
Laura Lombardi
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301
Stephen.labonte@doj.nh.gov
Laura.lombardi@doj.nh.gov

/s/ Mark W. Freel
Mark W. Freel