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8 Attorney for Plaintiffs Arizona Libertarian Party and Michael Kielsky

9 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

| | | | |
|----|--------------------------------------|---|-------------------------------------|
| 10 | The Arizona Libertarian Party |) | |
| 11 | and Michael Kielsky, |) | No. <u>2:16-cv-01019-DGC</u> |
| 12 | |) | |
| 13 | Plaintiffs, |) | PLAINTIFFS' MOTION FOR |
| 14 | |) | SUMMARY JUDGMENT |
| 15 | v. |) | |
| 16 | |) | |
| | Michele Reagan, |) | |
| | |) | |
| | Defendant. |) | |

17 Pursuant to Fed. R. Civ. P. 56, Plaintiffs Arizona Libertarian Party (“AZLP”) and
18 Michael Kielsky (together, “the Libertarians”) respectfully move the Court to grant them
19 summary judgment as to Count I, Count II, Count III and Count IV of the Amended
20 Complaint. In support of this motion, the Libertarians submit the attached Memorandum
21 of Points and Authorities in Support of Plaintiffs’ Motion for Summary Judgment, as well
22 as Plaintiff’s Statement of Facts.
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25 This motion also relies on the following Declarations, submitted pursuant to 28
26 U.S.C. § 1746, which are incorporated into the Amended Complaint (Dkt. 42): First
27 Declaration of Kim Allen; First Declaration of Ricky T. Fowlkes; First Declaration of
28

1 Ernest Hancock; First Declaration of Jack Heald; First Declaration of Michael Kielsky;
2 First Declaration of Christopher Rike; First Declaration of David Schlosser; and First
3 Declaration of Michael Shoen. In addition, this motion relies on the Second Declaration
4 of Michael Kielsky (Dkt. 10), the Third Declaration of Michael Kielsky (Dkt. 18), and
5 the First Declaration of Jonathan Apirion (Dkt. 18), which were submitted in support of
6 the Libertarians' motions for preliminary relief, and on the First Declaration of Kevin
7 McCormick, First Declaration of Merissa Hamilton, First Declaration of James Iannuzo,
8 Fourth Declaration of Michael Kielsky, First Declaration of Michael Shipley, First
9 Declaration of Robert Pepiton and First Declaration of Nolan Daniels, which are attached
10 hereto as Exhibit A.
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14 Finally, this motion relies on the following expert testimony: Report of Richard
15 Winger (Dkt. 46-1); Report of William Redpath (Dkt. 46-2); Report of Wesley Benedict;
16 (Dkt. 46-3); and Report of Carla Howell (Dkt. 46-4).
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18

19 Dated: April 1, 2017

Respectfully submitted,

20 /s/Oliver B. Hall

21 Oliver B. Hall

22 (Admitted Pro Hac Vice)

23 D.C. Bar No. 976463

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IN THE UNITED STATES DISTRICT COURT
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| The Arizona Libertarian Party and Michael Kielsky, |) | |
| |) | No. <u>2:16-cv-01019-DGC</u> |
| Plaintiffs, |) | PLAINTIFFS’ MEMORANDUM OF |
| |) | POINTS AND AUTHORITIES IN |
| v. |) | SUPPORT OF MOTION FOR |
| |) | SUMMARY JUDGMENT |
| Michele Reagan, |) | |
| |) | |
| Defendant. |) | |

In this action, the Libertarians challenge the constitutionality of two provisions of Arizona law, A.R.S. §§ 16-321 and 16-322, which establish the requirements that qualified political parties must meet to place their candidates on Arizona’s primary election ballot. The parties have already briefed and argued the Libertarians’ two motions for preliminary relief (Dkt. Nos. 10, 18), which are incorporated herein by reference. Accordingly, as directed by the Court, the Libertarians rely on the background discussion provided in those two motions, and proceed directly to their legal argument.

LEGAL STANDARD

Under Fed. R. Civ. P. 56(a), “the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A disputed fact is “material” if it might affect the outcome of the case under governing law. *Id.*

In ruling upon a motion for summary judgment, the Court views all inferences “in

1 the light most favorable to the nonmoving party.” *Matsushita Elec. Indus. Co. v. Zenith*
2 *Radio Corp.*, 475 U.S. 574, 587 (1986)). However, “the nonmoving party cannot
3 establish a genuine dispute as to a material fact by pointing to unsupported allegations in
4 the pleadings.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). Instead, to defeat
5 a motion for summary judgment, the nonmoving party must raise more than “some
6 metaphysical doubt as to the material facts,” *Matsushita*, 475 U.S. at 586, and the court
7 must determine that “a fair-minded jury could return a verdict for the [nonmoving party]
8 on the evidence presented.” *Liberty Lobby*, 477 U.S. at 252.

11 ARGUMENT

12 **I. Summary Judgment Is Proper Because the Undisputed Facts Demonstrate** 13 **That Arizona’s Statutory Scheme Violates Supreme Court Precedent.**

14 The Libertarians’ argument that Sections 16-321 and 16-322 are unconstitutional
15 under the Supreme Court’s ballot access jurisprudence, and on the independent ground
16 that they violate the Libertarians’ freedom of association, are set forth in the Libertarians’
17 Motion for Preliminary Injunction (Dkt. No. 18), at 6-14 (citing *California Democratic*
18 *Party v. Jones*, 530 U.S. 567 (2000); *Anderson v. Celebrezze*, 460 U.S. 780 (1983);
19 *Storer v. Brown*, 415 U.S. 724 (1974); *Jenness v. Fortson*, 403 U.S. 431 (1971); *Williams*
20 *v. Rhodes*, 393 U.S. 23 (1968)). Those arguments are incorporated herein by reference,
21 and the Libertarians rely on them as the basis for their claims for summary judgment.

22 **II. Summary Judgment Is Proper Because the Concerns That Led the Court to** 23 **Deny the Libertarians Preliminary Relief Should Be Resolved in Their Favor.**

24 In its July 20, 2016 order denying the Libertarians preliminary relief (Dkt. No. 34)
25 (“Order”), the Court acknowledged that their claims “raised serious questions regarding
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1 the constitutionality” of Sections 16-321 and 16-322. Order at 11 n.3. At that early stage
2 of proceedings, however, the Court was unable to conclude that the Libertarians had
3 shown a likelihood of success on the merits, because it found the facts and evidence
4 insufficient to resolve three issues. With the benefit of a more fully developed record,
5 including evidence arising from the 2016 election cycle, those issues are now ripe for
6 decision, and the Court should resolve them in the Libertarians’ favor.
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9 **A. The Burden Imposed By Arizona’s Statutory Scheme Is Properly
10 Analyzed as a Percentage of Eligible Voters in AZLP’s Closed Primary.**

11 The Court’s primary concern is that there is an apparent tension between a state’s
12 interest in requiring a reasonable modicum of support to appear on a general election
13 ballot and the process of choosing candidates through closed, small-party primaries.
14 Order at 9. This tension, in the Court’s view, gives rise to the following “dilemma”:
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16 If a state decides that a reasonable modicum of support must be shown to access
17 its general election ballot, and a small party chooses to hold a closed primary
18 election before the general election, how can the prescribed level of support be
19 shown other than by the method Arizona has chosen?

20 *Id.* But this is a false dilemma, at least under the facts of this case.

21 Arizona has already made a legislative determination that AZLP has the requisite
22 modicum of support to qualify it for continued representation on the general election
23 ballot. *See* A.R.S. § 16-804(B) (providing that a political party qualifies if “its registered
24 members comprise at least two-thirds of one percent of the total registered electors in the
25 relevant jurisdiction” by October 1 of the year preceding the election). Based on this
26 legislative determination, Arizona requires that AZLP hold a primary election. *See* A.R.S.
27 § 16-301. The only question, then, is what modicum of support may Arizona require of
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1 individual candidates seeking to appear on AZLP’s primary ballot? And the answer to
2 that question is a matter of controlling precedent.

3 Every Supreme Court and lower federal court decision analyzing the
4 constitutionality of ballot access laws cited by the parties in the proceedings thus far
5 measures the modicum of support that such a law requires as a percentage of eligible
6 voters. Thus to deviate from that methodology and uphold the signature requirements in
7 this case would be to blaze a new trail in ballot access jurisprudence – one which raises
8 serious constitutional concerns, as the Court has acknowledged. Secretary Reagan’s prior
9 briefing on this critical issue offers little support for adopting such a novel approach.
10 (Dkt. Nos. 12, 26). Without expressly stating it, Secretary Reagan has taken the position
11 that a state may impose any signature requirement it wants, provided the number amounts
12 to less than 5 percent of the pool of “qualified signers” – however that pool may be
13 defined, and regardless of how many voters it includes. But this approach renders
14 constitutional scrutiny meaningless, since any signature requirement, no matter how
15 burdensome, may be defined as less than 5 percent of some pool of voters, as long as the
16 pool is large enough. That is why eligible voters are the relevant criterion and common
17 denominator in every ballot access case the parties have cited. It also explains Secretary
18 Reagan’s failure to cite any case in which a court has upheld a statute requiring a
19 showing of support from more than 5 percent of eligible voters, as Sections 16-321 and
20 16-322 do. There is no such case.

21 Moreover, if Arizona’s asserted interest is in requiring that particular Libertarian
22 candidates demonstrate a modicum of support before allowing them to appear on the
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1 general election ballot, it has chosen a particularly ill-suited means of doing so. As
2 Arizona's 2012 and 2014 election returns show, Libertarian candidates often receive very
3 few votes in their primary races, but go on to receive a substantial percentage in the
4 general election. *See* Expert Report of Richard Winger, 1-2 (comparing primary and
5 general election vote totals for such candidates and concluding that "a candidate's vote in
6 a primary is no predictor of how many votes he or she will poll in November"). The
7 undisputed evidence thus demonstrates that, virtually without exception, Libertarian
8 candidates who have appeared on Arizona's general election ballot do have a modicum of
9 support among the general electorate, even if their primary vote total was very low. *See*
10 *id.* The same is true of minor party candidates that ran in other states' primary elections.
11 *See id.*, at 2-5 (citing examples).

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15 The inherent unsuitability of primary elections to measure voter support for minor
16 party candidates among the general electorate is exacerbated in this case by the fact that
17 AZLP's primary is closed. Non-members are not permitted to vote in AZLP's primary, so
18 independent and unaffiliated voters have no incentive to support a candidate seeking to
19 run in such an election. The evidence bears this out. The Libertarians have submitted
20 multiple sworn declarations from candidates attesting to their difficulty in obtaining
21 support for their primary election campaigns from such voters. *See* Allen Dec. ¶ 7;
22 Fowlkes Dec. ¶ 4; Hancock Dec. ¶ 4; Heald Dec. ¶ 3; Kielsky Dec. ¶¶ 5-6; Rike Dec. ¶¶
23 3, 7; Schlosser Dec. ¶ 4; Shoen Dec. ¶ 5. Just as Arizona cannot require the Libertarians
24 to allow such non-member voters to participate in AZLP's primary, *see Arizona*
25 *Libertarian Party v. Brewer*, No. 02-144-TUC-RCC (D. Az. Sept. 27, 2007) (unpublished
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1 order), neither should it be permitted to require that Libertarian candidates demonstrate
2 support from these voters in order to appear on the AZLP ballot.

3 **B. The Court Need Not Treat the Signature Requirements Imposed By**
4 **Sections 16-321 and 16-322 as a “Litmus-Paper Test” to Hold These**
5 **Provisions Unconstitutional.**

6 As this Court correctly observed, there is “no litmus-paper test” for distinguishing
7 between valid and invalid ballot access restrictions. Order at 10 (citation omitted). It is
8 also true, however, that signature requirements may be so severe as to be facially invalid.
9 *See Williams*, 393 U.S. at 41, 46 (Harlan, J. concurring). If that was true of Ohio’s 15
10 percent requirement in *Williams*, *see id.*, it is certainly true of the signature requirements
11 that Arizona imposes under Sections 16-321 and 16-322, which range as high as 30
12 percent or more. Nonetheless, the Court need not treat these signature requirements as a
13 litmus-paper test, because the undisputed evidence in the record demonstrates that they
14 are unconstitutional as applied to the Libertarians.
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18 The signature requirements imposed by Sections 16-321 and 16-322 burden the
19 Libertarians’ constitutional rights in three distinct but related ways: as voters, as
20 candidates and as a political party. With respect to the Libertarians’ voting rights, the
21 Supreme Court has recognized that state laws restricting ballot access burden “two
22 different, although overlapping, kinds of rights – the right of individuals to associate for
23 the advancement of political beliefs, and the right of qualified voters, regardless of their
24 political persuasion, to cast their votes effectively.” *Williams*, 393 U.S. at 30. “Both of
25 these rights,” the Court found, “rank among our most precious freedoms.” *Id.*
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28 The Supreme Court has not attached the same “fundamental status” to the rights of

1 candidates, but it has recognized that candidates’ rights and voters’ rights “do not lend
2 themselves to neat separation,” because “laws that affect candidates always have at least
3 some theoretical, correlative effect on voters.” *Bullock*, 405 U.S. at 143. Of particular
4 concern are laws “tending to limit the field of candidates from which voters might
5 choose.” *Id.* As the Court explained in *Anderson*, “the exclusion of candidates ... burdens
6 voters’ freedom of association, because ... a candidate serves as a rallying point for like-
7 minded citizens.” *Anderson*, 460 U.S. at 787-88.
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10 Finally, the Supreme Court has recognized “the constitutional right of citizens to
11 create and develop new political parties.” *Norman v. Reed*, 502 U.S. 279, 288 (1992).
12 This right “derives from the First and Fourteenth Amendments, and advances the
13 constitutional interest of likeminded voters to gather in pursuit of common political
14 ends.” *Id.* It is “an integral part of the basic constitutional freedom” to associate for the
15 “advancement of political beliefs and ideas.” *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973).
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18 If there were any doubt prior to the 2016 election, the evidence now available
19 amply demonstrates that Sections 16-321 and 16-322 impose unconstitutional burdens on
20 each of the Libertarians’ foregoing rights. In fact, the evidence shows that these
21 provisions have, in the course of a single election cycle, almost eliminated the
22 Libertarians’ ability to participate in Arizona’s electoral process. Prior to the 2016
23 election, when the challenged amendments to Sections 16-321 and 16-322 first took
24 effect, Libertarian candidates routinely appeared on the general election ballot. *See*
25 *generally*, Arizona Secretary of State, Historical Election Information, available at
26 <https://www.azsos.gov/elections/voter-registration-historical-election-data/historical->
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1 election-information; *see also* Third Kielsky Dec. ¶¶ 8-10 (AZLP placed at least 35
2 candidates on the general election ballot in 2004; 19 in 2008; and 18 in 2012). In 2016,
3 by contrast, just one candidate qualified to appear on the AZLP primary election ballot
4 under the new signature requirements, *see id.*, and he did so only by working on his
5 petition drive full-time for approximately 70 days. Third Kielsky Dec. ¶ 6.¹

7 As a result of the near-total exclusion of their candidates from AZLP's 2016
8 primary ballot, the Libertarians attempted to qualify their candidates for the general
9 election ballot by running them as write-ins in the primary. *See* A.R.S. § 16-345(E)
10 (providing that write-in candidates may advance to the general election if they receive a
11 number of votes equal to the number of signatures they would have had to collect
12 pursuant to Section 16-322). To support this effort, AZLP spent \$7,676.26 – a significant
13 portion of its limited resources – to print and mail a 6" x 9" full-color postcard to every
14 address in the state where a registered Libertarian voter resided, which listed 17 declared
15 Libertarian write-in candidates, the offices for which they were running, and urged
16 Libertarian voters to write-in their names on the primary election ballot. Fourth Kielsky
17 Dec. ¶ 7. The Maricopa County Libertarian Party also sent a similar mailing to people
18 who were proven to be reliable, consistent Libertarian voters. First Iannuzo Dec. ¶ 7.

23 Despite the foregoing efforts, not one of AZLP's declared write-in candidates was
24 able to garner enough votes to qualify for the general election ballot under Section 16-
25 345(E). *See* Arizona Secretary of State, 2016 General Election – November 8, 2016,
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28 ¹Chad Thomas Lisk and Frank Tamburri submitted the required number of
signatures but were not permitted to appear on the primary ballot.

1 available at <http://apps.azsos.gov/election/2016/General/ElectionInformation.htm>.
2 Sections 16-321 and 16-322 have thus relegated the Libertarians to a kind of ballot access
3 purgatory. Based on the number of registered voters belonging to their party, they are
4 required to hold primary elections pursuant to Sections 16-804(B) and 16-301. But
5 because the signature requirements now imposed on them by Sections 16-321 and 16-322
6 are so high, their candidates cannot qualify for placement on the primary election ballot,
7 nor can their write-in candidates qualify for the general election ballot under Section 16-
8 345(E). AZLP has become a political party that is required by statute to hold elections in
9 which none of its candidates can realistically hope to participate.
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12 Little citation is needed to show that such a statutory scheme is in conflict with
13 Supreme Court precedent. The Court has recognized, for instance, that such a deprivation
14 of choice at the polls constitutes a severe burden on voting rights. *See Williams*, 393 U.S.
15 at 31 (“the right to vote is heavily burdened if that vote may be cast only for one of two
16 parties at a time when other parties are clamoring for a place on the ballot”). Likewise,
17 the Court has recognized that a political party subjected to such a scheme is also severely
18 burdened. *See id.* at 31 (“The right to form a party for the advancement of political goals
19 means little if a party can be kept off the election ballot and thus denied an equal
20 opportunity to win votes”). Accordingly, whether Arizona’s signature requirements are
21 analyzed in isolation, *see Williams*, 393 U.S. at 41 (Harlan, J. concurring), or as part of
22 Arizona’s “entire scheme regulating ballot access,” Order at 10 (citing *Williams*, 393 U.S.
23 at 34), they cannot withstand constitutional scrutiny.
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C. The Libertarians’ Evidence Demonstrates That Even the Most Diligent

1 **Candidates Cannot Satisfy the Requirements Imposed By Sections 16-321**
2 **and 16-322.**

3 The third issue the Court raised is that the “scant record” at the preliminary stage
4 of this case lacked sufficient evidence for the Court to determine whether “reasonably
5 diligent” minor party candidates can be expected to satisfy the requirements imposed by
6 Sections 16-321 and 16-322. Order at 10 (citations omitted). Any such deficiency has
7 now been remedied.
8

9 The Libertarians’ initial evidentiary submissions focused on the burden imposed
10 on candidates who are attempting to qualify for AZLP’s primary ballot by nomination
11 petition. It demonstrates that reasonably diligent candidates cannot expect to satisfy the
12 signature requirements imposed by Sections 16-321 and 16-322. *See, e.g.*, Apirion Dec.
13 ¶¶ 3-9; First Kielsky Dec. ¶ 19; Heald Dec. ¶ 6; Hancock Dec. ¶¶ 3-5; Rike Dec. ¶¶ 2-7;
14 Schlosser Dec. ¶ 4; Shoen Dec. ¶ 5. This evidence is now buttressed by the expert reports
15 of Carla Howell, Wesley Benedict and William Redpath, who attested to the added
16 burden such candidates face as a result of Arizona’s restrictions on which voters may sign
17 nomination petitions. (Dkt. Nos. 46-2, 46-3, 46-4). All of this evidence is further
18 supported by the fact that, despite the Libertarians’ diligent efforts only one candidate
19 qualified to appear on AZLP’s primary ballot in 2016, and he did so only by working on
20 his petition drive full-time for approximately 70 days. Third Kielsky Dec. ¶ 6.
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25 The Libertarians have also submitted evidence demonstrating that diligent write-in
26 candidates cannot comply with the requirements imposed by Sections 16-321 and 16-322.
27 Such evidence includes detailed accounts of the lengths to which Libertarian candidates
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1 went to obtain the requisite number of votes, all to no avail. *See* First Hamilton Dec.;
2 First McCormick Dec.; First Iannuzo Dec.; Fourth Kielsky Dec.; First Daniels Dec.; First
3 Shipley Dec.; First Pepiton Dec. Merissa Hamilton attests, for example, that she
4 campaigned approximately 65 hours a week for six weeks, and that she had a team of 27
5 volunteers working for her. First Hamilton Dec. ¶ 7. Kevin McCormick attests that he
6 dedicated at least 200 hours to his campaign, and spent nearly \$1,000.00 of his own
7 money to finance it. First McCormick Dec. ¶ 8. James Iannuzo used his own money to
8 finance a mailing targeting high impact Libertarian voters in his district. First Iannuzo
9 Dec. ¶ 7. It cannot seriously be suggested that these candidates were not diligent.

12 The Libertarians also submitted evidence relating to the broader consequences of
13 the amendments to Sections 16-321 and 16-322. For example, they caused confusion
14 among voters who received “blank” ballots in the mail and did not understand that they
15 could write in the names of Libertarian candidates. First Iannuzo Dec. ¶ 13. Others, like
16 AZLP’s own volunteer coordinator, made a conscious decision not to “risk[] money on
17 almost certain failure and consequent demoralization of the volunteer base,” and thus
18 withdrew from participation in the election. First Shipley Dec. ¶¶ 6-9. Such factors
19 undoubtedly contributed to the sharp decline in voter turnout AZLP experienced in its
20 2016 primary, compared with its 2014 primary, and compared with other parties 2016
21 primary turnout. First Iannuzo Dec. ¶ 12. This low turnout made complying with the
22 newly increased requirements even more onerous. *See id.*

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27 **III. Arizona’s Statutory Scheme Violates the Libertarians’ Right to Equal**
28 **Protection Because It Imposes Severe Burdens That Fall on Them Alone.**

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2 The Ninth Circuit has concluded that Equal Protection claims asserted in ballot
3 access cases should be analyzed under the same framework set forth in *Anderson*. See
4 *Dudum v. Arntz*, 640 F.3d 1098, 1106 n.15 (9th Cir. 2011). Of particular relevance here,
5 *Anderson* specifies that a state’s “regulatory interests are generally sufficient to justify
6 reasonable, nondiscriminatory regulations.” *Anderson*, 460 U.S. at 788 & n.9 (emphasis
7 added) (equating “nondiscriminatory” with “generally applicable and evenhanded”).
8 Although the 2015 amendments to Sections 16-321 and 16-322 might be considered
9 generally applicable, in that they applied to Republicans and Democrats as well as
10 Libertarians, they certainly do not qualify as evenhanded.

13 It is a matter of public record that H.B. 2608 generally caused little or no increase
14 to the signature requirements that Sections 16-321 and 16-322 impose upon Republican
15 and Democratic candidates, and in many cases, it lowered them. Comp. ¶¶ 25-29 (citing
16 public records available from the Secretary of State’s website). It is also undisputed that
17 these provisions, as amended, increased the signature requirements imposed upon
18 Libertarian candidates anywhere from 1,000 to 3,000 percent, depending on the office.
19 Such a gross disparity in the impact of a facially neutral statute is the very antithesis of
20 evenhanded. See *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

24 Because Sections 16-321 and 16-322, as amended, fall with unequal weight on the
25 Libertarians, they also impose additional burdens on the Libertarians, which do not
26 impact the Republicans and Democrats at all. Perhaps most important is the burden on
27 the Libertarians’ freedom of association. See *supra* at Part I (citing *Jones*, 530 U.S. 567).
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1 As a small party, with just over 32,000 members statewide, relying on non-members is a
2 practical necessity for Libertarians to comply with the increased signature requirements
3 imposed by Sections 16-321 and 16-322. *See* Arizona Secretary of State, Voter
4 Registration and Historical Data, available at [https://www.azsos.gov/elections/voter-](https://www.azsos.gov/elections/voter-registration-historical-election-data)
5 [registration-historical-election-data](https://www.azsos.gov/elections/voter-registration-historical-election-data). Republicans and Democrats, by contrast, each have
6 well over one million members, *see id.*, on whom they may rely exclusively to satisfy
7 signature requirements that remain largely unchanged. This case thus presents an instance
8 in which “the grossest discrimination can lie in treating things that are different as though
9 they were exactly alike.” *Jenness*, 403 at 442. By treating the Libertarians as if they were
10 similarly situated with the two major parties, the statute effectively compels their
11 association with non-members, in violation of *Jones*.

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15 At the same time, Arizona’s statutory scheme treats AZLP as though it were
16 differently situated than the only other minor party recognized by the state, the Arizona
17 Green Party (“AZGP”). AZGP, being even smaller than the AZLP, does not qualify for
18 continued representation on the ballot pursuant to Section 16-804(B), but rather achieves
19 ballot status by submitting a petition to qualify as a new party pursuant to A.R.S. § 16-
20 801 (requiring valid signatures equal in number to one and one-third of the total vote for
21 governor at the last preceding general election). Its candidates are therefore subject to
22 different, much lower signature requirements than those imposed on the Libertarians
23 under Sections 16-321 and 16-322. *See* A.R.S. § 16-322(C) (establishing signature
24 requirement of “one-tenth of one percent of the total vote for the winning candidate or
25 candidates for governor or presidential electors at the last general election within the
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1 district). As a result, although Libertarian candidates uniformly outpolled Green
2 candidates by wide margins in the 2016 primary, in each instance the Greens were
3 permitted to appear on the general election ballot, while the Libertarians were not. *See*
4 Arizona Secretary of State, 2016 Election Information, available at
5 <http://apps.azsos.gov/election/2016/Info/ElectionInformation.htm>. Such disparate
6 treatment violates the Libertarians' right to equal protection of law.
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CONCLUSION

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2 For the foregoing reasons, Plaintiffs' Motion for Summary Judgment should be
3 granted.
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5 Dated: April 1, 2017

Respectfully submitted,

6 /s/Oliver B. Hall

7 Oliver B. Hall

8 CENTER FOR COMPETITIVE DEMOCRACY

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13 *Counsel for Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2017, I filed the foregoing Plaintiffs' Motion for Summary Judgment, by means of the Court's CM/ECF system, which will effect service upon all counsel of record.

/s/Oliver B. Hall
Oliver B. Hall

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EXHIBIT A

**First Declaration of Kevin McCormick; First Declaration of Merissa Hamilton;
First Declaration of James Iannuzo; Fourth Declaration of Michael Kielsky; First
Declaration of Michael Shipley; First Declaration of Robert Pepiton; and First
Declaration of Nolan Daniels**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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| THE ARIZONA LIBERTARIAN | |) | |
| PARTY, et al. | |) | |
| | |) | |
| Plaintiffs, | |) | |
| | |) | |
| v. | |) | Civil Action No. 2:16-cv-01019-DGC |
| | |) | |
| MICHELE REAGAN, |) |) | |
| | |) | |
| Defendant. | |) | |
| <hr/> | |) | |

FIRST DECLARATION OF KEVIN MCCORMICK
(pursuant to 28 U.S.C. § 1746)

I, Kevin McCormick, hereby declare as follows:

1. I am 38 years old and competent to make this declaration.
2. I am a resident of Maricopa County, Arizona.
3. In 2016, I ran for Arizona House District 15, as a write-in candidate in the Arizona Libertarian Party ("AZLP") primary election.
4. There were 1,083 registered Libertarians in District 15 as of March 2016, according to the Arizona Secretary of State's official report, available here: <http://apps.azsos.gov/election/voterreg/2016-03-01.pdf>. To qualify for the general election ballot, I needed to receive at least 238 write-in votes in the AZLP primary. I received 57 votes, or 100 percent of the total votes cast in the AZLP primary, according to the official canvass available here: <http://apps.azsos.gov/election/2016/Primary/canvass2016primary.pdf>. Because I did not receive the requisite 238 write-in votes, I did not appear on the general election ballot.
5. Although I did not receive enough write-in votes to appear on the general election ballot, I campaigned diligently and was a serious candidate. I put forward a professional campaign website, www.kevinmccormick2016.com, which generated substantial interest. According to our web analytics software, for example, the site received 11,789 visitors in May, 3,168 in June, 2,388 in July, and 1,580 in August.

First Declaration of Kevin McCormick

6. To further promote my campaign, I ran ads online, mostly on Facebook, and spent close to \$1,000.00 on them. I made a campaign video highlighting my disagreements with the current candidates, which I posted on my website and shared on Facebook and Twitter. The video has received 6,200 views as of today. I also posted the video on Youtube, where it received another 247 views. My official Facebook statistics indicate that my Kevin McCormick for State Representative page received 144,692 unique visitors from June 1, 2016 to August 31, 2016.

7. During the campaign, I was active in all AZLP events, which I attended and campaigned for votes. I went to at least one such event per month, and sometimes two or three, for a total of 10 or 12 events total during the campaign. In addition, I went door-to-door in my district, and estimate that I knocked on a few hundred doors. I also did several media appearances, including interviews on local news programs that aired on ABC Channel 5, Arizona Family Channel 3 and Channel 12. And I was a recurring guest on the RT network show Fishtank, where I appeared every one or two weeks.

8. All told, I estimate that I spent a total of 200 hours to promote my primary election campaign. I was diligent in my efforts, and I spent nearly \$1,000 on my campaign.

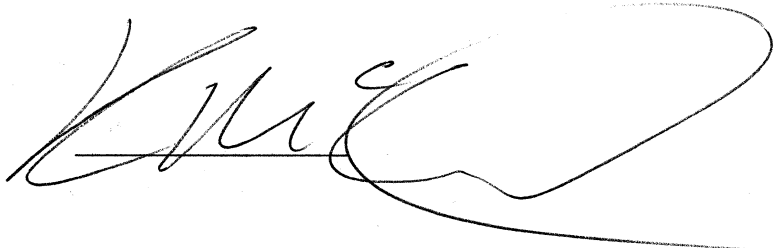
9. AZLP also promoted my candidacy, by mailing postcards to every registered Libertarian voter in my district, urging them to write-in Kevin McCormick for State Representative. The early voting ballots that were sent to voters by mail didn't list any AZLP write-in candidates, however, and most voters I spoke with said they didn't see the postcard. As a result, many voters were completely unaware of my candidacy.

10. The statements and matters alleged herein are within my personal knowledge, and true and correct to the best of my knowledge and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date:

3/30/17



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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| <hr/> | |) | |
| THE ARIZONA LIBERTARIAN | |) | |
| PARTY, et al. | |) | |
| | |) | |
| Plaintiffs, | |) | |
| | |) | |
| v. | |) | No. <u>2:16-cv-01019</u> |
| | |) | |
| MICHELE REAGAN, | |) | |
| | |) | |
| Defendant. | |) | |
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FIRST DECLARATION OF MERISSA HAMILTON
(pursuant to 28 U.S.C. § 1746)

I, Merissa Hamilton, hereby declare as follows:

1. I am 35, and competent to state the following.
2. I currently reside in Maricopa County, Arizona.
3. In 2016, I ran as a write-in candidate in the the Arizona Libertarian Party (“AZLP”) primary election. The party recruited me to run after the original candidate, Frank Tamburri, was challenged and knocked off the ballot. I therefore filed my write-in papers a week or two before the deadline for filing.
4. I launched my campaign by filming a video announcement and uploading it to my campaign Facebook page, @merissahamilton, and also to my campaign website, merissahamilton.com, which I retained the firm VoteDifferent to design. That video was viewed more than 2,000 times on Facebook. I filmed several more videos to promote my candidacy

First Declaration of Merissa Hamilton

during the election, which were viewed a combined total of more than 80,000 times on Facebook. One video alone had more than 40,000 hits. In addition, I spent more than \$2,000 of my own money to pay for advertising on Facebook, and I received about \$200 in contributions, which I also used to pay for advertising. I also produced 117 memes on Facebook, each one to dedicated to explaining my position on the issues in the campaign, and I was active on Twitter. My efforts garnered me approximately 1,800 “likes” on my Facebook campaign page, and my posts averaged around 20,000 reads, with a high of 60,000 reads for a single post.

First Declaration of Merissa Hamilton

5. My employer was supportive of my candidacy, and allowed me to work a reduced schedule during the election. As a result, I was able to campaign from 3 PM to midnight every day after work from July 14, 2016 until the election on August 30, 2016, and all day and late into the evenings on the weekends. Every day I would do media appearances and anything else I could to further my campaign. I was on the Gianluca Zanna Show, on AM radio, three times, and I also appeared on the Wake Up Tuscon program, which airs on KVOI radio. The Mojave newspaper, kminer.com published a piece on my candidacy, as did syndicated columnist Renso Martinez. The online publication Libertychronicle.net covered my campaign, and I did appearances on The Edge podcast and the 3HE podcast.

6. Because Libertarian voters are so widely dispersed in Arizona, I did not campaign door to door, but instead focused my personal appearances at Libertarian events staged by the Maricopa County and Mojave County Libertarian Parties, and at a Tuscon Libertarian Party meeting, as well as a barbecue party held by the AZLP, where the national Libertarian Party Chair Nick Sarwark urged party members to support me. I also campaigned at a Gary Johnson for President viewing party, at the kick-off event for Libertarian activist Adam Kokesh's "For the Love of Freedom!" tour in Arizona, and at several events staged by liberty-minded groups such as the sponsors of the pro-marijuana referendum, Legal Crimes AZ, and the makers of the documentary Vaxxed.

7. All told, I worked on my campaign approximately 65 hours a week for six weeks, for a total of 390 hours. I also had anywhere from 3 to 10 volunteers working for me at any given time, with a total of 27 members of my volunteer group.

First Declaration of Merissa Hamilton

8. My campaign had such an impact that my father heard about it in Connecticut, even though I hadn't told him about it. I don't believe there's much more I could have done in this campaign. I put everything I could into it, but ended up receiving only 1,286 votes in the AZLP primary, which was not enough to advance to the general election ballot.

9. The statements and matters alleged herein are within my personal knowledge, and true and correct to the best of my knowledge and belief, except as to those allegations stated upon information and belief, and, as to those allegations, I believe them to be true.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 3-31-17


Merissa Hamilton

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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| THE ARIZONA LIBERTARIAN | |) | |
| PARTY, et al. | |) | |
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| Plaintiffs, | |) | |
| | |) | |
| v. | |) | Civil Action No. 2:16-cv-01019-DGC |
| | |) | |
| MICHELE REAGAN, | |) | |
| | |) | |
| Defendant. | |) | |
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FIRST DECLARATION OF JAMES IANNUZO
(pursuant to 28 U.S.C. § 1746)

I, James Iannuzo, hereby declare as follows:

1. I am 56 years old and competent to make this declaration.
2. I am a resident of Maricopa County, Arizona.
3. I serve as Chair of the Maricopa County Libertarian Party.
4. In 2016, I ran for Maricopa County Supervisor, District 3, as a write-in candidate in the Arizona Libertarian Party (“AZLP”) primary. To qualify for the general election ballot, I needed to receive at least 360 write-in votes in the primary election.
5. In that election, my Republican opponent, Bill Gates, ran unopposed in both the primary and general election. I ran specifically to give voters a choice.
6. To promote my campaign, AZLP sent out flyers to every address with a registered Libertarian in Arizona, urging voters to write in my name, as well as the names of all the other

First Declaration of James Iannuzo

write-in candidates AZLP had recruited to run in the primary election.

7. The Maricopa County Libertarian Party also sent a mailing to high impact Libertarian voters in my district, which urged them to write in my name, and the names of all other write-in candidates who were running in Maricopa County. To ensure this effort had the greatest impact on voter turnout, we sent our mailing only to people who had been Libertarians for a long time and consistently voted Libertarian in recent primary and general elections. That was about 500 voters. This was not a haphazard effort. We sent our mailing only to people who were proven to be consistent, reliable Libertarian voters. I then sent another 500 postcards to additional Libertarian voters who were qualified to vote for me in District 3. Between the state and county party, therefore, we sent mailings to a total of 1000 people who had voted Libertarian in 2012 or 2014, urging them to vote for me.

First Declaration of James Iannuzo

8. I also promoted my campaign by attending Libertarian Party events, as well as through my talk show, the Libertarian Solution, that aired on some AM radio stations, and was also available as a podcast and through iTunes. In addition, I walked the neighborhood, knocking on doors, but you can maybe reach only 10 or 15 Libertarians in a day that way. My outreach therefore had to be targeted, because there were only about 4,400 registered Libertarians in my district. I therefore focused on speaking directly to registered Libertarians.

9. I estimate that I campaigned directly to 70 Libertarians, by knocking on 40-50 doors around my home neighborhood, and by calling another 30-40 on the phone. In total, I dedicated at least 120 hours on my campaign. I spent just under \$500, to stay under the campaign finance filing exemption, and the county party spent another \$2,500 or so on the mailing it sent on behalf of all Maricopa County write-in candidates. I believe the state party also spent around \$7,000 on the mailing it sent to the address of every registered Libertarian in the state.

10. With help from the state and county parties' direct mailing efforts, I thought I could get the 360 write-ins that I needed. In the end I only got 217. *See Maricopa County Official Write-In Canvass Summary, available at <https://recorder.maricopa.gov/electionarchives/2016/08-30-2016%20Final%20Write-In%20Report%20Summary.pdf>*. Because I wasn't on the ballot, voters had no choice but to elect Bill Gates.

11. Some voters told me they received my mailing, and said they would vote for me. But the post office returned five percent or more per district from the state party's mailing to Maricopa County voters – about 25 mailings or so – and my mailing to less efficacious voters

First Declaration of James Iannuzo

resulted in another 15 percent being returned, amounting to 90 or 100 mailings returned in total.

12. We also experienced very low turnout in AZLP primary, compared with other parties' 2016 primaries. Statewide, turnout in AZLP's 2016 primary was only 13.53 percent. *See* State of Arizona Official Canvas, 2016 Primary Election – Aug. 30, 2016, available at <http://apps.azsos.gov/election/2016/Primary/canvass2016primary.pdf>, (showing 3,302 Libertarian votes cast out of 24,394 total registered Libertarian voters). That is less than half the 29.10 percent turnout for all voters statewide. *See id.* It is also a sharp decline from AZLP's immediately preceding primary in 2014, a non-presidential election year when turnout is typically lower, but we still had a turnout of 22.79 percent. *See* State of Arizona Official Canvass, 2014 Primary Election, Aug. 26, 2014, available at <http://apps.azsos.gov/election/2014/primary/Canvass.pdf>, (showing turnout of 6,134 Libertarian voters out of 26,915 total registered Libertarians, or 22.79 percent). The dropoff in voter turnout in 2016 was similar in the Maricopa County Libertarian primary. *See* Maricopa County Recorder Election Results Archives, available at <https://recorder.maricopa.gov/electionresults/archivedelectionresults.aspx> (showing turnout of 11.34 percent in 2016, compared with 19.24 percent in 2014). Meanwhile, the Green Party enjoyed an unusually strong turnout of 33.75 percent in its 2016 primary election. *See* State of Arizona Official Canvas, 2016 Primary Election – Aug. 30, 2016, available at <http://apps.azsos.gov/election/2016/Primary/canvass2016primary.pdf> (showing 2,623 Green votes out of 7,771 total registered Green voters).

13. I believe the sharp decline in voter turnout in AZLP's 2016 primary election is

First Declaration of James Iannuzo

attributable to the change in ballot access laws that Arizona enacted in 2015. Arizona mails ballots to voters in advance of each election, and I believe that Libertarian voters were dissuaded from voting in the primary when they received these ballots, which did not list any Libertarian candidates. Many people called me to say they had received blank ballots in the mail, with no Libertarians printed on them, and said they had no one to vote for. I asked if they got our postcards, and generally they either didn't know or didn't understand they could vote by writing in the names.

14. Because Bill Gates ran unopposed for County Supervisor in District 3, he won the race with 99.16 percent of the vote. *See* August 30, 2016 Summary Report, Maricopa County Final Official Results, available at <https://recorder.maricopa.gov/electionarchives/2016/08-30-2016%20Final%20Summary%20Report.pdf>. The other 0.84 percent of the votes – 453 in total from all partisan primaries – were write-in votes. *See id.*

15. Because I was the only declared write-in candidate, I received 100 percent of the reported write-in votes. *See* Maricopa County Official Write-In Canvass Summary, available at <https://recorder.maricopa.gov/electionarchives/2016/08-30-2016%20Final%20Write-In%20Report%20Summary.pdf>. Still, it wasn't enough for me to get on the ballot, due to the depressed voter turnout in the AZLP primary election.

16. I'm a known candidate because I've run before and I'm county chair of our party. I ran a serious campaign, but because of the way the election was run, I don't think there was any realistic chance for me to advance beyond the primary.


17. The statements and matters alleged herein are within my personal knowledge, and

First Declaration of James Iannuzo

true and correct to the best of my knowledge and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 3/30/17



Jim Iannuzo

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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| THE ARIZONA LIBERTARIAN PARTY, et al. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. <u>2:16-cv-01019</u> |
| |) | |
| MICHELE REAGAN, |) | |
| |) | |
| Defendant. |) | |

FOURTH DECLARATION OF MICHAEL KIELSKY
(pursuant to 28 U.S.C. § 1746)

I, Michael Kielsky, hereby declare as follows:

1. I am 51, and competent to state the following.
2. I currently serve as Chair of the Arizona Libertarian Party (“AZLP”).
3. Like virtually every minor political party, AZLP is a party of limited resources.

We nevertheless worked diligently to recruit candidates and support them, in an effort to gain access to Arizona’s November 2016 general election ballot.

4. Such efforts included responding to dozens, if not hundreds, of inquiries to the Arizona Libertarian Party, via e-mail, social media, and phone calls, requesting information on the party, our principles, our policies, and wanting to support the Arizona Libertarian Party as a member, volunteer, or candidate. Upon information and belief, the other officers of the Libertarian Party each also responded to similar inquiries.

5. Actively seeking to recruit new party members, volunteers, and candidates via our website, social media posts, at Libertarian Party meetings, and at other events which were likely

Second Declaration of Michael Kielsky

to appeal to freedom activists.

6. Establishing a phone bank system through which Arizona Libertarian Party volunteers could call Libertarian registered voters, remind them about our candidates, and urge them to vote. Upon information and belief, several dozen volunteers participated in placing calls through this system.

7. To support the Arizona Libertarian Party get-out-the write-in vote effort, mailing 22,768 full-color 6" x 9" postcards, one each per household for all 25,339 registered Arizona Libertarians, in late July and early August of 2016, for a total cost of \$7,676.26 (postcard images attached as an exhibit), which represented a significant expenditure of our very limited resources. The postcard prominently listed 17 of AZLP's declared write-in candidates and the office for which each was running. It was designed to allow Libertarian voters to remember to write-in our candidates if voting by mail, or to carry it to their election precinct on Primary Election Day, in either case to help our members remember to cast write-in votes for our official write-in candidates. The mailing was timed to coincide with the arrival of vote-by-mail ballots. We then further heavily cross-promoted our write-in effort, the postcard, and every write-in candidate, on social media, our website, and through our candidates and activists, via our phone-bank, as well as at all Libertarian events prior to the August 30, 2016 primary election.

8. I also filed to run for Maricopa County Attorney as a nomination-petition candidate in AZLP's 2016 primary election. I knew it would be difficult to collect enough signatures to qualify for the ballot because of the dramatically increased signature requirement, and so I made diligent efforts to do so, and campaigned hard, and invested significantly more time, far beyond any effort in prior elections, knowing that my long-term goal, beyond the 2016 election cycle, was to continue to grow the support for the Libertarian Party platform, grow name

Second Declaration of Michael Kielsky

recognition for the Libertarian Party, increase our voter registration numbers, and attract more supporters, members, donors, volunteers, and candidates.

9. In support of my effort to be listed on the ballot, and from the date I filed the initial candidate paperwork in about late October 2015, I began soliciting nomination petition signatures at dozens of events and meetings, ranging from Libertarian Party meetings, pro-medical marijuana meetings, events, and conventions, seeking individuals who could help collect a few or many signatures, up to and including carrying a nomination petition form with me at almost all times, and asking for signatures at almost any otherwise appropriate event and venue, for over 7 months.

10. Despite those diligent efforts, I was unable to collect sufficient nomination petition signatures to qualify for the ballot, and so I filed to run for Maricopa County Attorney as a declared write-in candidate in AZLP's 2016 primary election. Although I knew it would be exceedingly difficult to garner enough write-in votes to advance to the general election ballot, I continued to make diligent efforts to help raise awareness of our write-in efforts, and continued to campaigned hard, far beyond the efforts expended in every election cycle, knowing that my long-term goal, beyond the 2016 election cycle, was to continue to grow the support for the Libertarian Party platform, grow name recognition for the Libertarian Party, increase our voter registration numbers, and attract more supporters, members, donors, volunteers, and candidates.

11. In support of my effort to be successful as a write-in candidate, I actively solicited volunteers and support via social media, my campaign website, and in person, up until the date of the primary election.

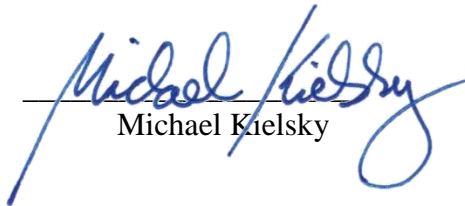
12. The statements and matters alleged herein are within my personal knowledge, and true and correct to the best of my knowledge and belief, except as to those allegations stated

Second Declaration of Michael Kielsky

upon information and belief, and, as to those allegations, I believe them to be true.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: March 30, 2017



Michael Kielsky

EXHIBIT A

**Arizona Libertarian Party Write-In Campaign Postcard (July, 2016)
Front + Back**

Federal Candidates:

US Senate: Merissa Hamilton

US Congress, CD 1: Kim Allen

US Congress, CD 2: Ed Tilton, Jr.

US Congress, CD 3: Mike Ross

US Congress, CD 4: Jeffrey Daniels

US Congress, CD 5: Nolan Daniels

US Congress, CD 6: Michael Shoen

US Congress, CD 7: Joe Cobb

US Congress, CD 9: Mike Shipley



State Legislative Candidates:

Senate, LD 07: Barry Keaveney

Senate, LD 26: Chris Will

House, LD 15: Kevin McCormick

House, LD 27: Robert Pepiton

House, LD 29: Bill Barker

Maricopa County Candidates:

Board of Supervisors, D.3: James Iannuzo

County Attorney: Michael Kielsky

County Recorder: Ernest Hancock

Maryvale Justice of the Peace: Chad Lisk

**AZLP 2016
Primary Write-in
CANDIDATES**

Dear Libertarian,

Our August 30, 2016 Primary Election is just around the corner. Vote-by-mail Ballots are arriving after August 3rd, the start of early voting. The Arizona Libertarian Party is excited to announce a fantastic slate of write-in candidates for our Primary. Candidates who receive the required number of write-in votes (which varies) will appear on the November Ballot like any other candidate.

With the increased interest in Libertarians nationally, please help to support our candidates by writing in their names on your Primary Ballot. You may find candidate profiles at AzLP.org.

Remember to write in candidate names exactly as listed online or on this card. An updated write-in list is at www.AzLP.org/primary.

Take this list with you when you go to the polls or to an early voting location, and use it when completing your Arizona Libertarian Primary Ballot. Share this card with other registered Libertarians and please mention our write-in campaign on social media!

Thank you for your continued support.

The Arizona Libertarian Party approved and paid for this message.

Learn more: www.AzLP.org – get involved, participate, get active!

Arizona Libertarian Party
4635 S. Lakeshore Dr.
Tempe, AZ 85282



**A current and updated
list of write-in candidates
is available here:**

www.AzLP.org/primary

**Early voting begins August 3
Primary Election: August 30**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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| THE ARIZONA LIBERTARIAN | |) | |
| PARTY, et al. | |) | |
| | |) | |
| Plaintiffs, | |) | |
| | |) | |
| v. | |) | Civil Action No. 2:16-cv-01019-DGC |
| | |) | |
| MICHELE REAGAN, | |) | |
| | |) | |
| Defendant. | |) | |
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FIRST DECLARATION OF MICHAEL SHIPLEY
(pursuant to 28 U.S.C. § 1746)

I, Michael Shipley, hereby declare as follows:

1. I am 41, and competent to state the following.
2. I currently serve as Assistant Secretary of the Arizona Libertarian Party and Chair of its Volunteer Coordination Committee. These are just two of many responsibilities I carry as a grassroots organizer.
3. One of the greatest challenges I face is mobilizing and retaining volunteers. Ordinary people simply do not have a great deal of discretionary time to spend, and they want to spend it doing things they enjoy. Pouring effort into hopeless causes is not enjoyable.
4. Given the odds against any particular Libertarian candidacy becoming the victory that changes everything, if one cannot count their hope in immediate victory, they must count it in the potential for the campaign to change hearts and minds in a perceptible way, such that each subsequent campaign builds on the gains of each prior cycle. As an organizer, my duty is to highlight the benefits of running an educational campaign for office, and maintain volunteer

First Declaration of Michael Shipley

morale, by characterizing activities as having victorious long term impact despite the specter of a short term electoral loss.

5. The key to this is gaining the candidate a platform. A candidate cannot hope to change hearts and minds if they cannot hope to gain access to the ballot at all. Activities like town hall meetings, candidate meet & greets, panel discussions, neighborhood canvassing and public debates are inseparably linked with actually being on the actual ballot. The petitioning phase is a choke point through which the candidate, and their supporters, must pass if the hoped-for outcome is to materialize at all.

6. During the 2016 election cycle, I was faced with a strategic and tactical crisis of conscience. The psychological well-being of the volunteers and the financial well-being of the party are both factors that weighed heavily in this consideration. Would it be appropriate to allocate precious resources, and expose human beings to the likelihood of failure, that came with the new signature requirements?

7. In my opinion it would be unethical to ask human beings to stand outside in 100+ degree Arizona weather, seeking out signatures from independent voters who are uninterested or even hostile toward Libertarian voices, knowing from experience that the effort was unlikely to be successful, and in some cases that it was numerically impossible. Also in my opinion, it would be unwise to squander financial resources on an essentially lost cause, when those resources could be more wisely allocated toward growth in other ways.

8. In short, risking money on almost certain failure and consequent demoralization of the volunteer base would be a grossly irresponsible choice; and this was the choice presented by A.R.S. §§ 16-321 and 16-322 as amended in 2015.

9. Upon reaching this conclusion, I chose to stand down from the 2016 election

First Declaration of Michael Shipley

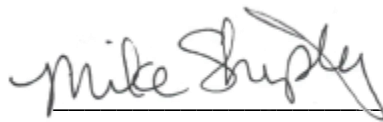
cycle, both as a potential candidate and as an organizer for other candidates. I redirected my own energy, and the energies of those over whom I had influence, away from the election and into projects I felt could make a meaningful impact over time.

10. As we now know, the 2016 election cycle was unusual in many ways. To watch this opportunity pass without Libertarian candidates on electoral campaign platforms having the chance to reach hearts and minds that were so uniquely open to change was to experience a terrible and irreplaceable loss.

11. The statements and matters alleged herein are within my personal knowledge, and true and correct to the best of my knowledge and belief, except as to those allegations stated upon information and belief, and, as to those allegations, I believe them to be true.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: March 30, 2017


Michael Shipley

First Declaration of Robert Pepiton

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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| THE ARIZONA LIBERTARIAN | |) | |
| PARTY, et al. | |) | |
| | |) | |
| Plaintiffs, | |) | |
| | |) | |
| v. | |) | Civil Action No. 2:16-cv-01019-DGC |
| | |) | |
| MICHELE REAGAN, | |) | |
| | |) | |
| Defendant. | |) | |
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FIRST DECLARATION OF ROBERT PEPITON
(pursuant to 28 U.S.C. § 1746)

I, Robert Pepiton, hereby declare as follows:

1. I am 28 years old, and competent to state the following.
2. In 2016 I ran as a write-in candidate for Arizona House District 15, in the Arizona Libertarian Party (“AZLP”) primary election.
3. There were 615 registered Libertarians in District 27 as of March 2016, according to the Arizona Secretary of State’s official report, available here: <http://apps.azsos.gov/election/voterreg/2016-03-01.pdf>. To qualify for the general election ballot, I needed to receive at least 167 write-in votes in the AZLP primary. I received 31 votes, or 100 percent of the total votes cast in the AZLP primary, according to the official canvass available here: <http://apps.azsos.gov/election/2016/Primary/canvass2016primary.pdf>. Because I did not receive the requisite 167 write-in votes, I did not appear on the general election ballot.
4. I ran a serious campaign. Although I did not receive the required number of write-in votes, Given my limited financial resources using Social media was critical to my campaign, I

First Declaration of Robert Pepiton

received a total of 1344 page views between June 18th and August 30th.


5. I responded to several candidate surveys including the Women's league of voters, Arizona Catholic Conference, Children's Action Alliance, Arizona Right to Life, Center for Arizona Policy, and ABATE of Arizona, Inc.

6. I was active in all AZLP events, monthly meetings, I also attended meetings for the South Mountain GOP to gather support because the Democratic party was running unopposed. From June to August I attended at least 10 events promoting my campaign and other Libertarian Candidates. I also knocked on several hundred doors in my District, and made 126 phone calls to potential voters,

7. The statements and matters alleged herein are within my personal knowledge and true and correct to the best of my knowledge and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 3/30/17



Signature
Robert Pepiton

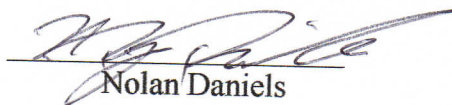
First Declaration of Nolan Daniels

it is to win their vote if your name is listed on the ballot.

6. The statements and matters alleged herein are within my personal knowledge, and true and correct to the best of my knowledge and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 3/30/17


Nolan Daniels