

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

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LIBERTARIAN PARTY OF MAINE, INC.,  
JORGE MADERAL, SUSAN POULIN,  
SHAWN LEVASSEUR, CHRISTOPHER  
LYONS, ERIC GRANT, AND CHARLES  
JAQUES,

Plaintiffs

v.

MATTHEW DUNLAP, Secretary of State  
for the State of Maine, in his official  
capacity, JULIE FLYNN, Deputy Secretary  
of State for the State of Maine, in her official  
capacity, TRACY WILLETT, Assistant Director,  
Division of Elections, in her official capacity,  
and the MAINE DEPARTMENT OF  
THE SECRETARY OF STATE,

Defendants

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Civil Action No. 2:16-cv-00002-JAW

**PLAINTIFFS' EMERGENCY MOTION FOR RECONSIDERATION**  
**(With Incorporated Memorandum of Law)**

NOW COME THE Plaintiffs, pursuant to Rule 7(g) of the Local Rules of the United States District Court for the District of Maine, and move this Court on an emergency basis to reconsider its April 25, 2016 Order denying their Motion for a Preliminary Injunction. As set forth more fully below, the Court's denial of the request for preliminary injunctive relief is based on a manifest error of fact and/or law.

**Introduction & Summary of Argument**

In its Order dated April 25, 2016, the Court denied Plaintiffs' Emergency Motion for Preliminary Injunction without deciding whether they had shown a substantial likelihood of success on the merits of Counts I and/or II of their Complaint, which challenge the constitutionality of two separate provisions of a Maine statute governing the qualification

requirements and procedures for new political parties. Instead, the Court’s ruling was based on its conclusion that “the injunctive relief sought is a practical impossibility: the Secretary of State cannot certify the Libertarian Party on May 31, 2015 and arrange for their candidates to appear on the primary ballot on June 14, 2016.” April 25, 2016 Order at p. 23. As a result, the Court held, the Plaintiffs’ “requested injunctive relief would send the Maine primary election into chaos.” *Id.* at p. 26.

As set forth more fully below, Plaintiffs’ request for injunctive relief – which was reduced to writing in the form of a proposed order admitted into evidence at the hearing as Plaintiffs’ Exhibit 7 and further presented through the testimony of party chairman Jorge Maderal – did not include a single request having anything to do with this year’s primary election, scheduled to occur on June 14, 2016. *See* Plaintiff’s Exhibit 7 at ¶¶ A-J. The only ballot affected in any way by the relief requested is the ballot for the general election, which is not scheduled to occur until November 8, 2016, more than six from now. *Id.* For this reason, the timing of Maine’s primary election cannot possibly serve as the basis for denying the relief sought or support any conclusions about undue hardship on the Secretary of State. Accordingly, the Court’s April 25<sup>th</sup> decision is based on a manifest error of fact, namely, a misunderstanding or misconstruction of the relief sought by the Plaintiffs. As discussed more fully below, the Court’s order may also be based on manifest errors of law, but that is not entirely clear from the language of the decision. Pursuant to Local Rule 7, this Court can and should reconsider and amend its Order dated April 25, 2016.

## **Argument**

### **I. LEGAL STANDARD**

This Motion is governed principally by Local Rule 7(g) of the Rules of the United States District Court for the District of Maine, pursuant to which this Court has the discretion to reconsider and amend its own interlocutory order if the moving party demonstrates that “the

order was based on a manifest error of fact or law.” Local Rule 7(g). *See also Millay v. Surry School Department*, 632 F.Supp.2d 38, 41-42 (D. Me. 2009).

**II. THE COURT’S ORDER IS BASED ON THE PLAINLY ERRONEOUS CONCLUSION THAT THE PLAINTIFFS WERE SEEKING AN ORDER COMPELLING THE PLACEMENT OF LIBERTARIAN PARTY CANDIDATES ON THE BALLOT FOR MAINE’S JUNE 14, 2016 PRIMARY ELECTION.**

Through their proposed order and the evidence and testimony presented at the hearing on their Motion for a Preliminary Injunction, Plaintiffs made clear that they were not asking the Court to compel the Secretary of State to place any Libertarian Party candidates on the ballot for the June 14, 2016 primary election. Instead, the Plaintiffs’ request for relief – reduced to writing in the form of their Proposed Order (Plaintiff’s Exhibit 7) – focused on enrolling voters in the Libertarian Party, nominating candidates by convention rather than by primary, and securing placement of its duly nominated candidates on the general election ballot, including candidates for President and Vice President.<sup>1</sup>

**A. Enrolling Voters in the Libertarian Party**

As set forth in its proposed Order, Plaintiffs asked the Court to order the Secretary of State restore the enrollment status of some 4513 voters who were stripped of their enrollment status, and allow the party to continue to enroll voters in the Libertarian Party until May 31<sup>st</sup> so that it can attempt to reach the 5000 enrollment threshold. *See* Plaintiffs’ Exhibit 7 at ¶ A & B.

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<sup>1</sup> The original proposed order submitted to the Court upon the filing of the Motion for Preliminary Injunction on January 27, 2016 did include a request that the Secretary of State be required to “declare the Libertarian Party to be a qualified political party eligible to participate in Maine’s June 2016 primary election upon verification by the Secretary, within a reasonable time in advance of that election, that there are at least 5,000 Maine voters enrolled in the Libertarian Party.” *See* proposed Order filed by the Plaintiffs on January 27, 2016 at ¶ D. At the time, Plaintiffs’ counsel was unaware of whether there were individuals interested in seeking to be nominated as Libertarian Party candidates through the primary election. After the Clerk’s office inquired as to the urgency of the motion – as duly noted in footnote 6 of the Court’s April 25<sup>th</sup> Order – undersigned counsel contacted his clients and determined that their central focus was less about participation in the primary election, and more about their ability to enroll voters, qualify as a party and secure placement of the Libertarian Party’s Presidential and Vice Presidential candidates – to be chosen at the national convention in Orlando, Florida from May 27<sup>th</sup> through May 30<sup>th</sup> – on the general election ballot. For that reason, undersigned counsel notified the Clerk and opposing counsel that an expedited briefing schedule and expedited hearing was unnecessary. Plaintiff also thereafter revised its proposed order and request for relief, provided a copy to counsel for the state in advance of the hearing, and presented it to the Court as Plaintiffs’ Exhibit 7.

Upon qualification, the Plaintiffs sought to be able to continue to enroll voters so that they can build support for the Libertarian Party's general election candidates and organize get-out-the vote activities that target enrolled libertarians. *Id.* at ¶ E. This relief has nothing to do with the Maine primary election, has no effect on Maine's primary, and places no burden on whatsoever the Secretary of State's office.

**B. Nominating Candidates by Convention**

With regard to candidates that are required to be nominated via primary election under Maine statute, the Plaintiffs asked the Court to order that the Secretary of State instead allow the Libertarian Party – for this election year only – to nominate any such candidates by convention. *See* Plaintiffs' Exhibit 7 at ¶ H. As testified to by Jorge Maderal, this request was driven by two central factors: (1) the timing of the upcoming primary and the fact that the March 15<sup>th</sup> deadline for filing primary petitions had passed, making it unworkable for the party to nominate candidates via primary election this year; and (2) the fact that there were no individuals who had committed to seeking the primary nomination of the Libertarian Party based on the hope of a successful legal outcome in this case. Rather than disrupt the June 14<sup>th</sup> primary, the Plaintiffs' request for preliminary injunctive relief was expressly designed to avoid any disruptive impact on Maine's primary election or place any undue burden on the Secretary of State.

The Court does not expressly state that it is without authority to order the Secretary of State to allow the Libertarian Party to nominate its candidates by convention rather than primary this year, as the Plaintiffs requested. In fact, the Court never mentions or addresses this particular request for preliminary injunctive relief set forth in Plaintiffs' proposed Order. If the Court overlooked the relief requested, then the manifest error is one of fact. If instead the Court tacitly held that it was without authority to grant such relief, then the manifest error is one of law, for the following reason. To the extent the Court determines that the Plaintiffs' are likely to succeed in regard to the claims in Counts I and/or II that their constitutional rights were violated

by operation of the statute in question, the equitable powers of this Court to fashion a remedy that vindicates those rights and minimizes or averts the adverse the impact of the constitutional violation are vast and broad.<sup>2</sup> That authority includes the authority to order the Secretary of State to place on the general election ballot candidates nominated by the Libertarian Party at its 2016 state convention to be held next month.<sup>3</sup>

### **C. Presidential and Vice Presidential Candidates**

This is a presidential election year. In its briefing on the motion and throughout the hearing, the Plaintiffs emphasized their interest in qualifying as a political party so that it could secure a place for the Libertarian Party's Presidential and Vice Presidential candidates on Maine's November 8<sup>th</sup> general election ballot in the same manner that the major parties do. *See* Plaintiffs' Exhibit 7 at ¶ H. Once again, the court never addressed this request for preliminary injunctive relief – which has nothing to do with the primary election – anywhere in its 27-page order. If that was an oversight, then the manifest error upon which the Court's April 25<sup>th</sup> Order is based is one of fact. If instead the Court's decision was based on the tacit conclusion that

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<sup>2</sup> *See, e.g., Williams v. Rhodes*, 393 U.S. 97 (1968) (exercising its equitable power to fashion a remedy when faced with a motion for preliminary injunctive relief and a likely constitutional violation, the High Court ordered that the State of Ohio place the names of the American Independent Party's candidates for President and Vice President on the general election ballot, less than two months before the general election); *Stoddard v. Quinn*, 593 F. Supp. 300 (D. Me. 1984) (after finding Maine's qualification deadline for independent candidates to be unconstitutionally early, the Court barred the Secretary of State from enforcing the filing deadline against the Plaintiff or refusing to include her name on the general election ballot based on a failure to meet that deadline, notwithstanding the fact that Plaintiff waited until July 3<sup>rd</sup> – three months after being notified of the disqualification – to file suit, and notwithstanding the fact that the Court's decision and order was not rendered until August 31<sup>st</sup>, just two months before the general election); and *Green Party of Georgia v. Kemp*, 2016 WL 1057022 \*25 (N.D. Ga. 2016) (after striking down as unconstitutional Georgia's signature requirement for party qualification, the Court fashioned a remedy that included setting 7500 as the number of required signatures until such time as the legislature is able to repeal and/or amend the statute).

<sup>3</sup> *See, e.g., Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690, 694-701 (E.D. Ark. 1996) (after striking down an Arkansas law requiring new political parties to file qualifying petitions 5 months before the primary election and 10 months before the general election as unconstitutionally early, the court ordered that the State allow the Reform Party to nominate its candidates by convention rather than a primary); and *Libertarian Party of Ohio v. Brunner*, 567 F.Supp.2d 1006 (S.D. Ohio 2008) (after finding that the Libertarian Party had shown a likelihood of success on the merits of their constitutional challenge to Ohio's party qualification statute and its early deadline, the Court granted a preliminary injunction requiring the Secretary of State to place on the general election ballot candidates nominated at Libertarian Party's state convention – thereby allowing the party to bypass the primary – notwithstanding its determination that the Ohio statute requiring minor political parties to nominate candidates by primary election was not itself unconstitutional).

Presidential or Vice Presidential candidates or electors must be nominated via primary under Maine law, then the decision is based on a manifest error of law.<sup>4</sup> Once again, no part of the relief requested has anything to do with the June 14<sup>th</sup> primary election or the ballot for that election or places any burden on the Secretary of State.<sup>5</sup>

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court reconsider its April 25, 2016 Order, address and find likelihood of success on the merits, and grant the relief requested by the Plaintiffs, which has nothing to do with the primary election and places no undue burden on the Secretary of State. Moreover, given the unexpected course of the proceedings on this Motion, the May 16<sup>th</sup> date set for oral argument on this Motion, and the fact that the granting of this Motion would require the Court to render a decision on the merits of the central constitutional issues underlying the Plaintiffs' Motion for Preliminary Injunction, Plaintiffs respectfully request – if the motion is granted – that they have not less than forty-five (45) days from the date of the Court's ruling to enroll additional voters in the Libertarian Party and file a declaration with the Secretary of State, instead of the May 31<sup>st</sup> deadline set forth in their Proposed Order (Plaintiffs' Exhibit 7).

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<sup>4</sup> As set forth in Plaintiffs' briefs on their motion and at the hearing, qualified parties in Maine – with regard to elections through and including the 2016 presidential election – do not nominate candidates/electors for President and Vice President by primary election, nor are they required to circulate nominating petitions to place their candidates on the ballot. 21-A M.R.S.A. § 331. Instead, qualified parties in Maine are simply required to certify to the Secretary of State the names of their duly selected Presidential and Vice Presidential candidates/electors following their nominating conventions. 21-A M.R.S.A. § 322.

<sup>5</sup> It is also worth noting that Maine law does not require a political party to run a single candidate in the primary election in order to be a qualified party and enjoy the plethora of other benefits enjoyed by qualified parties, including but not limited to the right to enroll voters in its ranks and place its presidential and vice presidential candidates on the ballot – by certification to the Secretary of State – without gathering signatures on a nominating petition. See 21-A M.R.S.A. §§ 301-303.

Dated at Portland, Maine this 29<sup>th</sup> day of April, 2016.

/s/ John H. Branson

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 29, 2016, I electronically filed the Plaintiffs' Emergency Motion for Reconsideration and Proposed Order with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's CM/ECF system, including those listed below. Parties may access this filing through the CM/ECF system.

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