No. 15-3558

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MARK MOORE,
Plaintiff – Appellant

MICHAEL HARROD; WILLIAM CHRIS JOHNSON
Plaintiffs

v.

MARK MARTIN, in his official capacity as
Secretary of State for the State of Arkansas,
Defendant – Appellee

On Appeal from the United States District Court
For the Eastern District of Arkansas, Western Division

Honorable James M. Moody, Jr., District Judge
D.C. No. 4:14-cv-00065

APPELLANT'S REPLY BRIEF

JAMES C. LINGER
1710 South Boston Avenue
Tulsa, Oklahoma 74119-4810
Tel.: (918) 585-2797
Fax: (918) 583-8283
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND OTHER AUTHORITIES

STATEMENT OF THE CASE

The Plaintiff-Appellant Mark Moore (hereinafter referred to as "Plaintiff Moore"), commenced a timely appeal in this Court from a decision rendered in an Order and Judgment below on August 25, 2015 (Joint App. at 236-275 and 276), and a subsequent Order denying a Motion to Reconsider and Alter or Amend Judgment on October 7, 2015 (Joint App., at 283), by the United States District Court for the Eastern District of Arkansas, Western Division. Plaintiff Moore's Opening Brief was filed with this Court on January 7, 2016. After being granted an extension of time, the Brief of Defendant-Appellee Mark Martin, in his official capacity as Secretary of State for the State of Arkansas (hereinafter referred to as "Defendant Secretary of State"), was filed with this Court on February 23, 2016. Plaintiff Moore now submits his Reply Brief.

SUMMARY OF THE ARGUMENT

The Defendant Secretary of State in his Brief of Defendant-Appellee in the case at bar engages in statements of fact and argument involving immaterial facts and conclusionary statements. As noted in the summary of the argument in Plaintiff Moore's Opening Brief of Appellant, in reviewing a decision of a trial court in granting a summary judgment motion, the appeal court conducts appellate review on a de novo basis. In conducting such a review, this Court should consider that the Trial Court failed to show why it was necessary for the Independent

candidate deadline to be March 1st of an election year. As the U.S. Court of Appeals for the Eighth Circuit has held:

> Restrictive measures are constitutionally suspect, and if they are to pass constitutional muster, they must be reasonable and must be justified by reference to a compelling state interest. The measures adopted by a state may not go beyond what the state's compelling interests actually require, and broad and stringent restrictions or requirements cannot stand where more moderate ones would do as well. *MacBride v. Exon*, 538 F.2d 443, 448 (8th Cir. 1977).

The Defendant Secretary of State in his Brief has set forth several factors which constitute his argument as to why the Trial Court was correct in its finding as to compelling state interest, viz.: (1) the increase in petitions for nonpartisan offices justified a March 1 deadline for Independent candidates; (2) the added expense and time required to count these additional petition signatures made it necessary to have a March 1 deadline; and (3) previous decisions of the Court were not binding precedent.

The March 1 deadline for independent candidate petitions which will be required for the 2018 General Election cycle is constitutionally suspect under previous decisions of the District Court holding that a deadline in April or earlier is unconstitutional. The fact that since those decisions the number of petition signatures required for independent candidate petitions for partisan office has decreased while the petitioning time allowed has increased does not save an unconstitutional deadline under the ruling of the U.S. Supreme Court in *Anderson*

v. Celebrezze, 460 U.S. 780 (1983), and other decisions. Further, it is not a compelling interest of the State of Arkansas which makes it necessary to have a March 1 deadline in an election year for the submission of independent candidate petitions so as not to interfere with the review of petitions filed on behalf of judicial and prosecutorial candidates since judicial and prosecutorial candidate elections—with the rare exception of a runoff election—are not on the November General Election ballot like independent candidates for partisan office, but rather in May of the General Election year when the preferential primary is held. Ark. Code Ann. § 7-10-102. Therefore, under the teaching of the U.S. Supreme Court in *Tashjian v. Republican Party of Connecticut,* 479 U.S. 208, 217-218 (1986), the extra administrative time and expenses of reviewing and counting the independent candidate petition signatures, or even the initiative petition signatures which have a later petition deadline, cannot be a reason for finding the March 1 petition signature deadline law constitutional. As the U.S. Court of Appeals for the Eighth Circuit has stated: ". . . it is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary." *McLain v. Meier*, 637 F.2d 1159, at 1164 (8th Cir. 1980).

ARGUMENT

A. Standard of Review.

As stated in Appellant's Opening Brief, and not disputed in the Brief of Defendant Secretary of State, in reviewing a decision of a Trial Court in granting a summary judgment motion, the appeals court conducts appellate review on a *de novo* basis. In exercising *de novo* review, the appellate court not only affords no deference to the Trial Court's interpretation of the law, but examines the evidence submitted by the parties to determine if there exists any genuine issue of material fact and, if not, whether the law was correctly applied by the Trial Court. All evidence and inferences in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment. The instant appeal involves primarily a question of law. The analytical three-pronged test applied by the United States Supreme Court in *Anderson v. Celebrezze*, 460 U.S. at 789, is appropriate in judging the election laws in question herein.

B. Discussion.

Beginning with the summary of the case on page ii in the Secretary of State's Brief, it is asserted that the change in the petition signature deadline for Independent candidates in Arkansas from May 1 of the General Election year to March 1 of the General Election year was a "minor change" to the petition signature deadline which "was narrowly tailored to advance the State's interests in

timely certifying Independent candidates, as well as other candidates qualifying by petition and those promoting ballot initiatives." However, nowhere in the Secretary of State's Brief or in the Trial Judge's opinion is it made clear why it would be necessary to have a March 1 deadline for Independent candidate petitions for partisan elections to meet the State's compelling interests. As noted on page 10 of Plaintiff Moore's Opening Brief of the Appellate, as well as page 2 of the Secretary of State's Brief, the certification of names of candidates to the General Election ballot did not have to be completed in Arkansas until August 21, 2014, with the delivery of electronic ballots to military voters being on September 19, 2014. Therefore, previous petition deadlines for Independent candidates of May 1 or May 29 of an election year would be more than adequate to meet the other deadlines set under Arkansas law.

One of the major arguments made by the Secretary of State in his Brief on pages 7, 16, and 19, is that the Federal laws contained in UOCAVA, 52 U.S.C. § 20301, *et seq.*; and MOVE, 52 U.S.C. § 20302(a)(8) (delivery of out of jurisdiction ballots to military voters required at least 45 days prior to general election), was not disputed in its application by the Plaintiff Moore and that, therefore, this was a justification for the March 1 petition deadline for Independent candidates. Simply stating that this is a justification in no way shows why these new Federal laws make the aforesaid March 1 deadline necessary. Since, as noted above,

certification of ballots to the General Election and delivery of electronic ballots to military voters do not even take place until August 21 and September 19 of the General Election year, there has been no showing why a later deadline, e.g., May 29th of the election year, would better serve the compelling state interests of Arkansas by a less drastic means that would not so seriously impact the rights of potential Independent candidates and their supporters.

Rock v. Bryant, 459 F.Supp 64 (E.D. Ark. 1978), *aff'd*, 590 F.2d 340, No. 78-1592 (8th Cir. Oct. 30, 1978) (unpublished *per curium*), cited by the Secretary of State in his Brief, involved a petition deadline for Independent candidates in Arkansas of May 29 of the General Election year. It should first be noted that a May 29th deadline is almost three months later than a March 1 deadline in the General Election year. While the *Rock v. Bryant* case is mentioned in the Secretary of State's Brief, no discussion is given at all about the specific law analyzed in *Rock v. Bryant*. The Trial Court in the instant case did cite *Rock* on pages 9 and 10 of its decision, describing the law which was upheld there as requiring petition signatures of ". . . 3% of qualified voters, a circulation time of 60 days, and a filing deadline of noon on the Monday preceding the preferential primary." (Joint App., pp. 271-272). What is interesting about both the Brief of the Secretary of State and the Trial Judge's aforesaid description of the decision in *Rock* is how nothing is mentioned specifically about the petition deadline date

discussed therein. Since this is the main issue in the case at bar, it seems it would have been important to note that in *Rock* the date of the preferential primary was May 30, and therefore, ". . . the deadline for filing nominating petitions by Independent candidates was May 29 . . . ." *Rock v. Bryant*, 459 F.Supp at 66, n.2.

While knowing what the specific petition deadline for Independent candidates in the *Rock* decision was, it is of equal importance to consider that the Court in *Rock* put emphasis on the fact that there had been a statewide Independent candidate who had successfully petitioned for ballot access in 1978, unlike in the instant case where there were no successfully petitioning Independent candidates in Arkansas for statewide office in 2014. In 1978, John Black successfully gathered 10,097 valid petition signatures of the minimum of 10,000 required in order to place his name on the Arkansas ballot in the 1978 General Election as an Independent candidate for the United States Senate. After noting this, we come to the interesting information that Mr. Black began his candidacy on April 12, 1978 by purchasing a newspaper advertisement in the Arkansas Gazette. Therefore, from April 12, 1978 to the petition deadline of May 29, 1978, was a period of 48 days in which Mr. Black was able to collect approximately 16,000 signatures of which 10,097 were valid. However, in comparing the *Rock* case to the case at bar, it can be noted that Mr. Black's campaign for elective office and petitioning began approximately 42 days after March 1st. If Mr. Black had had to deal with the law

in question herein he would have been out of luck because the petitioning deadline would have passed before he had even got started. Nothing could more emphasize the difference between the case at bar and the Court's decision in *Rock*. As the Court noted in *Rock*: "Strict access requirements imposed on qualifying procedures for ballot position, however, can be upheld as not impermissibly burdensome if it can be determined that they are necessary to further some compelling state interest." *Rock v. Bryant*, 459 F.Supp at 70.

Between 1978 (when the Independent petition deadline was May 29), 2012 (when the Independent petition deadline was May 1), or 2014 and 2018 (when the Independent petition deadline was Monday, March 3, 2014, or March 1 for 2018), there is some evidence of the effect of different deadlines for Independent candidates' petitions. While Mr. Black was able to comply with a May 29th deadline in 1978, and a couple of Independent candidates were able to comply with a May 1 deadline in 2012, there were no Independent candidates for statewide office in Arkansas who were successful in 2014 in meeting the March 3, 2014 deadline. "Past experience will be a helpful, if not always an unerring, guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not." *Rock v. Bryant*, *Id.*, quoting *Storer v. Brown*, 415 U.S. 724, 742 (1974).

Finally, in closing out our discussion of the Court's decision in *Rock v. Bryant*, it is important to note that the Court evidently felt that there was no problem with having a May 29 deadline for Independent candidate petitions in order to properly meet the interests of the State. "Sufficient time must be set aside after filing to verify the signatures that appear on the petitions as well as to resolve any disputes that may have arisen and to review contested petitions." *Rock v. Bryant*, 459 F.Supp at 73. Nothing in the record below would indicate that a deadline in May for Independent candidates would have interfered with the foregoing State interest, particularly considering that Independent candidates do not appear on a preferential primary or primary runoff ballot, but only on the general election ballot in November.

Also argued in the Secretary of State's Brief, pages 12-14, is the fact that Plaintiff Moore completed only part of the requirements to be a candidate for Lieutenant Governor in 2014 and failed to even try to obtain the petition signatures. These facts are immaterial to the question presented in this case because Plaintiff Moore did not finally seek preliminary injunctive relief for the 2014 election, nor did he seek any other relief to be placed on the Arkansas ballot in 2014. Defendant Secretary of State spends a lot of time on facts, both material and immaterial to the issues on appeal, when both sides in the case below filed Motions for Summary Judgment and asserted that the case was one of a question of

law and not of fact. Defendant Secretary of State then states on page 6 of his Brief that the Trial Court ". . . articulated explicit reasons why the "minor change" in the filing deadline was necessary as a result of the arguments articulated for the extension made by [the Secretary of State]." (Joint App., p. 274-275). However, the term "minor change" is simply an opinion and requires further discussion and analysis.

Defendant Secretary of State also argues in his Brief about Plaintiff Moore's Affidavit referencing a proposed 2018 Independent candidacy for Lieutenant Governor and his failure to follow certain procedures to obtain ballot access as an Independent candidate for the 2014 election in Arkansas. However, such facts are immaterial to the issues in the instant case because Plaintiff Moore did not seek injunctive relief placing him on the ballot as an Independent candidate for Lieutenant Governor in Arkansas in 2014. The Trial Court below specifically found that Plaintiff Moore had standing, the case was ripe for decision, and was not moot. (Joint App., pp. 267-270). *McLain v. Meier*, 851 F.2d 1045, 1048 (8th Cir. 1988) (holding that voter had standing to challenge ballot access law that he claimed was overly restrictive in signature requirements and deadlines). Also see, *Miller v. Moore*, 169 F.3d 1119, 1123 (8th Cir. 1999).

Defendant Secretary of State argues in his Brief, pages 14 and 17, that there was an Independent candidate in Arkansas in 2014 who successfully petitioned to

get on the ballot (viz., George Pritchett). However, not only was Mr. Pritchett a candidate for the State Senate in a small district rather than a statewide office, but the number of signatures which were required of him was only 852 rather than the 10,000 minimum for a statewide office. (Joint App., p. 243, ¶ 9). Such a limited success rate in 2014 hardly speaks well of the regularity of Independent candidates obtaining ballot access in Arkansas with a March 1 or March 3 deadline when compared to statewide success for petitioning by Independent candidates with much later deadlines of May 1 in 2012 and May 29 in 1978.

Additionally, Defendant Secretary of State argues on page 16 of his Brief that there was a record number of petitions for nonpartisan candidates, with 90 out of 92 candidates being successful in their petitioning instead of paying a filing fee. However, what the Defendant Secretary of State fails to note is that these nonpartisan candidates were not similarly situated Independent candidates for partisan offices to be decided on the November General Election ballot, but rather judicial and prosecutorial candidates who stand for election at the preferential primary election in May rather than the General Election in November. (Joint App., p. 242, ¶10). Since the preferential primary election in 2014 for these candidates was conducted on May 20, 2014, the only contests involving judicial or prosecutorial candidates which would have had to be decided on the November General Election ballot would be those rare instances when there were three or

more candidates for the office and no candidate received a majority of the vote. Ark. Code Ann., § 7-10-102. Thus, once again, the Secretary of State is comparing an election for a type of office which is different than an Independent candidate who would go straight to the November General Election ballot, rather than being placed on the preferential primary ballot in May, approximately six months before the General Election.

Defendant Secretary of State also argues in his Brief on pages 7 and 17-19 about the success of the Green and Libertarian parties in obtaining ballot access in Arkansas in 2012 and previous decisions upholding Arkansas ballot access law as to new political parties. However, as the Eighth Circuit has recognized, there are differences between the political party approach to elections and the Independent candidate approach, ". . . and neither is a satisfactory substitute for the other." *McLain v. Meier*, 637 F.2d at 1165, quoting *Storer v. Brown*, 415 U.S. 724, 745 (1974). Just because other alternative political parties can obtain ballot access is not particularly helpful in analyzing laws which impact Independent candidates. The decisions cited in the Secretary of State's Brief of *Green Party of Arkansas v. Daniels*, 377 F.Supp.2d 1055 (E.D. Ark. 2010) and *Green Party of Arkansas v. Martin*, 649 F.3d 675 (8th Cir. 2011) are not precedent in the case at bar because they concern political party ballot access and not Independent candidate ballot access. Likewise, the Eighth Circuit decision in *Libertarian Party of North Dakota*

v. Jaeger, 659 F.3d 687 (8th Cir. 2011), cited in the Secretary of State's Brief is of little impact because it concerned a ballot access requirement for a minority political party which required a vote equal in the primary election that was equal to the number of petition signatures required in order to obtain ballot status for the General Election. The Secretary of State's aforesaid cases are not on point.

Next, the Defendant Secretary of State argues in his Brief on page 11 that the unpublished *per curium* decision of the Eighth Circuit in *Langguth v. McCuen*, 30 F.3d 138, No. 93-3413 (8th Cir. August 9, 1994) (unpublished *per curium*), *cert. den.*, 513 U.S. 1147 (1995) is precedent and ". . . explicitly approved the Arkansas statutory provisions in question, albeit prior to the amendment . . . ." The Secretary of State's argument here is simply wrong. First off, pursuant to Eighth Circuit Rule 32.1A: "Unpublished opinions are decisions which a court designates for unpublished status. They are not precedent."[1] Secondly and significantly, even if we consider this unpublished decision, the qualification that it was prior to the amendment, i.e., moving the Independent petition deadline forward to March 1 of the general election year, makes all the difference in the world. Prior Independent petition deadlines were much less restrictive and closer to the general election in Arkansas. While *Langguth* recognized that ". . . having enough time both to

[1] 8th Cir. Rule 32.1A goes on to state in part that: "Unpublished opinions issued before January 1, 2007, generally should not be cited [unless relevant] to establishing the doctrines of *res judicata*, collateral estoppel, or the law of the case . . . ."

certify that the names on the signature petitions are registered voters and to permit the authenticity of the signatures to be challenged in court proceedings" constituted a compelling state interest, *Langguth*, slip op. at 2, there is nothing in applying the Court's analysis which would indicate that a petition deadline for Independent candidates in May would also not equally serve the State's compelling state interest. Arkansas cannot finalize its General Election ballots until after the political party preferential primary and run-off primary elections, so there is no compelling or rational justification for requiring a deadline for Independent candidate petitions in even May of the General Election year, let alone March 1st.

Defendant Secretary of State also argues in his Brief, pp. 23-26, that the four *Lendall* cases are not binding precedent when applied to the issue of the March 1 petition deadline for Independent candidates in Arkansas. While these cases represent different petition signature requirements, periods of time for collecting signatures, and petition filing deadlines, they do seem to indicate that a deadline in early April or earlier is unconstitutional. Plaintiff Moore has already indicated above the other related case of *Rock v. Bryant* and its approval of a May 29 petition filing deadline for Independent candidates. When considering the four *Lendall* cases, *Lendall v. Bryant*, 387 F.Supp. 397 (E.D. Ark., 1975) (hereinafter *Lendall I*); *Lendall v. Jernigan*, No. LR-76-C-184, *aff'd mem.*, 433 U.S. 901 (1977) (hereinafter *Lendall II*); *Lendall v. Jernigan*, 424 F.Supp. 951 (E.D. Ark., 1977)

(hereinafter *Lendall III*); and *Lendall v. McCuen*, No. LR-C-88-311 (E.D. Ark., W.D., Aug. 16, 1988) (hereinafter *Lendall IV*), along with the *Rock v. Bryant* case and the *Langguth* unpublished *per curium* case, the Secretary of State suggests on pages 26 and 27 of his Brief that the ". . . modest revision to the deadline, moving it from May 1 to March 1, is narrowly tailored to advance the State's interest in timely certifying independent candidate who wish to be placed on the ballot by petition allowing time [for challenges of signatures through litigation], and providing additional time for those who seek to promote ballot initiatives to have signatures reviewed and litigation concluded . . . ." Once again, we can note that a two month change in the petition deadline is characterized as a modest revision. While Plaintiff Moore would dispute this opinion, he would also note that the standard to be applied in judging a ballot access law, particularly a petition filing deadline, is not whether the change is a "modest revision," but whether the change is a "necessary revision." *MacBride v. Exon, Id.* As this Court has noted before, "A substantial but not undue burden may be constitutional so long as it is necessary to achieve a compelling state interest." *Libertarian Party of North Dakota v. Jaeger*, 659 F.3d at 697, quoting *McLain v. Meier*, 851 F.2d at 1049. As the Jaeger court went on to say, ". . . whether [the election law in question] is necessary to achieve these compelling interests is a more complex analysis." *Libertarian Party of North Dakota v. Jaeger, Id.*

However, neither the Brief of the Secretary of State nor the decision of the Trial Court below goes into any deep analysis other than to say that ". . . in light of the increase in non-independent candidates (mostly judges) filing petitions instead of paying filing fees as before and the increased number of initiative petitions there is simply not enough time to process all of the petitions within the May 1st deadline." The Trial Court then went on to reason that this ". . . fact coupled with the time consumed by ever increasing litigation over petitions has necessitated the extension of the deadline to March 1st." (Joint App., pp. 274-275). However, nothing in the record indicates that the March 1 deadline is necessary since it has absolutely nothing to do with the increase in non-independent candidates filing petitions for judges or prosecutors or the increased number of initiative petitions or the fact that they are not even elected on the same date. It was because of the Court's reasoning in its opinion above that Plaintiff Moore by way of a Motion to Reconsider and Alter or Amend the Order, pursuant to Fed. R. Civ. P. 59(e), called the Court's attention to the U.S. Supreme Court's decision in *Tashjian v. Republican Party of Connecticut* with its strictures against added administrative costs as an excuse for burdening constitutional rights relating to elections. *Tashjian*, 479 U.S., at 218.

Defendant Secretary of State also notes in his Brief on pages 7 and 21-22, that there was ". . . no harm to Appellant for the Court's discounting the disputed

Affidavit of Plaintiff's purported "expert" witness" (p. 7 of Secretary of State's Brief), and that the Trial Court "was entitled to discount the unsupported affidavit of Appellant's so-called "expert" witness." (p. 21 of Secretary of State's Brief). However, in all of the Trial Court's decision below, nowhere does the Trial Court discount, analyze, or even mention Plaintiff Moore's expert witness or his affidavits (Joint App., pp. 263-275). Further, while Defendant Secretary of State argues that Plaintiff Moore's expert merely recites case law, without legal analysis, this is simply not the case. Plaintiff Moore's expert, Richard Winger, recites an extensive history of ballot access law in Arkansas, along with changes in petition deadlines and requirements, and the reasons for legislative action and inaction to such a degree[2] that only an expert who has studied history extensively could do so. (Joint App., Affidavits of Richard Winger, pp. 187-195, particularly ¶¶11 and 12; and pp. 220-227). Additionally, Mr. Winger discusses in his affidavit the petition deadlines for Independent candidates of the other states of the Union.

In conclusion, the March 1 deadline for Independent candidates of Ark. Code Ann., §§ 7-7-101, 7-7-103 and 7-7-203(c)(1)—which was Monday, March 3, in the 2014 election cycle—is and will be before the preferential primary elections

[2] Besides the two affidavits in the record below of Richard Winger (Plaintiffs' Exhibit "5", pp. 6-7, ¶¶11-12, Joint App., pp. 226-227), Plaintiff Moore discussed specific testimony of Mr. Winger on pages 8-10 of Appellant's Opening Brief filed herein as to the history of ballot access and election law changes in Arkansas, the reasons why, and the effects thereof. Defendant Secretary of State did not question the recitation of the history Mr. Winger set forth in his affidavit, but only objected to him giving legal conclusions (e.g., Plaintiffs' Exhibit "5", pp. 3-6, ¶¶5-10, Joint App., pp. 223-226). The Trial Court decision below did not mention Mr. Winger or his affidavit testimony at all.

of the Republican and Democratic parties (which was on May 20, 2014 for the most recent general election cycle), as well as more than three months before the Arkansas General Primary runoff election (which was on June 10, 2014 for the most recent general election cycle), and more than eight months before the most recent Arkansas General Election on November 4, 2014.

The decision of the Trial Court in its aforesaid Order and Judgment of August 25, 2015, upholding as constitutional the new petition signature deadline of March 1 for Independent candidates in Arkansas, which was in effect for the 2014 general election, and will be in effect again for the 2018 general election, is contrary to the teaching of the U.S. Supreme Court decisions in *Anderson v. Celebrezze*, *Id.*, and *Tashjian v. Republican Party of Connecticut*, 479 U.S. at 217-218, as well as the Eighth Circuit's decisions in *McLain v. Meier*, 637 F.2d at 1164 (early filing deadline for third party candidates more than 90 days before primary election and more than 150 days before general election was unnecessarily oppressive and was not offset by a later filing deadline for Independent candidates of 40 days before the general election); and *McLain v. Meier*, 851 F.2d at 1051 (finding part of the law constitutional where the major party primaries were held in June while Independent candidates were required to obtain 1,000 petition signatures 55 days before general election in order to gain ballot access). As the Eighth Circuit has stated, ". . . it is important that voters be permitted to express

their support of independent and new party candidates during the time of the major parties campaigning and for some time after the selection of candidates by party primary." *McLain v. Meier*, 637 F.2d at 1164.

Because Arkansas cannot finalize its ballots until after the political party preferential primary and runoff primary elections in May and June, there is no meaningful justification for requiring independents to qualify by the petition deadline in early March. The foregoing arguments and cases would indicate that the laws in question herein are unconstitutional under the *Anderson v. Celebrezze* test. "It is clear that the Supreme Court has consistently required a showing of necessity for significant burdens on ballot access." *Anderson v. Celebrezze*, 460 U.S. at 789; and *Storer v Brown*, 415 U.S. at 743. The final part of the *Anderson* test is that the Court must consider the extent to which legitimate state interests make it necessary to burden the rights of the Plaintiff. *Anderson v. Celebrezze, Id.*

> Neither the administrative justification nor the benefit of an early filing deadline is applicable to an independent candidate. Ohio does not suggest that the March deadline is necessary to allow petition signatures to be counted and verified or to permit November general election ballots to be printed. *Anderson v. Celebrezze*, 460 U.S., at 800.

While the Trial Court noted that Arkansas had to check initiative petitions with a deadline in July, along with judicial petitions and any independent petitions for partisan office (which were two in 2014 with a March 3 deadline and seven in the previous general election with a May 1 deadline), said justification for an earlier

deadline amounts to the State checking a number of petitions (mostly for judges and prosecutors). As the Supreme Court has said, ". . . the possibility of future increases in the cost of administering the election system is not a sufficient basis for infringing [Plaintiff's] First Amendment rights." *Tashjian*, 479 U.S. at 218.

CONCLUSION

WHEREFORE, premises considered, the Plaintiff Moore requests that, upon full consideration of this appeal, the Court of Appeals reverse the decision of the United States District Court for the Eastern District of Arkansas, Western Division, in the case below, declare the relief prayed for herein by instructing the District Court upon remand to deny the Defendant Secretary of State's Motion for Summary Judgment, grant Plaintiff Moore's Motion for Summary Judgment, and grant such other and further relief as to which Plaintiff Moore may be entitled, and which this Court may deem equitable and just.

Respectfully submitted this 8th day of March, 2016.

MARK MOORE, Appellant

JAMES C. LINGER, OBA#5441

s/ James C. Linger
James C. Linger
1710 South Boston Avenue
Tulsa, OK 74119-4810
(918) 585-2797 Telephone
(918) 583-8283 Facsimile

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to pursuant to Fed. R. App. P. 28 (a) (10), the undersigned certifies this brief complies with the type-volume limitations of Fed. R. App. P. 32 (a)(7).

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4. Pursuant to Eighth Circuit Rule 28A(h)(2), the electronic version of this Reply Brief has been scanned for viruses and is virus-free.

/s/ James C. Linger
James C. Linger