

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 15-2068

LIBERTARIAN PARTY OF NEW HAMPSHIRE
Plaintiff - Appellant

v.

WILLIAM M. GARDNER, in his official capacity as
Secretary of State of the State of New Hampshire
Defendant - Appellee

On appeal from the United States District Court
For the District of New Hampshire

BRIEF OF APPELLEE, WILLIAM M. GARDNER, SECRETARY OF
STATE OF THE STATE OF NEW HAMPSHIRE

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STATEMENT OF ISSUE

Whether the district court properly granted summary judgment to the State because the State's strong interest in preventing ballot clutter by requiring political organizations to make a preliminary showing of substantial support outweighs the limited burdens imposed by N.H. RSA 655:40-a.

STATEMENT OF CASE

The Libertarian Party of New Hampshire (“LPNH”) brought this declaratory judgment action challenging the constitutionality of RSA 655:40-a, one of New Hampshire’s ballot-access laws. Specifically, LPNH argued that the last sentence of the statute, which requires that nomination papers for a political organization to access the general-election ballot “be signed and dated in the year of the election,” violates the First and Fourteenth Amendments to the United States Constitution. LPNH sought declaratory and injunctive relief, as well as attorneys’ fees and costs.

The State moved to dismiss the complaint for failure to state a claim, and LPNH objected. The district court denied the motion, ruling that LPNH was “entitled to proceed with its case under the fact-dependent framework that the Supreme Court has formulated for ballot access claims.” Memorandum and Order dated December 30, 2014, p. 10 (Doc. 17). The parties engaged in expedited discovery and filed cross-motions for summary judgment. On June 18, 2015, the district court held oral argument on the motions.

During the hearing, the district court noted that there was one factual dispute that affected the court’s ability to resolve the case on summary

judgment. Hearing Tr. 9-19.¹ Specifically, the parties disputed the reason why LPNH had struggled to obtain access to the ballot in years prior to the statutory amendment imposing the January 1 start date for obtaining nomination papers. LPNH, in arguing that the January 1 start date imposes a severe burden on ballot access, relied on evidence showing how hard it had been for LPNH to get on the ballot in prior years even before imposition of the January 1 start date. The State, in response, argued that to the extent LPNH had struggled to obtain party-wide ballot access in the past, that was due to the fact that either (1) LPNH did not have a modicum of support in New Hampshire and therefore did not have the persons or money necessary to get out and obtain the required number of signatures; or (2) LPNH did not marshal its resources in an effective way. The district court concluded that this factual dispute required a trial on the limited issue of whether the State's petitioning process was already burdensome even before adoption of the January 1 start date. LPNH Add. 72, n. 7; Hearing Tr. 143-49. The district court held a trial on this limited factual issue on July 13, 2015.

¹ Citations to the records are as follows: "Hearing Tr." refers to the transcript of the summary judgment hearing held on June 18, 2015; "AM Trial Tr." refers to the transcript of the morning session of the bench trial held on July 13, 2015; "PM Trial Tr." refers to the transcript of the afternoon session of the bench trial held on July 13, 2015; "JA" refers to the Joint Appendix; "LPNH Add." refers to the Addendum to the Brief of Appellant, Libertarian Party of New Hampshire; "State Add." refers to the Addendum to this Brief.

On August 27, 2015, the district court issued a Memorandum and Order denying LPNH's motion for summary judgment and granting the State's cross-motion for summary judgment. LPNH Add. 62-103. The district court applied the sliding scale test set forth in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and concluded that "[t]he State's strong and well-established interest in preventing ballot clutter by requiring political organizations to make a preliminary showing of substantial support provides sufficient justification for [RSA 655:40-a]." LPNH Add. 96 (citation and quotation marks omitted). The district court rejected LPNH's claims that the January 1 start date for obtaining nomination papers imposed a severe burden on ballot access, ruling instead that RSA 655:40-a "imposes only a reasonable burden on ballot access that is outweighed by the State's interest in avoiding ballot clutter." LPNH Add. 102.

STATEMENT OF FACTS

A. New Hampshire's Statutory Scheme for Ballot Access

Under New Hampshire law, a potential candidate has three avenues to placement on the general election ballot: (1) as the nominee chosen in the primary of a state recognized “party”²; (2) as the nominee of a state recognized “political organization”³; and (3) by submitting, as an individual candidate, the requisite number of nomination papers.⁴ *See Libertarian Party v. Gardner*, 638 F.3d 6, 10 (1st Cir. 2011); *see also Libertarian Party of New Hampshire v. State*, 154 N.H. 376, 378-79 (2006) (describing New Hampshire’s statutory scheme for ballot qualification). For the upcoming 2016 general election, LPNH claimed in its complaint that it planned to

² “Party” is defined as “any political organization which at the preceding state general election received at least 4 percent of the total number of votes cast for any one of the following: the office of governor or the offices of United States Senators.” RSA 652:11.

³ To constitute a state recognized “political organization” and have its name placed on the general election ballot, a political organization must submit nomination papers signed by at least 3 percent of the total votes cast at the previous state general election. RSA 655:40-a; RSA 655:42, III.

⁴ A candidate who is not nominated by a state recognized party or political organization must submit nomination papers signed by at least 3,000 registered voters to be nominated as a candidate for president, United States senator, or governor, *see* RSA 655:40, :42, I, and at least 1,500 registered voters to be nominated as a candidate for United States representative, 750 for councilor or state senator, and 150 for state representative or county officer, *see* RSA 655:40, :42, II.

“nominate a slate of candidates for statewide and/or legislative office” under the second avenue described above. Complaint, ¶ 2 (Doc. 1). In order to do so, LPNH must first qualify as a recognized political organization by submitting nomination papers signed by at least 3 percent of the total votes cast at the previous state general election. *See* RSA 655:40-a; RSA 655:42, III.

In order to be valid, the nomination papers must meet certain statutory requirements. Specifically, they must be “signed and dated in the year of the election” by “such persons only as are registered to vote at the state general election.” RSA 655:40-a. Once collected, each nomination paper must be “submitted to the supervisors of the checklist of the town or ward in which the signer is domiciled or registered” for a certification as to “whether or not the signer is a registered voter in said town or ward.” RSA 655:41, I. The nomination papers must be “submitted to the supervisors of the checklist no later than 5:00 p.m. on the Wednesday 5 weeks before the primary,” and the supervisors are required to complete the certification process “no later than 5:00 p.m. on the Wednesday 2 weeks before the primary.” *Id.* New Hampshire holds its primary on the second Tuesday in September. RSA 653:8. As a result of these statutory requirements, a political organization

has from January through July of an election year, approximately 7 months (or 210 days), to collect nomination papers.

B. The Libertarian Party In New Hampshire

Only approximately 150 New Hampshire residents are members of the National Libertarian Party. JA 82 (Tomasso Tr. 9). The number of New Hampshire residents registered with the LPNH is even less. *Id.* (Tomasso Tr. 11). In addition, despite the large size of New Hampshire’s House of Representatives, there is not a single state legislator who holds himself or herself out as a Libertarian in New Hampshire.⁵ JA 84 (Tomasso Tr. 18-19). Only about 12 individuals attended LPNH’s last convention in March 2015. JA 82 (Tomasso Tr. 11-12). LPNH no longer issues a print newsletter⁶, and has been holding meetings less frequently. *Id.* (Tomasso Tr. 12-13).

Richard Tomasso, the state chair for LPNH who is responsible for tracking legislation for LPNH, testified in deposition that over the last few years he “just ha[s]n’t had the time.” JA 84 (Tomasso Tr. 20). No one from LPNH

⁵ LPNH state chair Richard Tomasso testified in deposition that there were “a few” state legislators who pay dues to the Libertarian Party, but that they had asked “not to be identified as party members for political reasons, for their own political futures.” JA 84 (Tomasso Tr. 18). Tomasso could not name a single state legislator who publicly holds himself or herself out as Libertarian. *Id.* (Tomasso Tr. 18-19).

⁶ LPNH used to issue a monthly newsletter. JA 140 (Babiarz Tr. 19-20).

testified against House Bill 1542, the bill which amended RSA 655:40-a to add the January 1 start date for collecting nomination papers. *Id.* (Tomasso Tr. 19).

C. The 2012 General Election Cycle

In the 2012 general election cycle, LPNH decided to seek party-wide ballot access under RSA 655:40-a, which at that time did not require nomination papers to be signed during the year of the election. Voter turnout in the 2010 general election required LPNH to collect 13,843 valid signatures. AM Trial Tr. 22. However, because not every signature is valid, LPNH sought to collect approximately 19,000 raw signatures. *Id.* at 23. LPNH obtained the assistance of the Libertarian National Committee (“LNC”) for its 2012 petition drive. JA 93 (Tomasso Tr. 55). LNC agreed to provide \$28,000 for LPNH’s petition drive in New Hampshire. JA 93-94 (Tomasso Tr. 55-59); State Add. 42-43 (Tomasso Exhibit 6). It was expected that the funds from LNC would be sufficient to gather 13,500 gross signatures through a paid petitioning effort, and that LPNH would collect the remaining 6,000 gross signatures, either through volunteer efforts or fundraising to hire additional paid petition gatherers. JA 95 (Tomasso Tr. 62-63); State Add. 44 (Tomasso Exhibit 7).

In late July 2011, LNC hired paid petition gatherers, who collected over 10,000 nomination papers within the first two months of petition gathering. JA 95-96 (Tomasso Tr. 64-65). By the time the national funding ran out at the end of September 2011, over 13,500 gross signatures had been collected within a two month period. State Add. 45 (Tomasso Exhibit 10); JA 96-97 (Tomasso Tr. 67-70). In other words, LPNH had gathered about seventy percent of its goal by the end of September 2011. All that remained to be collected was approximately 6,000 signatures that LPNH had agreed to collect, and LPNH still had ten months left (October 2011 through July 2012) to collect those signatures.

After the national funds ran out in September 2011, the number of signatures being collected dropped significantly. JA 101 (Tomasso Tr. 86). By the end of October, LPNH party chair Richard Tomasso was already getting frustrated by the lack of assistance with the petition drive. PM Trial Tr. 4. In November 2011, LPNH volunteers did not turn in a single nomination paper. JA 12. A significant opportunity to collect nomination papers in November was the city elections, but only one or two people went out to collect signatures that day. PM Trial Tr. 7. In December 2011, a national ballot access expert, Richard Winger, expressed concern that LPNH was not going to be able to gather the required 6,000 gross signatures it had

agreed to collect. State Add. 46 (Tomasso Exhibit 14) (“I am extremely worried about the current petition drive. The LPNH has refused to honor its promise to pay for about 25% of the job.”); JA 100 (Tomasso Tr. 83).

From the end of September 2011 through July 2012, LPNH relied on local volunteers and whatever funds they could raise to hire paid petitioners. JA 97 (Tomasso Tr. 72). Nevertheless, despite having ten months to do so, LPNH was unable to collect the 6,000 signatures they had assured LNC they would be able to contribute to the drive. JA 97 (Tomasso Tr. 71-72). There were at least two significant opportunities during the first few months of 2012 for signature gathering – the New Hampshire Presidential Primary in January and town elections in March – but LPNH could muster only a handful of people to gather signatures at those events. JA 108 (Tomasso Tr. 115) (only “a couple people” collected signatures during the Presidential Primary); PM Trial Tr. 27 (LPNH “had very poor turnout for help on town election day.”). Tomasso had sent out numerous emails trying to muster volunteer support for town election day in March, explaining that if just twenty people volunteered LPNH could likely finish the petition drive that day, but despite his efforts, turnout was “very poor.” PM Trial Tr. 23-27. Attempts to persuade volunteers to petition at additional town elections in May also failed. *Id.* at 33-34.

As the August 2012 deadline approached, LNC became worried that LPNH would be short signatures, and decided to engage another professional firm to do one final week of petitioning. JA 97 (Tomasso Tr. 71). LNC expended another \$4,000 to collect the final 1,700 signatures in just one week's time. PM Trial Tr. 35; JA 97 (Tomasso Tr. 72); State Add. 45 (Tomasso Exhibit 10).

Overall, the vast majority of the money spent on the 2012 petition drive came from LNC as opposed to supporters within New Hampshire,⁷ and the majority of the signatures collected during the drive were collected by paid petitioners funded by LNC, as opposed to New Hampshire volunteers or paid petitioners funded by LPNH fundraising efforts. JA 101-02 (Tomasso Tr. 88-89).

D. The 2016 General Election Cycle

In its complaint, LPNH alleged that it intended to seek access to the ballot as a political organization for the 2016 general election. The evidence did not show, however, that LPNH ever had the intention of doing so. At the time of Tomasso's deposition in April 2015, LPNH had not even started fundraising for the 2016 general election, and in fact had no timetable for when it intended to begin fundraising. JA 104 (Tomasso Tr. 100). LPNH

⁷ LPNH was only able to raise a meager "few thousand dollars" to contribute to the 2012 petitioning effort. JA 105 (Tomasso Tr. 103).

only had “a couple of thousand dollars” in total funds, and had not earmarked any of that for the 2016 election. JA 105 (Tomasso Tr. 101).

In order to obtain party-wide access to the ballot in 2016, LPNH would need to obtain in excess of 14,800 certified nomination papers (requiring LPNH to collect approximately 20,000 “raw” nomination papers, assuming a validity rate of 75%). JA 6. LPNH estimates that funding a petition drive of that extent would cost approximately \$50,000. JA 104 (Tomasso Tr. 97). Even without the January 1 start date, it is doubtful that LNC would be willing to contribute to another petitioning effort in New Hampshire to the extent it did in 2012. JA 105 (Tomasso Tr. 102-03).

SUMMARY OF ARGUMENT

The January 1 start date provides political organizations seven months to collect nomination papers. The United States Supreme Court and this court of appeals have upheld analogous time frames for collecting signatures, and LPNH's attempts to distinguish this case based on New Hampshire's "harsh winter months" and LPNH's difficulty in obtaining ballot access in the past fail.

The evidence presented to the district court demonstrated that seven months is ample time for a political organization with sufficient support to collect nomination papers, and that any difficulty LPNH experienced in 2012 was due to LPNH's lack of support in New Hampshire, not the winter weather or a lack of sufficient time. The January 1 start date neither interferes with a political organization's ability to campaign during the general election year, nor requires it to "sit on the sidelines" during the odd year. A political organization can use the odd year to plan, organize and fundraise in preparation for a petition drive in the early part of the election year. A political organization with sufficient support can then rely on volunteers and paid petitioners to collect nomination petitions, allowing the candidates to focus their attention on campaigning. Evaluating the alleged burdens collectively, the district court properly found that the January 1 start

date “imposes only a reasonable and nondiscriminatory, and not a severe, burden on ballot access.” LPNH Add. 91.

It is well-settled that states have a legitimate interest in ensuring that a political organization has sufficient support before allowing its candidates on the ballot. LPNH does not dispute this legitimate state interest, but instead argues that the State cannot rely on this interest to justify the January 1 start date unless it is apparent that the legislature specifically considered this interest when enacting the law. The *Anderson* balancing test does not limit a court’s analysis in such a manner. Rather, the test requires a balancing of “the precise interests put forward by the State” against the “burden imposed,” with the rigorousness of the inquiry depending upon the severity of the burden. *See Anderson*, 460 U.S. at 789.

The district court properly applied the *Anderson* sliding scale test in concluding that the January 1 start date imposes only a reasonable and nondiscriminatory burden on LPNH’s ability to access the ballot, which is outweighed by the State’s strong interest in preventing ballot clutter by requiring political organizations to make a preliminary showing of substantial support before running a full slate of candidates on the ballot.

ARGUMENT

I. STANDARD OF REVIEW

Summary judgment is proper when there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court must draw all reasonable inferences in favor of the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Navarro v. Pfizer Corp.*, 261 F.3d 90, 94 (1st Cir. 2001). Conclusory allegations, unsupported inferences and speculation are insufficient to defeat summary judgment. *Carroll v. Xerox Corp.*, 294 F.3d 231, 236-37 (1st Cir. 2002). On cross motions for summary judgment, the standard of review is applied to each motion separately. *See Am. Home Assurance Co. v. AGM Maritime Contractors, Inc.*, 467 F.3d 810, 812 (1st Cir. 2006). This Court reviews a trial court's ruling on cross-motions for summary judgment *de novo*. *Maritime & Northeast Pipeline LLC v. Echo Easement Corridor LLC*, 604 F.3d 44, 47 (1st Cir. 2010).

II. RSA 655:40-A IMPOSES ONLY A REASONABLE BURDEN ON BALLOT ACCESS THAT IS OUTWEIGHED BY THE STATE’S INTEREST IN AVOIDING BALLOT CLUTTER.

“The freedom to associate with others for the advancement of political beliefs and ideas is a form of ‘orderly group activity’ protected by the First and Fourteenth Amendments, and ‘the right to associate with the political party of one’s choice is an integral part of this basic constitutional freedom.’” *Cool Moose Party v. Rhode Island*, 183 F.3d 80, 82 (1st Cir. 1999) (quoting *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973)). “Those associational rights, however, ‘are necessarily subject to qualification if elections are to be run fairly and effectively.’” *Id.* (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986)). “Thus, states may enact laws that are necessary to ensure the integrity, fairness, and honesty of the election process even though such laws may abridge a party’s associational rights by interfering with its internal affairs or its ability to garner support and members.” *Id.* (citations omitted).

In assessing the constitutionality of a law which burdens access to the ballot, the standard of review “is not static; rather, the Supreme Court has suggested something of a sliding scale approach and has noted that there is no ‘bright line’ to separate unconstitutional state election laws from

constitutional ones.” *McClure v. Galvin*, 386 F.3d 36, 41 (1st Cir. 2004)
(citing *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997)).

Under this sliding scale approach,

[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 the extent to which those interests make it necessary to burden the plaintiff’s rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson v. Celebrezze, 460 U.S. 780, 789 (1983).

In other words, the *Anderson* test required the district court here to first assess the extent of the burdens that RSA 655:40-a places on LPNH’s First and Fourteenth Amendment rights, and second identify the state interests justifying those burdens to determine whether those interests are sufficient to sustain the burdens imposed by the statute. For the reasons discussed below, the district court properly applied this sliding scale test in concluding that the January 1 start date imposes only a reasonable and nondiscriminatory burden on LPNH’s ability to access the ballot, which is outweighed by the State’s strong interest in preventing ballot clutter by

requiring political organizations to make a preliminary showing of substantial support.

A. RSA 655:40-a Imposes Only Reasonable, Nondiscriminatory Burdens On Ballot Access.

LPNH argues that RSA 655:40-a imposes a severe burden on ballot access because the January 1 start date (1) shortens the time during which nomination papers may be collected to only seven months, which include New Hampshire's "harsh winter months"; (2) hampers LPNH's ability to campaign during the election year; and (3) forces LPNH to "sit on the sidelines" the entire year before the general election. As the district court concluded, whether considered individually or collectively, these minor burdens are reasonable and nondiscriminatory.⁸ And in any event, the evidence presented failed to support many of LPNH's allegations of "burden."

⁸ LPNH does not argue that the burdens imposed by the statute are discriminatory. If they made such an argument, it would fail because the requirements imposed by RSA 655:40-a apply equally to all political organizations. *See Barr v. Galvin*, 626 F.3d 99, 109 (1st Cir. 2010) (holding that Massachusetts ballot access provisions that subject all political organizations to the same criteria for determining whether they qualify for recognition as political parties are nondiscriminatory); *see also Libertarian Party of New Hampshire v. State*, 154 N.H. 376, 381-82 (2006) (concluding that New Hampshire's statutes governing ballot access are nondiscriminatory because they provide all political organizations an equal opportunity to qualify for a place on the general election ballot).

1. The January 1 start date provides political organizations a sufficiently reasonable amount of time to gather nomination papers.

First, LPNH argues that the time frame within which to gather nomination papers severely burdens its ability to access the ballot. With the January 1 start date, a political organization has approximately 210 days to collect 14,800 certified nomination papers to qualify for the 2016 general election. JA 6. The United States Supreme Court and this court of appeals have upheld analogous time frames for collecting signatures. *See American Party of Texas v. White*, 415 U.S. 767, 786-87 (1974) (finding a 55-day period for circulating petitions in the State of Texas not “an unduly short time” for collecting 22,000 signatures); *Jenness v. Fortson*, 403 U.S. 431, 433, 439-40 (1971) (upholding Georgia ballot access regulations which provided a period of 180 days to circulate nominating petitions); *Barr v. Galvin*, 626 F.3d 99, 110 (1st Cir. 2010) (finding that 60 days to secure 10,000 required signatures was “modest” rather than severe). Other courts have upheld similar requirements. *See Libertarian Party of Florida v. Florida*, 710 F.2d 790, 794 (11th Cir. 1983) (upholding ballot access regulations which limited minor party to 188 days to conduct its petitioning effort); *Stone v. Board of Elections Comm’rs for City of Chicago*, 955 F. Supp. 2d 886, 896 (N.D. Ill. 2013) (finding a 90-day period for collecting

12,500 signatures “not unduly onerous” and “justified by Illinois’ interest in regulating access to the ballot”). The burden that the January 1 start date places on LPNH’s access to the ballot is not severe or unreasonable.

LPNH’s attempts to distinguish the above cases based on – (1) New Hampshire’s “harsh winter months,” and (2) LPNH’s difficulty obtaining ballot access in prior years – are unavailing. First, in claiming that the “harsh winter months” make petitioning difficult in the early months of the year, LPNH relies on *Jones v. McGuffage*, 921 F. Supp. 2d 888 (N.D. Ill. 2013) and *Kelly v. McCulloch*, No. CV-08-25-BU-SHE, 2012 WL 1945423 (D. Mont. May 25, 2012). Both of those cases are distinguishable. In *Jones*, the Green Party was required to collect “15,682 signatures in 62 days in December and January, without any lead-up time in which to organize a signature drive before implementing it.” *Jones*, 921 F. Supp. 2d at 892. In contrast, LPNH is not limited to collecting petitions *only* during winter months, but rather has seven months to collect the requisite number of nomination papers. In addition, unlike the Green Party in *Jones*, LPNH had all of 2015 to prepare, organize, and fundraise for its 2016 petition drive.

Kelly v. McCulloch also fails to provide LPNH with any support because the court’s finding of an undue burden in that case had nothing to do with petitioning during winter months, but rather was due to the fact that the

filing deadline for independent candidates was 75 days before the primary election for qualified party candidates. 2012 WL 1945423. The plaintiffs' claims in that case of difficulty petitioning in the winter months played no role in the court's decision. *Id.* The language LPNH quotes from the decision comes from the court's description of the plaintiffs' claims, not any finding by the court. *Id.* at *5.

In any event, the evidence presented to the district court demonstrated that any difficulty LPNH had in collecting signatures during the winter months of 2012 was due to LPNH's lack of support in New Hampshire, not the weather. There was ample undisputed evidence to support the district court's conclusion that New Hampshire's winter months did not pose a severe burden. Using a paid petitioner, over 1000 signatures were gathered in December 2011. JA 12; JA 98 (Tomasso Tr. 75-76). LPNH attempts to downplay this fact on appeal, asserting that "December 2011 was unseasonably mild." LPNH Brief 36. However, even in the later winter months, the evidence showed that LPNH's failure to collect significant numbers of nomination papers was due to lack of volunteer support in New Hampshire, not the weather. *See* JA 108 (Tomasso Tr. 115) (only "a couple people" turned out to collect signatures during the Presidential Primary in

January); PM Trial Tr. 27 (despite significant efforts made by Tomasso, LPNH “had very poor turnout for help on town election day” in March).

LPNH’s argument that the district court failed to adequately consider LPNH’s experience during the 2000 and 2012 general election years is equally unavailing. LPNH asserts that the district court “overly relied on perceived numerical ‘benchmarks’” and “ignored the monumental evidence of the burden to comply with RSA 655:40-a in 2000 and 2012 before [the January 1 start date] was enacted.” LPNH Brief at 34. In fact, the district court held a full day evidentiary hearing to allow LPNH to present evidence on precisely that issue. The evidence simply failed to support LPNH’s claims.

Specifically, LPNH attempted to use its experience during the 2012 general election year to support its claim that if the January 1 start date remained, it would likely be unable to complete the party-petitioning process for the 2016 election. But the evidence attached to the parties’ motions for summary judgment and presented at the July 13, 2015 evidentiary hearing demonstrated that any difficulties LPNH experienced in collecting nomination papers for the 2012 general election were due to lack of support within New Hampshire, not due to insufficient time to collect nomination papers. In fact, the evidence demonstrated that nomination papers can be

collected quite quickly. With LNC's financial support, paid petitioners were able to collect over 13,500 gross nomination papers within the first two-month period of the 2012 petition drive. JA 12; State Add. 45 (Tomasso Exhibit 10); JA 96-97 (Tomasso Tr. 67-70). LNC also financed paid petitioners to collect approximately 1,700 nomination papers in just a one week period of time at the end of the petition drive. JA 97 (Tomasso Tr. 71-72); PM Trial Tr. 35.

LPNH, on the other hand, did not have sufficient support within New Hampshire to achieve similar success. After the LNC financial effort successfully collected over 13,500 gross signatures within a two month period of time, the number of petitions coming in dropped significantly as soon as the national funds ran out and LPNH had to rely on in-state support. JA 101 (Tomasso Tr. 86). In November 2011, LPNH volunteers did not turn in a single nomination paper, *see* JA 12, and only one or two people turned out to collect nomination papers at the city elections in November and the Presidential Primary in January, despite those being significant opportunities for petitioning, *see* PM Trial Tr. 7; JA 108 (Tomasso Tr. 115). Overall, LPNH was only able to collect between 4,000 and 5,000 nomination papers over a ten month period of time. JA 12; JA 97 (Tomasso Tr. 71-72). LPNH had to turn again to the national party for support to finish the petition drive,

not because of the difficult time of year in which LPNH had been petitioning, but rather because there was insufficient support for the Libertarian Party within New Hampshire.

RSA 655:40-a's January 1 start date allows political organizations seven months to collect nomination papers, which is a reasonable amount of time for a political organization with sufficient support within the state. The evidence LPNH presented to the district court failed to demonstrate that the amount of time, and the fact that the time period included the winter months, imposes more than a minimal burden on LPNH's ability to access the ballot. Rather, the evidence showed that any difficulty LPNH had in obtaining ballot access in the past was due to a lack of support within New Hampshire. As such, the district court properly found that any slight burden the January 1 start date imposes on a political organization's ability to access the ballot is reasonable and not severe.

2. The January 1 start date does not interfere with a political organization's ability to meaningfully campaign during the general election year.

Next, LPNH claims that the January 1 start date for collecting nomination papers severely burdens its access to the ballot because it prevents LPNH from meaningfully engaging in the campaign process during the majority of the general election cycle. This argument presumes both that

the typical petition drive would take a full seven months to complete, and that candidates cannot campaign until after a petition drive has been completed. The record in this case does not support these presumptions.

First, as discussed above, the evidence presented to the district court demonstrates that a political organization with sufficient support can collect nomination papers in New Hampshire within a relatively short period of time. With LNC's financial support, over 13,500 nomination papers were collected within the first two-month period of the 2012 petition drive, and another 1,700 nomination papers in just one week at the end of the petition drive. State Add. 45 (Tomasso Exhibit 10); JA 96-97 (Tomasso Tr. 67-72); PM Trial Tr. 35.

Second, there is no reason why third party candidates cannot campaign at the same time that their political organization is conducting a petition drive. LPNH's gubernatorial candidate in the 2012 election, John Babiarz, testified in deposition that he focused on campaigning, and engaged in his own fundraising, during the 2012 petition drive. JA 159 (Babiarz Tr. 93-94). While there is no guarantee that a third party candidate will appear on the ballot until petitioning is complete, the same can be said of major party candidates before they have successfully obtained their party's nomination in the primary election in September. LPNH's claim that the

spring and summer months are the most crucial time for campaigning overlooks the fact that the major party candidates are campaigning within their own party for their party's nomination during that time period. It is not until after the primary election, when each party has nominated its slate of candidates, that campaigning between the parties is at its high point. As Tomasso stated in his deposition, "the time *immediately prior to the election* is the most important time for campaigning." JA 86 (Tomasso Tr. 26) (emphasis added). By requiring nomination papers to be filed with the secretary of state one week before the primary, RSA 655:43 ensures that a political organization is recognized in time for its candidates to actively campaign during the crucial time period leading up to the general election.

Moreover, much of LPNH's argument presumes that the candidates themselves will be personally engaged in the petitioning process, and therefore unable to focus on campaigning. A party with sufficient support within the state would rely on volunteers and paid petitioners, not the candidates themselves, for the petition drive. To the extent LPNH previously relied on the candidates themselves to collect nomination papers, that fact is again indicative of the lack of support for the party in New Hampshire.

The record supports the district court’s finding that “the placement of the petitioning window within the election year is both reasonable and nondiscriminatory,” and “imposes no severe burden on third-party ballot access in this state.” LPNH Add. 87.

3. The January 1 start date does not require political organizations to “sit on the sidelines” during the odd year before the general election.

The final burden asserted by LPNH – that the January 1 start date burdens the LPNH by requiring it to “sit on the sidelines” during the odd year before the general election – is the least persuasive. LPNH’s experience during the 2012 election demonstrates that the most effective means of collecting nomination papers is through hiring professional petitioners. In order to hire such professional petition gatherers, a political organization must first engage in fundraising to raise the necessary funds. With the January 1 start date, a political organization can appropriately focus on fundraising during the odd year before the election, and then turn its focus to petition gathering once it has acquired the necessary funds to engage in an effective petition drive. While LPNH apparently decided to do nothing in 2015 to prepare for the 2016 election, the January 1 start date in no way prevented them from fundraising in 2015, and then using the money raised to engage in an effective petition drive starting January 1, 2016.

LPNH's reliance on *Anderson* is misplaced, as that case in fact supports the State's position that petitioning is more effective *closer* to the election when voter interest is higher. *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.”). This provides all the more reason to use the odd numbered year to plan, organize, and fundraise in preparation for a petition drive in the early part of the election year.

LPNH's claim that the January 1 start date requires them to “sit on the sidelines” during the odd year simply lacks merit. The district court properly ruled that this alleged burden “is minor at best and not severe in any event.” LPNH Add. 88.

4. The record supports the district court's finding that the collective burdens alleged by LPNH are “reasonable and nondiscriminatory, and not severe.”

Finally, LPNH argues that “the record from the 2000 and 2012 election cycles illustrates the difficulty in complying with the 3% threshold in New Hampshire over the course of a 21 month window” LPNH

Brief at 45. LPNH further asserts that with the January 1 start date in place, “LPNH will not go through the party-petitioning process in the future due to the limited time frame and cost prohibitive nature of the endeavor.” *Id.*

However, as discussed above, the record clearly demonstrates that the difficulties LPNH faced in the past were not due to the time frame in which it had to gather petitions, but rather the lack of support within New Hampshire.

The reason LPNH was able to qualify as a political organization in 2012 was not because it had a longer period of time to collect nomination papers, but rather because of the significant financial support provided by LNC. In the absence of that out-of-state support, LPNH would never have been able to access the ballot. LPNH itself was only able to raise “a few thousand dollars” to contribute to the 2012 petitioning effort, *see* JA 105 (Tomasso Tr. 103), and over a ten month period of time, LPNH only managed to collect “between 4000 and 5000 nomination papers,” JA 12; JA 97 (Tomasso Tr. 71-72). This stands in stark contrast to LNC’s ability to finance the collection of over 13,500 nomination papers in only two months, and an additional 1,700 nomination papers in just one week when LPNH failed to obtain the remaining necessary number of petitions. State Add. 45 (Tomasso Ex. 10); PM Trial Tr. 35; JA 97 (Tomasso Tr. 71-72). Any

inability to obtain national funds in the future is not due to the January 1 start date, but more likely due to LPNH's failure to follow through with its obligation to collect signatures during the 2012 petition drive due to lack of support within the state. LPNH's attempt to blame the January 1 start date for any future lack of support from the national party is not credible. *See* JA 105 (Tomasso Tr. 102-03) (testifying that even without the January 1 start date, it is doubtful LNC would be willing to contribute to another petitioning effort in New Hampshire to the extent it did in 2012).

Finally, LPNH faults the district court for finding that \$50,000 to engage in a successful petition drive "is a relatively small amount of money." LPNH asserts that while that amount "may be a drop in the bucket for the major parties," it is "enormous for a small party like LPNH." LPNH Brief at 46. However, it is the lack of resources, not the January 1 start date, which makes this amount an obstacle to LPNH's ability to access the ballot.

The evidence presented to the district court shows that the primary obstacle to ballot access facing LPNH is its lack of support within New Hampshire. Evaluating the alleged burdens collectively, based on the evidence presented, the district court properly found that the January 1 start date "imposes only a reasonable and nondiscriminatory, and not a severe, burden on ballot access." LPNH Add. 91.

B. The State’s Strong Interest In Ensuring That Political Parties Have Significant Support Before Appearing On The Ballot Outweighs Any Limited Burden Imposed By RSA 655:40-a.

After finding that the January 1 start date “does not impose a severe burden on ballot access,” the district court went on to apply the *Anderson* sliding scale balancing test to determine whether the interests asserted by the State sufficiently outweighed the limited burden imposed. LPNH Add. 91-102. In doing so, the court rejected LPNH’s argument that some form of intermediate scrutiny applied preventing the court from considering any State interest other than the actual justifications considered by the legislature when enacting the law. *Id.* The district court also rejected the State’s argument that traditional rational-basis review applied. *Id.* at 91. LPNH’s assertion to the contrary – that the district court ultimately “applied rational basis review,” LPNH Brief at 58 – is incorrect. *See* LPNH Add. 91-102. The district court properly applied the *Anderson* balancing test and concluded that the State’s strong interest in requiring a political party to demonstrate a measure of support before appearing on the ballot outweighed the reasonable burdens imposed by the January 1 start date. *Id.*

On appeal, LPNH continues to argue that a form of heightened scrutiny applies, preventing this Court from considering any State interest other than the actual justifications considered by the legislature when

enacting the law. LPNH Brief at 47-58. The *Anderson* balancing test does not, however, limit a court's analysis in such a manner. The applicable test provides as follows:

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

Burdick v. Takushi, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 789). Under this standard, the rigorousness of the court's inquiry depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. *Id.* While “severe” restrictions require strict scrutiny review, *see id.*, there is no specific lesser level of scrutiny for non-severe restrictions, but rather a balancing scale requiring that the burden “be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation,’” *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191 (2008) (quoting *Norman v. Reed*, 502 U.S. 279, 288-89 (1992)). Where, as here, the burdens imposed on ballot access are reasonable and not severe, the court considers “the precise interests put forward by the State as justifications for the burden,” and need not limit its analysis to only those

State interests apparent in the legislative history.⁹ *See Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789.

The State articulated specific interests justifying the limited burdens imposed by RSA 655:40-a. “It is settled beyond hope of contradiction that states have a legitimate interest in ensuring that a candidate makes a preliminary showing of a substantial measure of support as a prerequisite to appearing on the ballot.” *Barr*, 626 F.3d at 111; *see also Jenness*, 403 U.S. at 442 (“There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization’s candidate on the ballot....”); *Bullock v. Carter*, 405 U.S. 134, 145 (1972) (citations omitted) (“The Court has recognized that a State has a legitimate interest in regulating the number of candidates on the ballot. In so doing, the State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter

⁹ The concerns of amicus curiae Center for Competitive Democracy that “the *Anderson/Burdick* sliding scale formula would in all cases short of those presenting severe burdens collapse into rationality review” unless the court is limited to considering only the legislature’s actual interests at the time of enactment, *see* Brief of Amicus Curiae Center for Competitive Democracy at 13, overlooks the fact that the rigorousness of the court’s inquiry depends on the magnitude of the injury to constitutional rights, *see Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789. In cases where the burden is less than severe, the court must still weigh the strength of the State’s interest against the extent of the burden imposed.

confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections.”).

LPNH does not dispute this legitimate state interest, but instead argues that the 3 percent threshold already satisfied this interest, making the “arbitrary and burdensome January 1 start date” unnecessary. LPNH Brief at 50-51. The district court properly rejected this argument, noting that the Supreme Court has rejected the notion that states cannot modify their ballot-access regulations until actual voter confusion has occurred. JA 40 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986) (“To require states to prove actual voter confusion, ballot overcrowding, or the presence of frivolous candidacies as a predicate to the imposition of reasonable ballot access restrictions . . . would necessitate that a State’s political system sustain some level of damage before the legislature could take corrective action.”)).

The question before this Court is whether the State’s strong interest in preventing ballot clutter by requiring political organizations to make a preliminary showing of support outweighs the limited burdens imposed by

RSA 655:40-a. For the reasons stated below, this Court should hold that it does.¹⁰

Gaining access to the ballot as a recognized political party in New Hampshire has real and substantial advantages, as it allows the party to run an entire slate of candidates without each individual third-party candidate needing to collect the number of nomination papers necessary under RSA 655:42 and RSA 655:40. Because the process for nomination of an organization excuses individual candidates from having to demonstrate a preliminary showing of support through the individual petitioning process, the State has a significant interest in regulating a political organization's access to the ballot. RSA 655:40-a accomplishes this interest by requiring a political organization to obtain the requisite number of nomination papers within a set time frame, thereby showing that the organization currently has the necessary level of popular support within New Hampshire to excuse its individual candidates from having to comply with the petitioning process. It

¹⁰ LPNH and its amici rely heavily on *Block v. Mollis*, 618 F. Sup. 2d 142 (D.R.I. 2009), in urging this Court to reverse the judgment of the district court. However, as the district court here aptly observed, *Block* is distinguishable because in that case, “[t]he sole rationale the State offer[ed] for the January 1 start date [was] its interest in ensuring that petition signatures [were] valid.” *Id.* at 151. Because the *Anderson* balancing test permits a court to only consider “the precise interests put forward by the State,” *see Anderson*, 460 U.S. at 789, the *Block* court’s analysis was necessarily limited to the narrow interest put forward by Rhode Island in that case; therefore, the *Block* decision is neither relevant nor persuasive.

“ensur[es] that only bona fide [political organizations] with a measure of support gain ballot access.” *Swanson v. Worley*, 490 F.3d 894, 911 (11th Cir. 2007).

Requiring nomination papers to be dated in the year of the election ensures that the support for the political organization is current. As discussed above, RSA 655:40-a excuses individual candidates from having to show a significant modicum of support before accessing the ballot. Where individual candidates must show such support by collecting nomination papers in the year of the election, *see* RSA 655:40, it rationally follows that a political organization seeking to run a full slate of individual candidates should have to establish such support within the same time frame. Requiring a political organization to collect nomination papers during the year of the election if it wishes to bypass the individual petitioning process for all of its candidates is justified by the State’s interest in ensuring that candidates have a substantial measure of support within New Hampshire before accessing the ballot.

LPNH argues that the “‘current support’ rationale is not credible because the State already accepts ‘support’ pre-dating January 1 of the election year when it provides ‘party’ recognition to a ‘major’ party whose nominee polls at least 4% of the vote for U.S. Senate or Governor in an

election held **24 months previously.**” LPNH Brief at 55 (emphasis in brief). This argument overlooks the difference between the avenue by which a major party obtains access to the ballot, *see* RSA 652:11, and the avenue by which a political organization obtains access to the ballot, *see* RSA 65:40-a; RSA 655:42, III. When a political organization qualifies as a “party” under RSA 652:11 by receiving 4 percent of the total number of votes cast for the office of governor or the offices of United States Senators, it has shown through the votes of New Hampshire voters that it has a significant modicum of support within New Hampshire. That is because when an individual votes for a candidate, the vote indicates support for that candidate’s party. In contrast, when a political organization seeks a voter’s signature on a nomination petition, it simply asks a registered voter to give the party a chance to be on the ballot. A voter’s signature on a nomination petition does not indicate support for the political organization; rather, it is the political organization’s ability to satisfy the *process* of gathering a set number of petitions within a given period of time that demonstrates that the organization has a significant enough presence within the state to entitle it to run a full slate of candidates on the ballot. By requiring a third party to satisfy this process during the election year, the State ensures that the party’s

presence within the state is reasonably current and will remain relevant at the time of the election itself.

Finally, amending RSA 655:40-a by adding the January 1 start date aligned the statute with RSA 655:40, thereby making consistent the individual candidate petitioning process and the party-wide petitioning process. Prior to the amendment, only the individual candidate petitioning process required nomination petitions to be dated in the year of the election. *Compare* RSA 655:40 (Supp. 2011) (as amended in 2009) (requiring that nomination papers for individual candidates “be dated in the year of the election”) *with* RSA 655:40-a (2008) (providing no start date for collecting nomination papers for nomination of a political organization). Amending RSA 655:40-a, to be consistent with RSA 655:40 ensured that checklist supervisors would be applying the same criteria when reviewing submitted petitions. Ensuring consistency between the two petitioning processes is rationally related to the State’s interest in regulating access to the ballot.

The district court properly applied the *Anderson* balancing test in weighing the precise interests put forward by the State against the reasonable, non-severe burdens imposed by the January 1 start date. “[W]hen a state election law provision 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.” *Libertarian Party*, 638 F.3d at 14. Here, the State’s interest in ensuring that a political organization has a sufficient measure of support before running a full slate of candidates on the ballot outweighs the reasonable, nondiscriminatory burdens imposed by RSA 655:40-a.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the district court.

Respectfully submitted,

WILLIAM M. GARDNER,
By his attorney,

JOSEPH A. FOSTER
N.H. ATTORNEY GENERAL

March 24, 2016

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Certificate of Compliance

This brief is in 14 point Times New Roman.

The word count according to the word-processing system used to prepare this brief is 8,027.

Certificate of Service

Date: March 24, 2016

I hereby certify that the State of New Hampshire's Brief has been served by use of the Court's CM/ECF system this day to Gilles Bissonnette, Esquire, and William E. Christie, Esquire, counsel for Appellant.

/s/Laura E. B. Lombardi
Laura E. B. Lombardi

ADDENDUM

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**DEPOSITION
EXHIBIT**

Tomasso 6
LNY 04.17.15



LNC EXECUTIVE COMMITTEE
CONFERENCE CALL MINUTES
JULY 25, 2011

DRAFT DISTRIBUTION DATE: JULY 27, 2011

CURRENT STATUS: **AUTO-APPROVED AUGUST 10, 2011**

ATTENDANCE

Executive Committee members present were: Mark Hinkle (Chair), Mark Rutherford (Vice Chair), Alicia Mattson (Secretary), Bill Redpath (Treasurer), Kevin Knedler, Jim Lark, and Mary Ruwart.

Other LNC members present were: Andy Wolf, Stewart Flood, Vicki Kirkland, and Dan Karlan.

Executive Director Wes Benedict was present representing staff.

Other guests were Rich Tomasso (as chair of the New Hampshire affiliate) and Richard Winger (ballot access guru extraordinaire).

CALL TO ORDER

The meeting was called to order at 9:03pm Eastern on July 25, 2011.

AGENDA

The purpose of the meeting was to discuss ballot access for New Hampshire.

EXHIBIT
C

NEW HAMPSHIRE BALLOT ACCESS

In New Hampshire, a full party petition requires 13,698 valid signatures (20,000 raw), and it would qualify for full party status through the 2012 election cycle. Full party status would give our party a separate column on the ballot, rather than being combined with all "other candidates". Retention of party status for 2014 would require that the party candidate for Governor receive 4% of the vote. The New Hampshire affiliate expects it could collect 2,000 to 3,000 volunteer signatures and fundraise to pay for a similar amount.

Mr. Redpath moved that the Libertarian National Committee encumber \$28,000 for a party petition drive in New Hampshire.

After some additional discussion, voting on the motion was as follows:

Aye: Hinkle, Knedler, Lark, Redpath, Ruwart
Nay: Mattson, Rutherford

The motion was adopted by a vote of 5-2.

ADJOURNMENT

Dr. Lark moved to adjourn. The motion was adopted without objection, and the Executive Committee adjourned at 9:48pm Eastern.

**DEPOSITION
EXHIBIT**

Tomasso 7
LWE 04-17-15

To: '2155208088'
Cc: 'William B. Redpath -Treasurer'
Subject: FW: petitioning expenditures

Darryl,

FYI Below from Bill.

You have ONLY \$1000 total for travel (to/from NH) so I guess it is up to you to let me know how much of that to give to each Ruby and Veronica (I'll preload that amount onto their respective cards). For example do you want \$250 to go on each of their cards for now?

Thanks!

Robert

Robert S. Kraus - Dir of Operations
Operations@LP.org
Libertarian National Committee
Ph: 202.333.0008 x 231

-----Original Message-----

From: William Redpath [mailto:wredpath@blakelsey.com]
Sent: Thursday, July 28, 2011 11:52 AM
To: Robert Kraus; 'Wes Benedict'; 'William B. Redpath -Treasurer'; Chair@LP.org
Subject: RE: I don't authorize any petitioning expenditures

Please tell Darryl that \$28k was approved for NH by the EC.

I approve for everyone combined up to \$1,000 for reimbursement of travel expenses only to and from (not while in) NH.

The other \$27,000 is to purchase 13,500 gross sigs at \$2 per sig.

The LPNH will need to cover approximately 6,000 gross sigs by paying for them or collecting them as volunteers.

That would bring us to 19,500 total gross sigs. With the valid required at 13,698, that would mean that we would need a 70.25% validity rate. In NH, that should be achievable.

So, within those parameters, please fulfill Darryl's requests.

Thanks, Bill

EXHIBIT
D

Type	Date	Num	Name	Memo	Amount
Bill	08/19/11	NHBA 700 Sigs	Ballot Access, Inc.	NHBA 700 Sigs	\$ 1,050.00
Bill	08/24/11	NHBA 1350 Sigs	Ballot Access, Inc.	NHBA 1350 Sigs	\$ 2,025.00
Bill	08/26/11	NHBA 566 Sigs	Ballot Access, Inc.	NHBA 566 Sigs	\$ 849.00
Bill	09/06/11	NHBA 1962 Sigs	Ballot Access, Inc.	NHBA 1962 Sigs	\$ 2,943.00
Bill	09/13/11	NHBA-570-Sigs	Ballot Access, Inc.	NHBA 570 Sigs	\$ 855.00
Bill	09/19/11	NHBA-930-Sigs	Ballot Access, Inc.	NHBA 930 Sigs	\$ 1,395.00
Bill	07/28/11	NHBA-Travel	Central Petition Management, LLC	NHBA Travel	\$ 1,000.00
Bill	08/01/11	NHBA-206-sigs	Central Petition Management, LLC	NHBA 206 Sigs	\$ 412.00
Bill	08/04/11	NHBA-138 Sigs	Central Petition Management, LLC	NHBA 138 Sigs	\$ 276.00
Bill	08/05/11	NHBA-Advance200sigs	Central Petition Management, LLC	NHBA 200 Sigs (advance)	\$ 400.00
Bill	08/08/11	NHBA 81 Net Sigs	Central Petition Management, LLC	NHBA 81 Net Sigs (281 gross)	\$ 162.00
Bill	08/09/11	NHBA 153 Sigs O/R	Central Petition Management, LLC	150 Sigs plus Over Ride (419 @ 50 cents)	\$ 509.50
Bill	08/12/11	NHBA-271-Sigs	Central Petition Management, LLC	NH Ballot Access Petitioning Expense	\$ 542.00
Bill	08/15/11	NHBA 278 Sigs (731)	Central Petition Management, LLC	NHBA 278 Sigs plus 731 O/R	\$ 921.50
Bill	08/19/11	NHBA 300 Sigs	Central Petition Management, LLC	NHBA 300 Sigs plus o/r	\$ 1,100.00
Bill	08/24/11	NHBA-276-Sigs	Central Petition Management, LLC	NHBA 276 Sigs plus O/R	\$ 1,227.00
Bill	08/26/11	NHBA-186 Sigs	Central Petition Management, LLC	NHBA 186 Sigs plus O/R	\$ 655.00
Bill	08/29/11	NHBA - Override LC	Central Petition Management, LLC	NHBA O/R	\$ 407.00
Bill	08/30/11	NHBA 293 Sigs	Central Petition Management, LLC	NHBA 293 Sigs	\$ 586.00
Bill	09/02/11	NHBA-249-Sigs	Central Petition Management, LLC	NHBA 249 Sigs	\$ 498.00
Bill	09/06/11	NHBA 472 Sigs	Central Petition Management, LLC	NHBA 472 Sigs plus O/R	\$ 2,156.00
Bill	09/13/11	NHBA484-Sigs	Central Petition Management, LLC	NHBA 484 Sigs plus O/R	\$ 1,374.00
Bill	09/13/11	NHBA-484-Sigs	Central Petition Management, LLC	NHBA 484 Sigs plus O/R	\$ 1,374.00
Bill	09/19/11	NHBA-242-Sigs	Central Petition Management, LLC	NHBA 242 Sigs plus O/R	\$ 993.50
Bill	09/23/11	NHBA-211-Sigs	Central Petition Management, LLC	NHBA 211 Sigs	\$ 422.00
Bill	08/09/11	NHBA 419 Sigs	Collins, Lawrence R.	419 Sigs at \$1.5 ea	\$ 628.50
Bill	08/15/11	NHBA 731 Sigs	Collins, Lawrence R.	NHBA 731 Sigs	\$ 1,096.50
Bill	08/19/11	NHBA 300 Sigs	Collins, Lawrence R.	NHBA 300 Sigs	\$ 450.00
Bill	08/29/11	NHBA-814 Sigs	Collins, Lawrence R.	NHBA 814 Sigs	\$ 1,221.00
Bill	09/06/11	NHBA 442 Sigs	Collins, Lawrence R.	NHBA 442 Sigs	\$ 663.00
Bill	09/13/11	NHBA-242-sigs	Collins, Lawrence R.	NHBA 242 Sigs	\$ 363.00
Bill	09/19/11	NHBA-89-Sigs	Collins, Lawrence R.	NHBA 89 Sigs	\$ 133.50
Bill	08/03/12	NH-BA-FINAL	Freedom Petition, LLC	LPNH Ballot Access Petitioning Expense	\$ 4,103.00
Bill	08/09/11	NHBA-148-Sigs	James, Ruby	NHBA 148 Sigs	\$ 296.00

LPNH-819

DEPOSITION EXHIBIT

Tomasso 10
JAY 04 19 15



**DEPOSITION
EXHIBIT**

Tomasso 14
Date 04-17-15

Re: LPNH - ballot access - retention requirement

Subject: Re: LPNH - ballot access - retention requirement
From: Rich Tomasso <rtomasso@lpmh.org>
Date: 12/4/2011 7:04 PM
To: richardwinger@yahoo.com
CC: "Scott L." <scott73@earthlink.net>, 'Bill Redpath' <wredpath@his.com>, 'William Redpath' <wredpath@biakelsey.com>, mark@garlic.com

Richard Winger wrote:

I am extremely worried about the current petition drive. The NHLP has refused to honor its promise to pay for about 25% of the job. So all the signatures that Darryl Bonner collected are just sitting around getting stale

That is bullshit.

Nearly everything that's been collected to date is in for certification.

We haven't gotten any money from national for more than a month now and are funding it on our own. Not as fast as I'd like, but the money is coming in here and there. We just sent out a fundraising letter and raised money at our state convention.

I talked with Bill Redpath this morning about the drive. I want to do everything I can to finish the drive with our own funds before having to ask national for additional help.

Ballot access isn't a sexy fundraising topic. Ask Scott Kohlhass how it's going in Oklahoma. People who are giving to us are giving less than they have in the past. And people who say they'll send us a check never do. Or they are giving Ron Paul their money instead.

As for the "lobbying" of the legislature, anything from out of state is pointless and usually detrimental. We are working on ballot access come January with the new session. I haven't forgotten the ideas I discussed with people, but there's nothing to do about it now.

EXHIBIT
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