IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARTIN COWEN, ALLEN BUCKLEY, AARON GILMER, JOHN MONDS, and the LIBERTARIAN PARTY OF GEORGIA, INC., a Georgia nonprofit corporation,	*	CASE NO.: 1:17cv04660-LMM
Plaintiffs,	*	
v.	*	
BRAD RAFFENSPERGER, Georgia Secretary of State,	*	
Defendant.	*	

DEFENDANT BRAD RAFFENSPERGER'S NOTICE OF OBJECTIONS TO PLAINTIFFS' EVIDENCE IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendant Brad Rafensperger objects to evidence submitted by Plaintiffs in support of their Motion for Summary Judgment as follows:

Introduction

In support of their motion for summary judgment, Plaintiffs proffer evidence in the form of sworn declarations from individuals who attempted but failed to qualify to appear on the general-election ballot as candidates for U.S. Representative. Defendant does not object to testimony from these witnesses

regarding their individual efforts to meet the qualifying requirements under Georgia law, so long as that testimony is based upon the witnesses' personal knowledge. However, Plaintiffs' declarations go much further, containing sweeping conclusions—without factual support—regarding Georgia's ballot access requirements. Many of these declarations also contain inadmissible hearsay statements and improper opinion testimony from witnesses not properly designated as experts. As detailed below, much of this testimony is inadmissible and should be disregarded by the Court. [1]

To be considered at summary judgment, declarations "shall be made on personal knowledge, shall set forth such facts as would admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." FED. R. CIV. P. 56(e). Affidavits must contain supporting facts demonstrating a basis for the affiant's claim that his statements are the product of his personal knowledge. *Williams v. Great-West Healthcare*, 2007 WL 4564176, *5 (N.D. Ga. 2007); *see also Brooks v. CSX Transp. Inc.*, 555 Fed. Appx. 878, 880 (11th Cir. 2014) (per curiam). Rule 56(e)'s personal knowledge requirement

[1] Objections are the appropriate vehicle for challenging declarations submitted in support of a motion for summary judgment, rather than a motion to strike. *See Morgan v. Sears, Roebuck & Co.*, 700 F.Supp. 1574, 1576 (N.D. Ga. 1988) ("Rather than filing a motion to strike as under Rule 12, the proper method for challenging the admissibility of evidence in an affidavit is to file a notice of objection to the challenged testimony.").

prevents statements in affidavits that are based, in part, 'upon information and belief' – instead of only knowledge – from raising genuine issues of fact sufficient to defeat summary judgment. *Pace v. Capobianco*, 283 F.3d 1275, 1278 (11th Cir. 2002).

Many of Plaintiffs' witnesses fail to demonstrate that their testimony is based upon personal knowledge or that the witness is competent to testify on the subject matter. Rather, much of the testimony is nothing more than "conclusory allegations without specific supporting facts," which have no probative value. *Leigh v. Warner Brothers, Inc.*, 212 F.3d 1210, 1217 (11th Cir. 2000); s*ee also Taylor v. City of Gadsden*, 958 F. Supp. 2d 1287, 1294 (N.D. Ga. 2013) ("Affidavits which set forth conclusory arguments rather than statements of fact based on personal knowledge are improper.").

Furthermore, the declarations contain inadmissible hearsay, which "generally cannot be considered on a summary judgment motion." *Moulds v. Bullard*, 345 Fed. Appx. 387, 391 (11th Cir. 2009) (citing *Club Car, Inc. v. Club Car (Quebec) Import, Inc.*, 362 F.3d 775, 783 (11th Cir. 2004)). Rule 801(c) of the Federal Rules of Evidence defines hearsay as a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted. *See also Taylor*, 958 F. Supp.

2d at 1294. Portions of Plaintiffs' declarations contain out-of-court statements by third parties, usually unidentified, and there is no indication that the statements could be reducible to a form admissible at trial. *See id.* Accordingly, hearsay statements should not be considered at summary judgment.

Finally, many of Plaintiffs' declarations contain improper opinion testimony by non-experts. Opinion testimony by lay witnesses is limited by Rule 701 of the Federal Rules of Evidence, which requires that the opinion must be (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness' testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. *See Ojeda v. Louisville Ladder, Inc.*, 410 Fed. Appx. 213, 215 (11th Cir. 2010 (excluding lay witness opinion testimony under FED. R. EVID. 701(c)). Plaintiffs had the opportunity to designate expert witnesses in this action pursuant to the requirements of FED. R. CIV. P. 26. Accordingly, any opinion testimony by witnesses not properly designated as experts is not admissible and should be disregarded by the Court.

Defendant's specific objections to Plaintiffs' declarations are described in further detail below.

Specific Objections to Plaintiff's Exhibits

Ex. 1: Declaration of Jeff Anderson (Doc. 69-4)

Mr. Anderson testifies to his attempts to qualify for the general election ballot as an independent candidate for U.S. Representative for Georgia's 11th Congressional District. While some of his testimony contains factual statements based upon his personal knowledge, many statements are conclusory allegations without supporting facts, inadmissible hearsay, and improper opinion testimony.

Specifically, in paragraph 6, Anderson speculates that his campaign needed to gather 33,000 signatures to qualify for the general election, rather than the required 21,000, based upon unidentified "anecdotal evidence" regarding the Secretary of State's petition challenge and disqualification practices. *See* Doc. 69-4 ¶ 6. This testimony is wholly speculative and lacks any foundation for the witness's knowledge of the Secretary of State's practices. Defendant further objects to the testimony in paragraph 7 in which Anderson states that he estimated the total cost of obtaining ballot-access was "approximately $10 per signature; roughly $330,000." *Id.* ¶ 7. Anderson does not state that he has personal knowledge of using paid petition circulators in Georgia, and his affidavit provides no factual support for his opinion.

Defendant also objects to the testimony in paragraph 13 that campaign volunteers found many residents in neighborhoods posting "no soliciting signs" to be "resistant" to having strangers knock on their door. *Id.* ¶ 13. This testimony appears to be based upon inadmissible hearsay statements from out-of-court declarants and not Anderson's personal knowledge.

Finally, Defendant objects to paragraphs 12, 14, and 15 as containing conclusory statements not based upon any facts or personal knowledge and improper lay witness opinion testimony under Rule 701. Anderson offers the opinion that the technical requirements of a nominating petition "were a potential minefield" and that the General Assembly designed ballot access laws to be "unjustifiably hard and remarkably expensive to qualify." *Id.* ¶ 12. He further concludes that "it is virtually impossible to qualify" for the general-election ballot as an independent or third-party candidate, that "hundreds of thousands of dollars" would be necessary to qualify, and that running as an independent would be "futile." *Id.* ¶ 14; *see also* Plaintiffs' Statement of Material Facts no. 158. Anderson provides no factual support for these conclusory allegations, which is also improper opinion testimony from a lay witness. This inadmissible testimony should be disregarded by the Court.

Ex. 2: Declaration of Victor Armendariz (Doc. 69-5)

Defendant objects to the Declaration of Victor Armendariz because it consists entirely of conclusory statements without factual support and inadmissible opinion testimony. Like the Anderson Declaration, Armendariz opines that running as an independent is "virtually impossible" and "would be futile under current law." Doc. 69-5 ¶ 10. Armendariz provides no factual evidence of his efforts to qualify—he merely states his conclusion that he would not be able to obtain the required number of signatures because "he learned that the Secretary of State's office had a history of rejecting a high percentage of signatures." *Id.* ¶ 8. These conclusory allegations are not based upon facts or the witness's personal knowledge and should not be considered at summary judgment.

Ex. 3: Declaration of Allen Buckley (Doc. 69-6)

Defendant objects to the Declaration of Allen Buckley as irrelevant and immaterial. Buckley testifies to his experience running campaigns for statewide elected office, for which no petitions were required. *See* Doc. 69-6 ¶¶ 5-10. Buckley discusses the policy platform similarities between the Georgia Libertarian Party and the National Libertarian Party and offers his personal opinion on fiscal policy. *Id.* ¶¶ 13, 14. His declaration concludes with the statement that he "ha[s] no

concrete plans to run for office again." *Id.* ¶ 13. This testimony is not relevant to the action, has no probative value, and is not admissible for any purpose.

Ex. 4: Declaration of Faye Coffield (Doc. 69-7)

Coffield's Declaration describes her attempt to qualify for the general-election ballot as an independent candidate for U.S. Representative for Georgia's 4th Congressional District in 2008. Defendant objects to paragraphs 11 and 12 of her declaration as inadmissible hearsay. Coffield testified that potential signers "were worried about identity theft and therefore extremely reluctant to sign." Doc. 69-7 ¶ 11. She further testified that many potential signers were "fearful of public or private retribution for signing my petition." *Id.* ¶ 12. These statements were made by individuals other than the declarant and are offered to prove the truth of the matter asserted, and are therefore inadmissible hearsay under FED. R. EVID. 801.

Ex. 5: Declaration of Martin Cowen (Doc. 69-8)

Plaintiff Martin Cowen submits a declaration describing his attempt to qualify as a Libertarian Party candidate for U.S. Representative for Georgia's 13th Congressional District in 2018. Defendant objects to paragraph 22 of his declaration, in which Cowen states that the candidate qualifying fee "is a sufficient barrier to ballot access for the purpose of excluding 'non-serious' candidates."

Doc. 69-8 ¶ 22. The witness provides no factual support based on his personal knowledge for this conclusory allegation. Further, Cowen was not offered as an expert witness, and as such his opinions regarding the qualifying fee's effect on ballot access and the legislative purpose behend the qualifying fee are not admissible. *See* FED. R. EVID. 701. The Court should disregard this testimony.

Ex. 6: Declaration of Hugh Esco (Doc. 69-9)

Hugh Esco is an officer with the Georgia Green Party, and he testifies in his declaration regarding his experience with petition drives, although he has never been a candidate for office. Esco makes the conclusory statement that the signature requirements for U.S. Representative nominating petitions "are not realistically achievable," and that the "Secretary of State's office routinely rejects a high proportion of signatures." Doc. 69-9 ¶¶ 6, 7. However, Esco does not provide factual support based on his personal knowledge to support these conclusory allegations. Esco further testifies in paragraph 7 that the Secretary of State rejected "approximately half" of the signatures gathered by Dr. Jill Stein for her 2016 Presidential nominating petition. *Id.* ¶ 7. Esco does not testify that he has personal knowledge of the Stein nominating petition campaign or the Secretary of State's rejection of that petition. Esco concludes that the Secretary of State's validation rates are "low" and that candidates should collect "at least double" the number of

required signatures. *Id.* Defendant objects that these allegations are not based upon the witness's personal knowledge of the Secretary of State's validation practices, and no showing is made that Esco is competent to testify on the subject matter.

In his declaration, Esco identifies four factors that, in his opinion, have "compounded" the burden of collecting signatures: (1) "traditional public spaces . . . such as main streets and town squares have become increasingly privatized into shopping malls and the like"; (2) "the automobile has insulated voters from circulators"; (3) concerns about identity theft; and (4) petition circulators are "often harassed by police officers." *Id.* ¶ 8. Esco was not offered as an expert witness, and therefore he may not offer this type of opinion testimony. His opinions also appear to be based upon hearsay evidence, which is only permitted by a properly qualified expert under Rules 702 and 703. Paragraphs 15 and 16 also inadmissible opinion testimony. Esco states that Georgia's ballot access laws "make it more difficult for the Green Party to recruit highly-qualified candidates for U.S. Representative." *Id.* ¶ 15. Paragraph 16 includes the statement that he "believe[s] that [Cynthia McKinney] would have been highly competitive" in a general election for U.S. Representative. *Id.* ¶ 16. Esco's speculative conclusions about the electoral viability of particular candidates are not admissible evidence and should be disregarded.

Finally, Defendants object to paragraphs 11-14, which include inadmissible evidence regarding unsuccessful attempts by Green Party candidates to qualify for the ballot. The declaration provides no foundation for the source of Esco's knowledge of this information, and the witness does not claim to have personally participated in these campaigns. *Id.* ¶¶ 11-14. The Court should therefore disregard this testimony.

Ex. 7: Declaration of Jay Fisher (Doc. 69-10)

Jay Fisher was the Libertarian Party's nominee for U.S. Representative for Georgia's 6th Congressional District in 2006. Defendant objects to numerous hearsay statements in Fisher's Declaration. In paragraphs 7 and 8, Fisher recounts conversations he had with "professional petition circulators" and voters which is inadmissible hearsay. Doc. 69-10 ¶¶ 7, 8. The statement in paragraph 9 that "my ideas could not get any traction in the media because I was not yet on the ballot" are speculative, lacking any foundation, and hearsay. *Id.* ¶ 9. Fisher's conclusion that Georgia's signature requirements "are not realistically achievable" are also conclusory allegations not based upon any facts. *Id.* ¶ 11. Even the witness concedes that he only utilized five volunteers and quickly abandoned his efforts to qualify, which flatly contradicts his unsupported claim that he "made a genuine

effort to gather signatures to qualify for the general-election ballot." *Id.* ¶¶ 6, 10. This testimony should not be considered by the Court.

Ex. 8: Declaration of Aaron Gilmer (Doc. 69-11)

Aaron Gilmer's Declaration describes his efforts to "explor[e] the possibility of running for U.S. Representative in 2017" for the Libertarian Party. In paragraph 13, Gilmer testifies that, during his signature campaign, many potential signers were "put-off" by giving personal information to a stranger and many refused to sign because of the personal information requirement. Doc. 69-11 ¶ 13. These statements are inadmissible hearsay.

Gilmer's declaration also includes conclusory statements not supported by facts within the witness's personal knowledge. Gilmer testifies that, had he qualified, his candidacy would have been competitive against the Republican incumbent. *Id.* ¶ 19. Further, he states, "Libertarian views on the economy, privacy, and government intrusion are popular in rural North Georgia," that he "would have gotten a lot of votes," and that he would have "broadened the discussion" as a candidate. *Id*. In paragraph 21, Gilmer testifies that it is "virtually impossible to qualify for the general election ballot as a Libertarian candidate for U.S. Representative. The number of signatures is just too high." *Id.* ¶ 21. These statements are nothing more than conclusory allegations without specific

supporting facts. Gilmer's conclusions are not evidence, and the Court should disregard them.

Ex. 10: Declaration of Derrick Lee (Doc. 69-13)

Defendant objects to the entire Declaration of Derrick Lee as including inadmissible opinion testimony from a lay witness. Lee has not been disclosed as an expert witness by Plaintiffs, and yet his declaration consists almost entirely of opinion testimony regarding "industry norms" and practices in other states with respect to gathering and validating signatures. *See* Doc. 69-13 ¶ 11. For example, in paragraph 9, Lee testifies that "[i]n my experience, most or all states" grant petition circulators access to voter registration records to allow circulators to verify their collected signatures. *Id.* ¶ 9. His conclusory statement regarding the access other states provide to petition circulators is not supported by any showing that Lee is competent to testify regarding the practices of other states. Similarly, paragraphs 12-17 and 21-24 purport to give opinions based upon Lee's "experience" without any supporting facts. This testimony is inadmissible lay witness opinion testimony and the entire Lee declaration should be disregarded by the Court. *See* FED. R. EVID. 701.

Ex. 11: Declaration of Cynthia McKinney (Doc 69-14)

Cynthia McKinney, a former member of Congress, testifies that she "began to explore" the possibility of running for U.S. Representative for Georgia's 4th Congressional District as a Green Party candidate. Doc. 69-14 ¶ 7. She opines that "based on her experience . . . Georgia's signature requirement for ballot access is not realistically achievable." *Id.* ¶ 15. However, McKinney admits that she was unable to raise any money for a signature gathering campaign and withdrew before even attempting to gather signatures. By her own admission, McKinney has no personal experience with a signature campaign, and therefore her testimony regarding Georgia's signature requirements for ballot access is neither competent nor based upon the witness's personal knowledge. This testimony has no probative value and should be disregarded by the Court.

McKinney further testifies that donors "do not like spend[ing] money their money on gathering signatures," and that she was told by an unnamed third party that donating was too risky when the Secretary of State's office can reject your petition. *Id.* ¶ 12. This testimony is inadmissible hearsay and should also be disregarded by the Court.

Ex. 12: Declaration of Ted Metz (Doc. 69-15)

The Declaration of Ted Metz, a former state-wide candidate for office, consists entirely of his speculation as to why more libertarian candidates do not run for office. In paragraph 10, Metz states, "It is hard to know for sure why some of the potential candidates declined to run, but my sense is that the signature requirement was a significant deterrent." Doc. 69-15 ¶ 10. Metz offers two examples—Beth Pollak and Travis Klavohn—and states that he believes both would have run without the signature and filing fee requirements. *Id.* Neither candidate was deposed nor submitted an affidavit or declaration. Metz's opinion about their decisions not to seek office, or any other candidate's motivations behind not seeking office as a member of the Libertarian Party, are not admissible.

Metz further testifies that he "heard" donors refuse to give to candidates because candidates were not certain to be on the ballot and that this "strikes donors as a risky proposition." *Id.* ¶ 11. This is inadmissible hearsay. Metz also testifies that volunteers decline opportunities because candidates might not make the ballot. He testifies that the Secretary of State's rejection of signatures and the task of door-to-door canvassing makes supporters "believe" that signature gathering would be a wasted effort. *Id.* ¶ 12. Metz's speculation is not evidence, and the Court should disregard it.

Metz's declaration also includes several conclusory statements without factual support. In paragraph 14, Metz testifies that "Georgia's ballot access requirements hurt the Libertarian Party's ability to compete in the marketplace of ideas" and "keep Libertarians off the ballot and limit the Party's exposure to Georgians." *Id.* ¶ 14. None of these conclusory statements is supported by facts for which Metz has personal knowledge. Metz's opinions about the Libertarian Party's relationship with Georgia voters, and how Georgia law affects that relationship, are inadmissible.

Ex. 13: Declaration of John Monds (Doc. 69-16)

Defendant objects to the Declaration of John Monds as irrelevant and not based upon the witness's personal knowledge. While Monds has run for state-wide office as a Libertarian Party candidate, he has never run for office where he was required to conduct a signature gathering campaign. Nevertheless, in paragraph 8, Monds testifies that he "do[es] not believe that Georgia's ballot-access requirements . . . for U.S. Representative are reasonably achievable," and that the ballot access requirements are "impossible." Doc. 69-16 ¶ 8. He also testifies that "it would take an army of volunteers or hundreds of thousands of dollars for paid petition circulators" and that neither option is truly feasible. *Id.* Monds does not claim any personal knowledge of signature-gathering campaigns, and he is not

competent to testify about the feasibility of signature gathering campaigns under Georgia law.

Ex. 14: Declaration of Eugene Moon (Doc. 69-17)

The Declaration of Eugene Moon describes the witness's efforts to qualify as an independent candidate for U.S. Representative for Georgia's 9th Congressional District. Moon testifies that he learned "there is a minefield of legal technicalities" that can cause many signatures to be invalidated and that "the deck is stacked against independent and third-party candidates." Doc. 69-17 ¶ 9. Moon also testifies that ballot access is "difficult" for independent candidates, and that running for U.S. Representative under current Georgia law would be "futile." *Id.* ¶ 12. Moon's allegations about the difficulties faced by independent and political body candidates are purely speculative, are not based upon the witness's personal knowledge, and are not admissible.

Ex. 15: Declaration of Hien Nguyen (Doc. 69-18)

Hien Nguyen sought to appear on the general-election ballot as an independent candidate for U.S. Representative for Georgia's 4th Congressional District. His declaration contains inadmissible hearsay and conclusory statements without factual support. Paragraphs 9 and 10 reference a letter from the Secretary of State's office without including a copy of the letter. *See* Doc. 69-18 ¶¶ 9, 10.

This testimony is inadmissible hearsay. In paragraphs 11 and 12, Nguyen testifies that the Secretary of State's signature requirement is "just too high" and "not realistically achievable," and that running as an independent candidate is "futile" under current law. *Id.* ¶¶ 11, 12. This testimony is speculative, conclusory, and not limited to facts within the witness's personal knowledge, and the Court should disregard it.

Ex. 16: Declaration of Wayne Parker (Doc. 69-19)

Wayne Parker was the Libertarian Party's nominee for U.S. Representative for Georgia's 11th Congressional District in 2002. Defendant objects to his declaration on the grounds that it includes conclusory allegations, testimony beyond Parker's personal knowledge, and inadmissible hearsay. In paragraph 12, Parker testifies about police harassment of his signature gatherers, but does not testify that police harassed him personally or that he personally witnessed the harassment. Doc. 69-19 ¶ 12. To the extent that this paragraph is not based on Parker's personal knowledge, the testimony is inadmissible hearsay. Paragraph 17 contains Parker's opinion that a candidate "would probably need more than $100,000" to meet the signature requirement, which is inadmissible speculation not based upon any factual evidence. *Id.* ¶ 17. In that same paragraph, Parker's statement that the "Secretary of State's office routinely rejects a large fraction of

the signatures submitted with literally no oversight or meaningful opportunity for review" is also inadmissible opinion evidence unsupported by any facts. *Id.* The Court should disregard this testimony.

Ex. 18: Declaration of Nicholas Sarwark (Doc. 69-21)

Nicholas Sarwark, the current chair of the Libertarian National Committee, provides testimony regarding the party's efforts to elect Libertarian candidates in the United States. While Defendant does not object to Sarwark testifying as to facts within his personal knowledge by virtue of his position with the party, Plaintiffs did not designate Sarwark as an expert witness, and therefore any opinions he provides must meet the requirements of FRE 701(c) for opinions by a lay witness. Defendant objects to Sarwark's testimony in paragraphs 30, 31, and 33 as improper opinion testimony by a lay witness. Sarwark alleges that Georgia's ballot-access laws have a "ripple effect" that "prevents us from presenting the Libertarian Party as a viable alternative for all voters nationwide" and "perpetuates the false impression that the [party] is only interested in running candidates for president." *See* Doc. 69-21 ¶¶ 30, 31, and 33. Sarwark provides no factual basis for his conclusions, which are inadmissible under FED. R. EVID. 701(c). Paragraphs 15 and 16 describe a 2010 study and a 2015 poll. *Id.* ¶¶ 15, 16. These studies, which are not provided, are inadmissible hearsay. Sarwark was not properly designated as an

expert witness and he may not rely upon hearsay statements in forming his opinions.

Ex. 19: Declaration of Luanne Taylor (Doc. 69-22)

Defendant objects to the Declaration of Luanne Taylor as not relevant to any issue involved in this action. The Taylor Declaration describes an attempt to conduct a signature-gathering campaign, but this campaign was in an effort to appear on the ballot as an independent candidate for the State House of Representatives, not the U.S. House of Representatives. *See* Doc. 69-22 ¶¶ 6-7. In paragraph 15, Taylor testifies that her "experience convinced me that it is virtually impossible to qualify for the general election ballot as an independent or third-party candidate for U.S. Representative." *Id.* ¶ 15. However, Taylor did not attempt such a petition campaign. Because Taylor has no personal knowledge of attempting to qualify for the general election ballot for U.S. Representative, she is not competent to testify and the Court should disregard her testimony.

Ex. 20: Declaration of Don Webb (Doc. 69-23)

In his declaration, Don Webb testifies to his involvement as a paid petition circulator and volunteer coordinator for the Libertarian Party in Georgia. Defendant objects to paragraphs 10 through 12 of Webb's testimony as inadmissible hearsay and conclusory statements without factual support. In

paragraph 10, Webb testifies that Libertarian Party supporters and potential volunteers are "discouraged by the Secretary of State's history of rejecting so many signatures to keep candidates off the ballot. They do not want to spend time on what they reasonably believe to be a futile effort." Doc. 69-23 ¶ 10. First, Webb's allegation that the Secretary of State rejects signatures to keep candidates off the ballot is purely speculative with no basis in the factual record. Second, Webb's reports of third parties telling him they choose not to donate time or money to the Libertarian Party are inadmissible hearsay. Paragraphs 11 and 12 also contain speculative conclusions regarding the financial investment and work required to run a successful signature campaign. *Id.* ¶¶ 11, 12. Webb was not designated as an expert witness, and therefore his opinions on these topics are inadmissible.

Ex. 21: Declaration of Nathan Wilson (Doc. 69-24)

Nathan Wilson is a former Executive Director of the Libertarian Party. Defendant objects to the Declaration of Nathan Wilson as including lay witness opinion testimony, conclusory statements, hearsay, and testimony not relevant to any issue involved in this case. In paragraph 4, Wilson testifies that donors do not want to give money to candidates for petition drives because donors prefer their money go toward supporting the Libertarian Party's ideas. This testimony is

inadmissible hearsay. Wilson also testifies that "[t]he difficulty—some would say impossibility—of obtaining ballot access for House candidates in Georgia is well-known in the donor community, and that knowledge makes it nearly impossible for the party to raise money for petition drives." Doc. 69-24 ¶ 4. Wilson does not provide factual support for any of these claims, and to the extent that this conclusion relies upon the statements of others not before the Court, it is inadmissible hearsay.

Defendant further objects to the claim in paragraph 13 that "around 20 percent or more of the data" in the Secretary of State's voter registration list is inaccurate. Wilson provides no factual basis for this allegation. Wilson further testifies that "based on [his] experience," Georgia's ballot access requirements are not "realistically achievable" without the use of professional circulators. *Id.* ¶ 17. However, Wilson has not run for non-statewide office and he does not indicate ever being involved in a nomination petition campaign for non-statewide office. This testimony is also inconsistent with the deposition of Doug Craig, one of the Libertarian Party's 30(b)(6) representatives. Craig testified that the party prefers to use volunteer circulators, rather than professional, because they collect signatures with a higher validity rate. *See* Doc. 74-1 (Craig Dep.) at 59:24 to 61:10. Accordingly, the Court should disregard Wilson's testimony in his declaration.

Conclusion

For the foregoing reasons, Defendant respectfully requests that the Court sustain its objections to Plaintiffs' declarations and disregard the inadmissible testimony on summary judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the forgoing Defendants' Brief was prepared in 14-point Times New Roman in compliance with Local Rules 5.1(C) and 7.1(D).

Certificate of Service

I hereby certify that I have electronically filed **Defendant Brad Raffensperger's Notice of Objections to Plaintiffs' Evidence in Support of their Motion for Summary Judgment** using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: NONE

This 7th day of August, 2019.

/s/Cristina Correia
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