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August 13, 2019

Via CM/ECF Filing

Michael E. Gans, Clerk of Court  
United States Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton U.S. Courthouse  
111 South 10<sup>th</sup> Street, Room 24.329  
St. Louis, MO 63102

Re: Libertarian Party of Arkansas, et al. v. John Thurston, etc.;  
Eighth Circuit Case No. 19-2503

Dear Mr. Gans:

Appellees hereby respond to Appellant's Fed. R. App. P. 28(j) letter of August 12, 2019, which references the District Court's order of August 12, 2019, denying Secretary of State Thurston's motion to stay the preliminary injunction pending appeal.

Secretary Thurston claims in his Rule 28(j) letter that the District Court ". . . did not reconcile its preliminary-injunction order with the overwhelming consensus that modicum-of- support requirements like Arkansas's law are constitutional." In fact, there is no overwhelming consensus supporting requirements like Arkansas's ballot access law being constitutional and the cases cited in Secretary Thurston's motion filed on August 8, 2019, do not support Secretary Thurston's assertion. Appellees will more fully deal with this point in their Response and Brief in Opposition to Secretary Thurston's aforesaid motion of August 8, 2019. However, Appellees would note that nowhere in Secretary Thurston's Rule 28(j) letter or in his aforesaid motion does he cite the two cases which previously declared unconstitutional a milder form of the 3% petition requirement for new political parties in Arkansas, *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. 690 (Ark. 1996) (appeal dismissed with conditions 8th Cir. Case No. 96-3238, June 19, 1997); and *Green Party of Arkansas v. Daniels*, 445 F.Supp.2d 1056 (E.D. Ark., W.D. 2006); or the cases of *McLain v. Meier*, 637 F.2d 1159, 1164-1165 (8<sup>th</sup> Cir. 1980); *New Alliance Party v. Hand*, 933 F.2d 1568 (11<sup>th</sup> Cir. 1991); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 589-590 (6<sup>th</sup> Cir. 2006); *Libertarian Party of*

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*South Dakota v. Krebs*, 290 F.Supp.3d 902, 912-916 (D.S.D. 2018); and *Graveline v. Johnson*, 336 F.Supp.3d 801, 816-817 (E.D. Mich. 2018), *stay denied*, 747 Fed. App'x. 408 (6<sup>th</sup> Cir. 2018). These cases are far more material and on point as to why the District Court was correct in granting a preliminary injunction, denying a stay, and holding that Secretary Thurston is not likely to prevail on the merits.

A copy of this letter is being electronically filed, served, and mailed to Appellant's counsel.

Yours truly,

s/ James C. Linger  
James C. Linger

JCL/sc

xc: Leslie Rutledge, Esq.  
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