

IN THE SUPREME COURT OF OHIO

STATE *ex rel.*)
)
JOHN FOCKLER)
188 Stadium Drive, Apt 6)
Boardman OH 44512,)
)
KEVIN KNEDLER)
6248 Home Road)
Delaware, OH 43015,)
)
M. ANN LEECH)
415 Pinebluff Drive)
Loveland, OH 45140,)
)
SCOTT PETTIGREW)
6015 Driftwood Court)
Maineville, OH 45039, and)
)
HAROLD D. THOMAS)
80 Villamere Drive)
Columbus, OH 43213,)
)
Relators,)
)
 vs.)
)
JON HUSTED)
Ohio Secretary of State)
180 E. Broad Street, 16th Flr.)
Columbus, OH 43215)
)
Respondent.)

CASE NO. _____

Original Action in Mandamus

Expedited Election Case
Under S. Ct. Prac. R. 12.08

**RELATORS' VERIFIED COMPLAINT IN ORIGINAL ACTION
FOR WRIT OF MANDAMUS**

Mark R. Brown
 Ohio Bar No. 81941
 303 E. Broad Street
 Columbus, Ohio 43215
 (614) 236-6590 (phone)
 (614) 236-6956 (fax)
 mbrown@law.capital.edu

Counsel for Relators

Now come Relators and for their Petition for the Issuance of a Writ of Mandamus state as follows:

PARTIES, JURISDICTION AND VENUE

1. Relator, John Fockler, is a citizen of the United States; a qualified elector in Ohio; a resident of Boardman, Ohio; and one of the five voters in the "group of voters" within the meaning of R.C. § 3517.01(A)(1) who formally nominated Gary Johnson and William Weld for President and Vice-President, respectively, in Ohio during the 2016 general election.
2. Relator, Kevin Knedler, is a citizen of the United States; a qualified elector in Ohio; a resident of Delaware, Ohio; and one of the five voters in the "group of voters" within the meaning of R.C. § 3517.01(A)(1) who formally nominated Gary Johnson and William Weld for President and Vice-President, respectively, in Ohio during the 2016 general election.
3. Relator, M. Ann Leech, is a citizen of the United States; a qualified elector in Ohio; a resident of Miami Township, Ohio; and one of the five voters in the "group of voters" within the meaning of R.C. § 3517.01(A)(1) who formally nominated Gary Johnson and William Weld for President and Vice-President, respectively, in Ohio during the 2016 general election.
4. Relator, Scott Pettigrew, is a citizen of the United States; a qualified elector in Ohio; a resident of Maineville, Ohio; and one of the five voters in the "group of voters" within the meaning of R.C. § 3517.01(A)(1) who formally nominated Gary Johnson and William Weld for President and Vice-President, respectively, in Ohio during the 2016 general election.
5. Relator, Harold Thomas, is a citizen of the United States; a qualified elector in Ohio; a resident of Columbus, Ohio; and one of the five voters in the "group of

voters" within the meaning of R.C. § 3517.01(A)(1) who formally nominated Gary Johnson and William Weld for President and Vice-President, respectively, in Ohio during the 2016 general election.

6. Respondent, Jon Husted, is the Ohio Secretary of State and, pursuant to R.C. § 3501.04, is the chief elections officer in Ohio charged with administering Ohio's Election Law.
7. This Court has jurisdiction over the subject matter of this action as well as the parties pursuant to Article IV, § 2(B)(1)(b) of the Constitution of the State of Ohio and R.C. § 2731.02.
8. This is an election case governed by the provisions of S. Ct. Prac. R. 12.08.
9. The proximity of the February 1, 2017 filing deadline for candidates who seek political party nominations on May 2, 2017 during Ohio's primaries, at which time Relators will seek to have their candidates for public office nominated by voters, qualifies this matter as an expedited elections case under S. Ct. Prac. R. 12.08.

FACTS

10. On August 10, 2016, Relators properly nominated Charles Earl and Kenneth Moellman for President and Vice-President, respectively, in full compliance with R.C. §§ 3513.257 and 3513.261. *See* Exhibit A (attached).
11. On August 15, 2016, Relators properly substituted Gary Johnson and William Weld as their candidates for President and Vice-President, respectively, by filing with Respondent substitution papers in full compliance with R.C. § 3513.31.
12. Respondent on August 22, 2016 recognized Gary Johnson and William Weld as Relators' candidates for President and Vice-President, respectively.

13. Respondent placed the names of Gary Johnson and William Weld for President and Vice-President, respectively, on all of Ohio's November 8, 2016 general election ballots, including all absentee, provisional and overseas-voter ballots.
14. Gary Johnson and William Weld were Relators' nominated candidates for President and Vice-President, respectively, in 2016.
15. Gary Johnson and William Weld won 3.17 percent of the total votes cast in Ohio in 2016 for President and Vice-President, respectively.
16. Respondent on November 29, 2016 certified that Johnson and Weld had won 3.17 percent of the total vote for President and Vice-President, respectively, in Ohio.
17. Relators on December 2, 2016 requested, in writing, that Respondent recognize them as a political party in Ohio under R.C. § 3517.01(A)(1)(a) because of their candidates' (Johnson and Weld) having won more than 3 percent of the total votes cast for President and Vice-President, respectively. *See* Exhibit B (attached).
18. Relators (through their attorney) on December 9, 2016 delivered to Respondent (through his attorney) Relators' legal authority supporting their request. *See* Exhibit C (attached) (e-mail from Mark Brown to Halli Watson).
19. Respondent (through his attorney) on December 16, 2016 delivered to Relators' attorney Respondent's refusal to recognize Relators as a proper "group of voters" under R.C. § 3517.01(A)(1)(a) and rejected their claim to political party status under R.C. § 3517.01(A)(1)(a). *See* Exhibit D (attached).
20. In his response dated December 16, 2016, Respondent cited no legal authority for his rejection of Relators' request under R.C. § 3517.01(A)(1)(a).
21. Respondent offered two non-legal justifications for rejecting Relators' request to be certified as a political party under R.C. § 3517.01(A)(1)(a): (1) his press release dated August 15, 2016 that accompanied his formal recognition of Johnson and

Weld as Relators' properly nominated candidates; and (2) an alleged agreement by Relators' attorney that Relators' are not entitled to be recognized as a political party under R.C. § 3517.01(A)(1)(a).

22. Neither justification offers accurate, persuasive, relevant legal support for Respondent's unprecedented action in refusing to certify Relators as a political party under R.C. § 3517.01(A)(1)(a).

23. Respondent's press release, even if relevant, referred to a new and different statute, Senate Bill (S.B.) 193, which in November of 2013 stripped the Libertarian Party of Ohio of its status as a recognized political party and stated:

The presence of independent joint-candidates for president and vice-president, even when endorsed by, or affiliated with, a national political party or that of another state, is not sufficient under Senate Bill 193 to create a minor political party.

See Exhibit D (quoting press release issued by Respondent on August 15, 2016).

24. Respondent's press release, even if relevant, has nothing to do with Relators' and their right to be certified as a political party under R.C. 3517.01(A)(1)(a).

25. Press releases are not authoritative precedents and cannot change existing law.

26. Respondent's assertion in his rejection that Relators and/or their attorney have somehow agreed with Respondent's interpretation of R.C. § 3517.01(A)(1) in this or in any other litigation is incorrect. *See* Exhibit D.

27. The quoted language cited by Respondent, *see* Exhibit D, is taken from an application for emergency relief filed by the Libertarian Party of Ohio on August 23, 2016 in *Libertarian Party of Ohio v. Husted*, 831 F.3d 582 (6th Cir.), *cert. pending*, U.S. No. 16-580 (2016), three months before Respondent announced his interpretation of R.C. § 3517.01(A)(1)(a) and rejected Relators' request.

28. The application for emergency relief filed on behalf of the Libertarian Party of Ohio in *Libertarian Party of Ohio v. Husted*, 831 F.3d 582 (6th Cir.), *cert.*

pending, U.S. No. 16-580 (2016), and footnoted language quoted by Respondent from that application, *see* Exhibit D, express no opinion on the meaning of R.C. § 3517.01(A)(1)(a), have nothing to do with Relators' argument, the meaning of R.C. § 3517.01(A)(1)(a), or any material statute in the present case.

29. The language Respondent now incorrectly claims constitutes an agreement between Relators and Respondent as to the meaning of R.C. § 3517.01(A)(1)(a) is contradicted by the very language Respondent quotes, Relators' formal request to be recognized as a political party, *see* Exhibit B, and Relators' legal argument delivered to Respondent's attorney on December 9, 2016. *See* Exhibit C.

30. The Libertarian Party of Ohio accurately reported to the Supreme Court of the United States that Respondent's pending certification of Relators' nomination of Johnson and Weld as independent candidates was not the equivalent of having those candidates run as Libertarians because, *inter alia*, the Libertarian Party of Ohio would not be able to use R.C. § 3501.01(F) to remain a political party based on votes won by Johnson and Weld:

Assuming Johnson/Weld were to be certified as an independent ticket and survive official protests, it (unlike the established parties' presidential tickets) will still not represent LPO as a political party, will not be listed as the 'Libertarian' ticket on Ohio's ballot, and cannot meet Ohio's 3% vote test on behalf of LPO in order to win for it qualified political party status in Ohio's future elections.

See Exhibit D (quoting application of Libertarian Party of Ohio in *Libertarian Party of Ohio v. Husted*, 831 F.3d 582 (6th Cir.), *cert. pending*, U.S. No. 16-580 (2016)) (emphasis added).

31. The Supreme Court on August 29, 2016 denied the Libertarian Party of Ohio's request for emergency relief in *Libertarian Party of Ohio v. Husted*, 831 F.3d 582 (6th Cir.), *cert. pending*, U.S. No. 16-580 (2016), Johnson and Weld were forced by Respondent to run as the independent nominees of Relators, and the Libertarian

Party of Ohio was thereafter unable to use R.C. § 3501.01(F) to remain a qualified political party (just as the Libertarian Party of Ohio had explained to the Supreme Court of the United States).

32. Section 3501.01(F) of the Revised Code specifically provides that established political parties (which the Libertarian Party of Ohio claims to be in *Libertarian Party of Ohio v. Husted*, 831 F.3d 582 (6th Cir.), *cert. pending*, U.S. No. 16-580 (2016)), remain recognized political parties in Ohio when their gubernatorial or presidential candidates win at least 3% of the total vote for that office.

33. Specifically, R.C. § 3501.01(F) states:

"Political party" means any group of voters meeting the requirements set forth in section 3517.01 of the Revised Code for the formation and existence of a political party.

(1) "Major political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received not less than twenty per cent of the total vote cast for such office at the most recent regular state election.

(2) "Minor political party" means any political party organized under the laws of this state that meets either of the following requirements:

(a) Except as otherwise provided in this division, the political party's candidate for governor or nominees for presidential electors received less than twenty per cent but not less than three per cent of the total vote cast for such office at the most recent regular state election. A political party that meets the requirements of this division remains a political party for a period of four years after meeting those requirements.

(Emphasis added).

34. Section 3501.01(F) of the Revised Code does not govern whether "any group of voters" may achieve political party status using Ohio's 3% vote test.

35. The relevant statute at issue in the present case before this Court is R.C. § 3517.01(A)(1), which states that "any group of voters" qualifies as a political party by meeting Ohio's 3% vote test.

36. Neither of the two justifications relied upon by Respondent to reject Relators' request under R.C. § 3517.01(A)(1) -- i.e., (1) a press release about the meaning of a different statute (S.B. 193); and (2) an accurate description of the effect of another, different statute (§ 3501.01(F)) -- are authoritative and neither can alter the meaning of R.C. § 3517.01(A)(1) and existing law in Ohio.

37. Section 3517.01(A)(1) of the Revised Code controls the present case and states in plain language:

A political party within the meaning of Title XXXV of the Revised Code is any group of voters that meets either of the following requirements:

(a) Except as otherwise provided in this division, at the most recent regular state election, the group polled for its candidate for governor in the state or nominees for presidential electors at least three per cent of the entire vote cast for that office. A group that meets the requirements of this division remains a political party for a period of four years after meeting those requirements.

(Emphasis added).

38. "Any group of voters" may under R.C. § 3517.01(A)(1)(a) become a "political party" in Ohio by polling for their candidate for presidential electors 3% of the entire vote cast for that office.

39. "Any group of voters" may alternatively under R.C. § 3517.01(A)(1)(b) become a political party by filing with Respondent a party formation petition supported by a sufficient number of signatures as defined by R.C. § 3517.01(A)(1)(b).

40. This Court recognized in *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 58, 2012-Ohio-69, 960 N.E.2d 452, 455 (2012), that the "group of voters" referred to in R.C. 3517.01(A)(1) refers to both the "group of voters" that may become a political party by filing a party formation petition and the "group of voters" whose candidate polls the requisite percentage of votes at the preceding presidential or gubernatorial election.

41. Ohio law provides three alternative mechanisms for "groups of voters" and established "political parties" to become or remain qualified political parties:

(1) Section 3501.01(F) provides that established political parties remain so when they meet Ohio's 3% vote test for governor or president;

(2) Section 3517.01(A)(1)(a) provides that "any group of voters" may establish a political party by having its gubernatorial or presidential candidate at the preceding general election win 3% of the total vote cast for that office; and

(3) "any group of voters" may create a party by filing a proper party formation petition supported by sufficient signatures with Respondent under § 3517.01(A)(1)(b).

42. Relators are a proper "group of voters" who lawfully nominated Gary Johnson and William Weld for President and Vice-President, respectively, within the meaning of § 3517.01(A)(1)(a).

43. Gary Johnson and William Weld won more than 3% of the total vote in Ohio for President and Vice-President, respectively, during the 2016 general election.

44. Relators under the plain terms of § 3517.01(A)(1)(a) are a recognized political party and will remain a recognized political party in Ohio for the next four years.

45. Respondent's refusal to recognize Relators as a qualified political party in Ohio is unprecedented and is in clear violation of his responsibility under Ohio law.

46. Relators have complied with all requirements of Ohio law and are entitled to be recognized as a qualified political party.

CLAIM FOR RELIEF: ISSUANCE OF WRIT OF MANDAMUS

47. Relators incorporate by reference each and every allegation set forth above.

48. Respondent has a clear legal duty under R.C. § 3517.01(A)(1)(a) to recognize and certify Relators as a qualified political party in Ohio with the political party designation of their choice, a duty which he has failed to perform.

49. Relators have a clear legal right to have Respondent recognize and certify their qualified political party in Ohio with the political party designation of their choice under R.C. § 3517.01(A)(1)(a).

50. Relators have no plain or adequate remedy at law in the absence of the issuance of a writ of mandamus.

51. Respondent abused his discretion and/or clearly disregarded applicable law in failing to recognize and certify Relators as a political party in Ohio with the political party designation of their choice under R.C. § 3517.01(A)(1)(a).

PRAYER FOR RELIEF

WHEREFORE, Relators respectfully pray that the Court grant the following relief:

1. Issue a Writ of Mandamus ordering Respondent to certify Relators as a recognized political party in Ohio under § 3517.01(A)(1)(a) with a political party designation of their choosing;
2. Assess the costs of this action against Respondent;
3. Award Relators attorney fees and expenses; and
4. Award such other relief that it deems just and proper.

Respectfully submitted,

/s Mark R. Brown

Mark R. Brown (#81941)
303 East Broad Street
Columbus, Ohio 43215
Tel: (614) 236-6590
Fax: (614) 236-6956
E-mail: mbrown@law.capital.edu

Counsel for Relators

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> Fockler, et al.,)	Case No. _____
)	
Relators,)	Original Action in Mandamus
)	
vs.)	
)	
JON HUSTED)	
)	
Respondent.)	

AFFIDAVIT OF RELATOR JOHN FOCKLER
PURSUANT TO S. CT. PRAC. R. 12.02(B)

STATE OF OHIO)
)
COUNTY OF MAHONING) ss:

I, JOHN FOCKLER, being first duly sworn according to law, depose and state that I am the Relator in the foregoing Complaint; that I have read the Complaint; that the statements of fact contained in the Complaint, which are incorporated and made a part of this Affidavit as if completely rewritten herein, are true and correct as I verily know and believe and based on my personal knowledge, and that I am competent to testify to same.

[Handwritten Signature]

JOHN FOCKLER

Sworn to before me and subscribed in my presence by JOHN FOCKLER
this the 19th day of December, 2016.

[Handwritten Signature]

Notary Public

My Commission Expires: 06/23/2018



TRACY L. GILLETTE
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES
JUNE 23, 2018

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> Fockler, et al.,)	Case No. _____
)	
Relators,)	Original Action in Mandamus
)	
vs.)	
)	
JON HUSTED)	
)	
Respondent.)	

AFFIDAVIT OF RELATOR KEVIN KNEDLER
PURSUANT TO S. CT. PRAC. R. 12.02(B)

STATE OF OHIO)
) ss:
COUNTY OF DELAWARE)

I, KEVIN KNEDLER, being first duly sworn according to law, depose and state that I am the Relator in the foregoing Complaint; that I have read the Complaint; that the statements of fact contained in the Complaint, which are incorporated and made a part of this Affidavit as if completely rewritten herein, are true and correct as I verily know and believe and based on my personal knowledge, and that I am competent to testify to same.

Kevin J Knedler

KEVIN KNEDLER

Sworn to before me and subscribed in my presence by KEVIN KNEDLER on, this the 18th day of December, 2016.



JUSTIN JOSEPH MARTINELLI
Notary Public, State of Ohio
My Comm. Expires 01/09/2019

Justin Joseph Martinelli

Notary Public

My Commission Expires: 01/09/2019

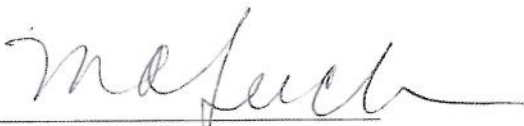
IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> Fockler, et al.,)	Case No. _____
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Relators,)	Original Action in Mandamus
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vs.)	
)	
JON HUSTED)	
)	
Respondent.)	

AFFIDAVIT OF RELATOR M. ANN LEECH
PURSUANT TO S. CT. PRAC. R. 12.02(B)

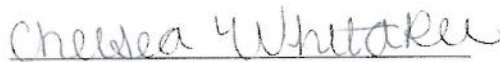
STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

I, M. ANN LEECH, being first duly sworn according to law, depose and state that I am the Relator in the foregoing Complaint; that I have read the Complaint; that the statements of fact contained in the Complaint, which are incorporated and made a part of this Affidavit as if completely rewritten herein, are true and correct as I verily know and believe and based on my personal knowledge, and that I am competent to testify to same.


M. ANN LEECH

Sworn to before me and subscribed in my presence by M. ANN LEECH on this the 19th day of December, 2016.




Chelsea Whitaker
Notary Public

My Commission Expires: 10/4/20

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> Fockler, et al.,)	Case No. _____
)	
Relators,)	Original Action in Mandamus
)	
vs.)	
)	
JON HUSTED)	
)	
Respondent.)	

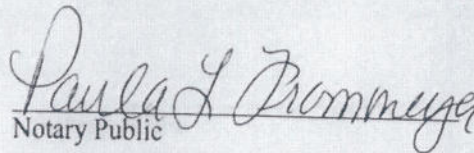
AFFIDAVIT OF RELATOR SCOTT PETTIGREW
PURSUANT TO S. CT. PRAC. R. 12.02(B)

STATE OF OHIO)
)
COUNTY OF WARREN) ss:

I, SCOTT PETTIGREW, being first duly sworn according to law, depose and state that I am the Relator in the foregoing Complaint; that I have read the Complaint; that the statements of fact contained in the Complaint, which are incorporated and made a part of this Affidavit as if completely rewritten herein, are true and correct as I verily know and believe and based on my personal knowledge, and that I am competent to testify to same.


SCOTT PETTIGREW

Sworn to before me and subscribed in my presence by SCOTT PETTIGREW on this the 19th day of December, 2016.


Notary Public

My Commission Expires: Paula L. Frommeyer
Notary Public, State of Ohio
My Commission Expires 6/22/2019

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> Fockler, et al.,)	Case No. _____
)	
Relators,)	Original Action in Mandamus
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vs.)	
)	
JON HUSTED)	
)	
Respondent.)	

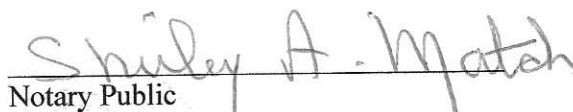
AFFIDAVIT OF RELATOR HAROLD THOMAS
PURSUANT TO S. CT. PRAC. R. 12.02(B)

STATE OF OHIO)
) ss:
 COUNTY OF FRANKLIN)

I, HAROLD THOMAS, being first duly sworn according to law, depose and state that I am the Relator in the foregoing Complaint; that I have read the Complaint; that the statements of fact contained in the Complaint, which are incorporated and made a part of this Affidavit as if completely rewritten herein, are true and correct as I verily know and believe and based on my personal knowledge, and that I am competent to testify to same.


 HAROLD THOMAS

Sworn to before me and subscribed in my presence by HAROLD THOMAS on this the 17 day of December, 2016.


 Notary Public
 My Commission Expires: June 19 - 2019

PRAECIPE TO CLERK

Please issue summons together with a copy of the foregoing Complaint to Respondent at the address set forth in the caption by certified mail pursuant to S. Ct. Prac. R. 12.02(A)(2).

s/ Mark R. Brown
Mark R. Brown

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served by electronic mail on the date of filing to Halli Watson, Assistant Attorney General, Counsel for Respondent, at halli.watson@ohioattorneygeneral.gov.

s/ Mark R. Brown
Mark R. Brown

EXHIBIT A

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES**

To be filed with the office of the Secretary of State not later than 4 p.m. of the 90th day before the general election.
Revised Code 3501.02, 3513.257, .261, .263


**NOTE – THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY FOR PRESIDENT

I, Charles R Earl, the undersigned, hereby declare under penalty of
(Name of Candidate for President)
election falsification, that my residence address is 10232 Middletown Pike,
(Street and Number, if any, or Rural Route and Number)
Bowling Green, Ohio, 43402.
(City or Village) (State) (Zip Code)

I further declare that I desire to be a candidate for election to the office of President of the United States at the general election to be held on the 8th day of November, 2016.

I further declare that I shall be at least thirty-five years old, and shall have resided for at least fourteen years within the United States by the 20th day of January after such election. I am a natural-born citizen of the United States.

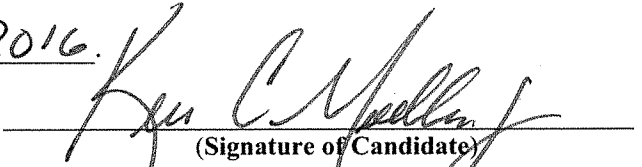
Dated this 26th day of March, 2016.

(Signature of Candidate)

STATEMENT OF CANDIDACY FOR VICE-PRESIDENT

I, Kenneth C Moellman, Jr., the undersigned, hereby declare under penalty of
(Name of Candidate for Vice President)
election falsification, that my residence address is 475 Hickory Grove Road,
(Street and Number, if any, or Rural Route and Number)
Foster, Kentucky, 40143.
(City or Village) (State) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Vice President of the United States at the general election to be held on the 8th day of November, 2016.

I further declare that I shall be at least thirty-five years old, and shall have resided for at least fourteen years within the United States by the 20th day of January after such election. I am a natural-born citizen of the United States.

Dated this 28th day of March, 2016.

(Signature of Candidate)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

We hereby designate the persons named below as a committee to represent us:

NAME	RESIDENCE
John Fockler	188 Stadium Dr, Apt 6, Boardman OH 44512
Scott Pettigrew	6015 Driftwood Ct, Maineville, OH 45039
Kevin Knedler	6248 Home Rd, Delaware, OH 43015
M. Ann Leech	415 Pinebluff Dr, Loveland, OH 45140
Harold Thomas	80 Villamere Dr, Columbus, OH 43213

NOMINATING PETITION

We the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Charles R Earl as a candidate for election to the office of President of the United States and Kenneth C Moellman, Jr.

as a candidate for election to the office of Vice President of the United States to be voted for at the next general election, and certify said persons are, in our opinion, well qualified to perform the duties of the office or position to which they jointly desire to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	ZIP CODE	COUNTY	DATE SIGNING
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						
21.						

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, _____, declare, under penalty of election falsification, that I reside
 (Printed Name of Circulator)
 at the address appearing below my signature; that I am the circulator of the foregoing petition containing
 _____ signatures; that I witnessed the affixing of every signature; that all signers were to the best
 (Number)
 of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and
 belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to
 section 3501.382 of the Revised Code.

<p>WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE</p>
--

 (Signature of Circulator)

 (Permanent residence address)

 (City or Village, State and Zip Code)

EXHIBIT B

Jon Husted,
Ohio Secretary of State
Columbus, OH

December 2, 2016

Dear Secretary Husted:

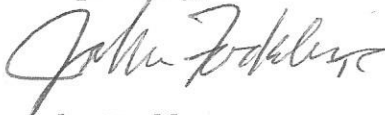
Pursuant to your declaration of the final vote count for Presidential Electors, our nominees, Gov. Gary Johnson and Governor William Weld, as substituted for Charles R. Earl and Kenneth C. Moellman, Jr., received 174,498 votes, comprising 3.17% of the entirety of votes cast for nominees for Presidential Electors. Pursuant to Section 3517.01 (A)(1)(a) of the Ohio Revised Code, we the undersigned Members of the Libertarian Party of Ohio Central Committee, and the Nominating Committee for Johnson/Weld, representing such candidates and Elector nominees, hereby respectfully demand immediate certification of our "group of voters" exceeding 3% of the vote for recognition as a political party with full party status for the next four years.

Pursuant to that section and Section 3517.01 (A)(2), we request recognition of our party identification as "Libertarian."

Since the filing deadline for partisan primaries in 2017 is February 1, 2017 and candidates must be permitted a fair opportunity to file declarations of candidacy and solicit signatures to be in the primary election, we respectfully request your immediate response, and in no event later than December 15, 2016.

We further attach the request and concurrence of representatives of the Libertarian Party of Ohio, with which each member of our Nominating Committee is associated as a member of its Central Committee.

Respectfully,



John Fockler
188 Stadium Dr, Apt 6
Boardman OH 44512



Scott Pettigrew
6015 Driftwood Ct
Maineville, OH 45039



Kevin Knedler
6248 Home Rd
Delaware, OH 43015



Harold D. Thomas
80 Villamere Dr
Columbus, OH 43213



M. Ann Leech
415 Pinebluff Dr
Loveland, OH 45140

The Libertarian Party of Ohio
2586 Tiller Ln, Suite 2K
Columbus, OH 43231-2265



December 2, 2016

Jon Husted
Secretary of State of Ohio
180 E. Broad Street, 16th Floor
Columbus, Ohio 43215

Dear Secretary Husted,

As the lawfully elected officers and representatives of the Executive Committee of the Libertarian Party of Ohio, and by resolution of said Executive Committee, we respectfully join in the request of the Committee on behalf of the nominees for presidential electors for Gov. Gary Johnson and Gov. William Weld, for recognition as a political party pursuant to Section 3517.01 of the Revised Code.

We further consent to and request the use of the designator "Libertarian" and the name "Libertarian Party" and/or "Libertarian Party of Ohio" for said party recognition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Pettigrew". The signature is stylized and cursive.

Scott Pettigrew, Vice Chair and Acting Chair

A handwritten signature in black ink, appearing to read "Robert Coogan". The signature is cursive and somewhat stylized.

Robert Coogan, Secretary

EXHIBIT C

Gary Johnson's Committee's Status as Recognized Party

Brown, Mark

Sent:Friday, December 09, 2016 3:56 PM

To: Halli Watson [Halli.Watson@ohioattorneygeneral.gov]

Cc: Zachery Keller [Zachery.Keller@ohioattorneygeneral.gov]

Hi Halli,

You may be aware that the group of voters I represent (i.e., the Committee whose voters successfully petitioned to have Gary Johnson placed on Ohio's presidential ballot) have delivered a letter to the Secretary of State asking that he recognize them as a minor political party under O.R.C. 3517.01(A)(1)(a). Johnson won 3.17% of the vote for President and satisfies 3517.01(A)(1)(a).

I have been informed by the Committee that the Secretary has acknowledged receipt of the letter, which asks for party recognition by December 15, 2016.

I thought it might be useful to outline my client's position on the matter to avoid unnecessary litigation if possible. I think the law, historical practice and opinions issued from your Office fully support the request.

First, section 3517.01(A)(1) (as amended by S.B. 193), states:

A political party within the meaning of Title XXXV of the Revised Code is any group of voters that meets either of the following requirements:

(a) Except as otherwise provided in this division, at the most recent regular state election, the group polled for its candidate for governor in the state or nominees for presidential electors at least three per cent of the entire vote cast for that office. A group that meets the requirements of this division remains a political party for a period of four years after meeting those requirements.

(b) The group filed with the secretary of state, subsequent to its failure to meet the requirement of division (A)(1)(a) of this section, a party formation petition

(Emphasis added). Section 3517.01(A)(1) uses "any group of voters" interchangeably whether the group is petitioning for party formation (as S.B. 193 requires) or running a presidential candidate who meets the vote test of 3%. Because the former is by definition something other than a recognized political party, the latter is also.

The Ohio Supreme Court recognized that the "group" language is interchangeable in *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 960 N.E.2d 452 (2012), where a candidate who voted Libertarian in the 2010 primary attempted to run as a Republican in the general election. The Court ruled he could not (because of O.R.C. 3513.191(A)) and rejected his claim that the Libertarian Party was not a political party within the meaning of O.R.C.3517.01(A)(1) (which at that time had a vote test of 5%):

The definition of "political party" in R.C. 3517.01(A)(1) does not automatically exclude a group of voters from its definition simply because at the most recent regular state election, its gubernatorial candidate or nominees for presidential election failed to poll at least 5 percent of the entire vote for that office. R.C. 3517.01(A)(1) permits a group of voters who failed to meet the applicable 5 percent threshold to nevertheless qualify as a political party for the succeeding primary election ballot if it files with the secretary of state a petition signed by qualified electors equal in number to at least one per cent of the total vote for governor or nominees for presidential electors at the most recent election,

Id. at 58, 960 N.E.2d at 455 (emphasis added). The Court plainly treated "a group of voters" interchangeably for purposes of either petitioning or meeting the vote test.

That a group of voters nominating a gubernatorial or presidential candidate may make use of the vote test to establish a political party has been repeatedly recognized by your Office. In a formal Opinion of the Attorney General released in 1930 (when the vote test was 15%) the AG stated that it was the only way for a group of voters to become a political party. There was no petition alternative for parties. Another opinion released two years later, 1932 OAG 4587, says that an independent candidate who wins enough votes for governor can establish a new party this way even after adoption of a party petition alternative. The statutes at issue in those AG Opinions also used the language "any group of voters." An earlier 1917 OAG opinion says basically the same thing. See 1917 OAG at 1833. I have copies of all these if you would like me to send them over.

Of course, none of this replaces the procedure for existing political parties to maintain their recognized status, which is contained in O.R.C. 3501.01(F)(2)(a). As amended by S.B. 193, it defines "[m]inor political party" as "any political party organized under the laws of this state that meets either of the following requirements: the political party's candidate for governor or nominees for presidential electors received less than twenty percent but not less than three percent of the total vote cast for such office at the most recent regular state election. A political party that meets the requirements of this division remains a political party for a period of four years after meeting those requirements." (Emphasis added).

LPO, as you know, was not allowed by the SoS to run a presidential candidate in 2016 and therefore could not meet the vote test requirement for remaining a political party found in 3501.01(F)(2)(a). Litigation over that (as you know) is ongoing.

In sum, the Committee's position is that Ohio law provides three paths to recognized political party status: (1) Section 3501.01(F)(2)(a) provides that political parties previously recognized remain so when they meet the 3% vote test for governor or president; (2) Section 3517.01(A)(1) provides that "any group of voters" (the Committee here) may establish a recognized political party if their gubernatorial or presidential candidate meets the 3% vote test; and (3) S.B. 193 (which is still being litigated) provides that "any group of voters" may create a party by nominating petition (which has not been pursued). The Committee has satisfied the path prescribed by 3517.01(A)(1) and deserves to be recognized as a political party.

In the interest of avoiding unnecessary litigation, please let me know if I am missing something or am simply wrong. I will do my best to respond to any questions or concerns.

Best,

Mark

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

From: Brown, Mark
Sent: Friday, August 12, 2016 4:12 PM
To: Halli Watson
Cc: Zachery Keller
Subject: RE: Records Request

Hi Halli.

I represent the committee that has nominated Earl and will substitute Johnson. Because all we have are press reports it is impossible to know exactly what SoS's position is. Still, press reports indicate that SoS feels that substitution would be improper. If this is true, it would be helpful if you could relay SoS's position on this to me so we might discuss it.

Basically, the committee's position is that 3513.31(F) governs. Earl will withdraw and Johnson will be substituted by 4 PM on Monday, August 15, 2016 per ORC 3513.31(F). That is all the law requires for the substitution to be effective.

Ohio has allowed this since 1996 and the Libertarian Party used the procedure in 1996 and 2004. I have requested those records just in case they are necessary.

Thanks.

Mark

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

From: Halli Watson [Halli.Watson@ohioattorneygeneral.gov]
Sent: Friday, August 12, 2016 3:38 PM
To: Brown, Mark
Cc: Zachery Keller
Subject: RE: Records Request

Mark,

I am trying to get up to speed on this issue. Zach Keller is working with me on this and he is copied on this email. Feel free to contact either one of us on this.

We were contacted by Matt Sanderson who represents the Gary Johnson campaign. We invited him to share any authority or anything else he'd like us to consider. Likewise, if you have anything you'd like us to consider, please let us know.

Also, just so I'm clear, who are you representing on this issue?

Thank you,

Halli Brownfield Watson
Associate Assistant Attorney General, Constitutional Offices
Ohio Attorney General Mike DeWine
614-466-2872 Main
614-644-7649 Direct
614-728-7592 Fax
Halli.Watson@OhioAttorneyGeneral.gov

30 East Broad Street, 16th Floor
Columbus, Ohio 43215
OhioAttorneyGeneral.gov

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From: Brown, Mark [mailto:MBrown@law.capital.edu]
Sent: Friday, August 12, 2016 9:04 AM
To: Halli Watson
Subject: FW: Records Request

Thanks.

From press reports it appears we may be headed back to court in regard to substitution. Interested in talking about it? Would hate to needlessly waste yours and court's time.

Best,

Mark

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

From: Halli Watson [Halli.Watson@ohioattorneygeneral.gov]
Sent: Friday, August 12, 2016 8:11 AM
To: Brown, Mark
Subject: RE: Records Request

Mark,

I have passed along your request to the Secretary of State's Office.

Halli Brownfield Watson
Associate Assistant Attorney General, Constitutional Offices
Ohio Attorney General Mike DeWine
614-466-2872 Main
614-644-7649 Direct
614-728-7592 Fax
Halli.Watson@OhioAttorneyGeneral.gov

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From: Brown, Mark [mailto:MBrown@law.capital.edu]
Sent: Thursday, August 11, 2016 4:55 PM
To: Halli Watson
Subject: Records Request

Hi Halli,

Because of our ongoing litigation, and to avoid my contacting SoS directly during this ongoing litigation, Bridget was kind enough to see that my records requests to SoS were delivered.

Would you be so kind to do the same?

Thanks.

Mark

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

EXHIBIT D



Jon Husted Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

December 16, 2016

Mr. Scott Pettigrew
6015 Driftwood Court
Maineville, OH 45039

Mr. Kevin Knedler
6248 Home Road
Delaware, OH 43015

Mr. Robert Coogan
2586 Tiller Lane, Suite 2K
Columbus, OH 43231

Ms. M. Ann Leech
415 Pinebluff Drive
Loveland, OH 45140

Mr. John Fockler
188 Stadium Drive, Apartment 6
Boardman, OH 44512

Mr. Harold D. Thomas
80 Villamere Drive
Columbus, OH 43213

Dear Messrs. Pettigrew, Coogan, Fockler, Knedler, Thomas, and Ms. Leech:

We are in receipt of your letters dated December 2, 2016. The first letter is signed by the “committee of five” designated to represent independent joint-candidates for president and vice-president Gary Johnson and William Weld pursuant to Ohio Revised Code § 3513.31(F).¹ The letter states that Governor Johnson and Governor Weld received 3.17% of the votes cast for nominees for presidential electors, and, based on these results, asks that a political party be established using the designator “Libertarian.” The second letter is signed by two members² of the group “The Libertarian Party of Ohio” (hereinafter “LPO”) and reiterates the request made by the “committee of five” in the first letter.

As you know, on August 15, 2016, the Office of the Ohio Secretary of State permitted independent joint-candidates for president and vice-president Charlie Earl and Kenneth Moellman to withdraw their candidacy and substitute the names of Governor Johnson and Governor Weld in their place. In permitting this substitution, the Secretary’s Office stated: “The presence of independent joint-candidates for president and vice-president, even when endorsed by, or affiliated with, a national political party or that of another state, is not sufficient under Senate Bill 193 to create a minor political party.”³ The LPO’s longtime attorney, Professor Mark Brown, agreed in a document he filed on behalf of the LPO with the Supreme Court of the United States. In that document, he stated the following: “Assuming Johnson/Weld

¹ The five individuals comprising the “committee of five” are John Fockler, Kevin Knedler, M. Ann Leech, Scott Pettigrew, and Harold D. Thomas.

² The two individuals are Scott Pettigrew and Robert Coogan.

³ A variety of newspapers published or linked to the document, which was distributed to the public on August 15, 2016. See, e.g., Jeremy Pelzer, *Libertarians Can Swap in Gary Johnson’s Name on Ohio Ballot, Jon Husted Rules*, Aug. 15, 2016, available at http://www.cleveland.com/open/index.ssf/2016/08/libertarians_can_swap_in_gary.html & Randy Ludlow, *Libertarian Gary Johnson Likely to Appear on Ohio’s Ballot*, Aug. 15, 2016, available at <http://www.dispatch.com/content/stories/local/2016/08/15/libertarian-gary-johnson-likely-to-appear-on-ohios-ballot.html>.

Letter regarding Party status

12.16.16

Page 2

were to be certified as an independent ticket and survive official protests, it (unlike the established parties' presidential tickets) will still not represent LPO as a political party, will not be listed as the 'Libertarian' ticket on Ohio's ballot, and cannot meet Ohio's 3% vote test on behalf of LPO in order to win for it qualified political party status in Ohio in future elections."⁴

Nevertheless, despite this representation to the Court, it appears Prof. Brown has reversed course and now contends that the Johnson/Weld ticket could and did satisfy the 3 % vote test. The authorities offered by Mr. Brown to support his now-changed position, however, do not support the proposition that the LPO should be recognized as a party based on the Johnson/Weld ticket's 2016 performance.

Accordingly, as this Office stated on August 15, 2016, and as Mr. Brown confirmed on August 22, 2016, the presence of independent joint-candidates for president and vice-president, Gary Johnson and William Weld, is not sufficient to establish a minor political party.

Sincerely,

Jack L. Christopher



General Counsel

cc: Mark Brown, Esq.
Mark Kafantaris, Esq.
Naila Awan, Esq.

⁴ See *LPO et al. v. Husted et al.*, Application for Stay and Emergency Injunction Addressed to Justice Kagan, fn. 7, Aug. 22, 2016, available at <http://ballot-access.org/wp-content/uploads/2016/08/Libertarian-US-Supreme-Ohio-August.pdf>.