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NO. 19-2503

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LIBERTARIAN PARTY OF ARKANSAS, SANDRA CHANEY RICHTER,
MICHAEL PAKKO, RICKY HARRINGTON, JR,
CHRISTOPHER OLSON, and MICHAEL KALAGIAS,
Plaintiffs-Appellees,

v.

JOHN THURSTON, in his official capacity as
Secretary of State for the State of Arkansas,
Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of Arkansas
No. 4:19-CV-00214 KGB (Honorable Kristine G. Baker)

APPELLEES' RESPONSE AND BRIEF IN OPPOSITION TO APPELLANT'S MOTION FOR A STAY OF A PRELIMINARY INJUNCTION PENDING APPEAL AND FOR EXPEDITED CONSIDERATION OF THIS APPEAL

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TABLE OF EXHIBITS

Plaintiffs' Exhibit 1	Affidavit of Richard Winger admitted at the Preliminary Injunction Hearing of June 4, 2019
Plaintiffs' Exhibit 3	Eighth Circuit Docket Statement Docket Number 96-3238, Citizens to Establish a Reform Party in Arkansas v. Priest admitted at the Preliminary Injunction Hearing of June 4, 2019
Plaintiffs' Exhibit 4	Letter of June 30, 2017 from Arkansas Secretary of State Mark Martin to Michael Pakko admitted at the Preliminary Injunction Hearing of June 4, 2019
Plaintiffs' Exhibit 5	Libertarian Participation in Arkansas Elections, 2016 and 2018, admitted at the Preliminary Injunction Hearing of June 4, 2019
Plaintiffs-Appellees' Exhibit 6	Letter of July 29, 2019 from Arkansas Secretary of State John Thurston to Michael Pakko

INTRODUCTION

On July 3, 2019, the District Court granted Plaintiffs' motion for preliminary injunction and allowed the Libertarian Party of Arkansas ("LPAR") to obtain ballot access if 10,000 valid petition signatures of Arkansas registered voters were submitted to Secretary of State Thurston ("Secretary Thurston"). The LPAR successfully complied with the District Court's order by turning in 18,702 petition signatures on June 28, 2019, of which 12,749 petition signatures were valid (Letter of July 29, 2019, Plaintiffs-Appellants' Exhibit "6"). Secretary Thurston filed a Notice of Appeal on July 12, 2019, to the preliminary injunction order and a motion for a stay pending appeal. On July 24, 2019, the Plaintiffs filed a response in opposition to the motion. On July 25, 2019, Secretary Thurston filed a motion for leave to file a reply with an exhibit of the proposed reply. The District Court granted the motion for leave to file a reply, considered the reply, and entered an order denying the motion to stay preliminary injunction pending appeal on August 12, 2019. Secretary Thurston had previously filed a motion to stay preliminary injunction pending appeal in the Eighth Circuit on August 8, 2019.

In its preliminary injunction order, the District Court found, *inter alia*, that the Arkansas election statutes challenged, Ark. Code Ann., §§ 7-7-101, 7-7-203(c)(1), 7-7-205(a)(2), 7-7-205(a)(4)(B), 7-7-205(a)(6), and 7-7-205(c)(3) were likely to be proved by the Plaintiffs to place a severe burden upon Plaintiffs' associational rights

under the First and Fourteenth Amendments so that the District Court should apply strict scrutiny to the challenged ballot access statutes, the state had failed to articulate clearly a compelling state interest to be examined, and leaving the District Court to speculate as to what the state's interest may be. The District Court then reviewed various possible state interests and found that the state had failed to meet its burden of showing that the challenged statutes are narrowly drawn to serve the state's compelling interest. The District Court analyzed the challenged election statutes as to the number of petition signatures required, the petitioning deadline, and the 90-day period of time allowed for petitioning. Because the challenged statutes are likely to be found unconstitutional, the District Court found that the enforcement of the law would prevent the LPAR from achieving ballot access and running candidates unless the 10,000 petition signature requirement was restored. The District Court reasoned that if the LPAR was allowed to meet the 10,000 petition signature requirement which was in effect for the last several election cycles, election dates and timelines would not be interfered with and, therefore, the balance of equities and the public interest weigh in favor of a preliminary injunction. Reinstating the 10,000 signature requirement was the narrowest form of relief that would grant relief to the irreparable harm facing Plaintiffs. Because Secretary Thurston does not meet any of the four factors set forth in the four-factor stay analysis in *Hilton v. Braunskill*,

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481 U.S. 770, 776 (1987), the Motion for a Stay of a Preliminary Injunction Pending Appeal is without merit and should be denied.

ARGUMENT AND AUTHORITIES

Secretary Thurston has shown no necessity for the increased petition signature requirement, no necessity for the petition deadline 424 days before the general election, no necessity for the ninety day petitioning period, and no credible compelling state interest that could not be served by less drastic means. Under the factors and equities to be considered in answering whether a stay should be granted of a preliminary injunction pending appeal, *Hilton v. Braunskill*, 481 U.S. at 776, Secretary Thurston has failed to show why this Court should grant his motion. The District Court's relief granted in its preliminary injunction order is both conservative and narrowly tailored in only restoring the 10,000 petition signature requirement and not at this time changing the petition signature deadline or 90-day gathering period, as well as not disturbing any election dates.

The District Court's preliminary injunction order (hereinafter "PI order") specifically found the LPAR had been able to meet the 10,000 petition signature requirement in 2012, 2014, 2016, and 2018, and had obtained 2.9% of the total vote for Governor in 2018, just short of the 3% retention requirement that would require the political party to nominate its candidates in a preferential primary election. (PI order, ¶¶ 20 and 85). The District Court further found that prior to the

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law passing in late February 2019, and raising the 10,000 petition signature requirement to 3% of the previous vote for Governor (26,746), the LPAR had started fundraising and announced an intent to become a new political party once again before 2020. (PI order, ¶ 18). Not only did the District Court note the difficulty of petitioning so far removed from the general election, but took extensive testimony as to costs and past and present efforts. The District Court further noted that the LPAR would not be able to meet the 26,746 signature requirement in 2019 because Michael Pakko had testified that he thought the most the LPAR and its supporters could collect would be 22,000 or 23,000 unverified signatures within the 90-day period (PI order, ¶ 39). After hearing other extensive testimony, including the fact that from 1977 to the present only three independent candidates had gotten on the statewide ballot by meeting the 10,000 petition signature requirement (PI order, ¶¶ 15 and 64), the District Court found that Secretary Thurston had not shown any compelling state interest that would justify the laws in question. In fact, even the state's own expert witness admitted that the Arkansas ballot was not overcrowded under the old law. (PI order, ¶ 93).

The District Court was correct in granting the preliminary injunction and no stay should be granted pending appeal. A somewhat similar stay request before the Sixth Circuit is instructive to the instant situation. Recently, the Sixth Circuit upheld a denial of a stay by a District Court which had preliminarily enjoined a

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30,000 petition signature requirement in a ballot access case, which is less than 1% of the last Michigan gubernatorial vote, and ordered the state to accept *Graveline's* filing as complete and determine the validity of the signatures in time to place *Graveline* on the ballot if he had sufficient valid signatures of at least 5,000, and at least 100 valid signatures from registered voters in each of at least half of the 14 Michigan congressional districts. *Graveline v. Johnson*, 336 F.Supp. 3d 801, 816-817 (E.D. Mich. 2018), *stay denied*, 747 Fed. App'x. 408 (6th Cir. 2018).

I. Secretary Thurston is not likely to succeed on the merits of his appeal.

Secretary Thurston's Motion at issue is an outstanding example in legal advocacy of "hiding the ball." In the 24 pages of Secretary Thurston's motion there is not a single mention of the two cases wherein the 3% petition signature requirement was previously declared unconstitutional. *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. 690 (E.D. Ark., 1996), *appeal dismissed with conditions*, 8th Cir. Case No. 96-3238, June 19, 1997 (see Plaintiffs' Exhibit "3" hereto as to the apeal); and *Green Party of Arkansas v. Daniels*, 445 F.Supp.2d 1056 (E.D. Ark., W.D. 2006). These two cases should have been discussed by Secretary Thurston in presenting his motion at issue to this Court. In distinguishing the two cases from the present case, it is significant that the current Arkansas election scheme for the recognition of new political parties results in a petition deadline which is 424 days before the general election.

Restrictions on ballot access "may not go beyond what the state's compelling interests actually require," *McLain v. Meier*, 637 F.2d 1159, at 1163 (8th Cir. 1980), and must be "narrowly drawn to serve a compelling state interest." *Libertarian Party of N.D. v. Jaeger*, 659 F.3d 687, at 693 (8th Cir. 2011) (quoting *McLain v. Meier*, 851 F.2d 1045, at 1049 (8th Cir. 1988)). "In such cases, the State bears the burden of showing that the challenged statute is narrowly drawn to serve the State's compelling interest." *Moore v. Martin*, 854 F.3d 1021, at 1026 (8th Cir. 2017). Other than mentioning a modicum of support, Secretary Thurston presents no compelling state interest in his motion which could not be served by less drastic means.

Secretary Thurston does suggest that it would have been better for the LPAR to have turned in their petitions later than June 28, 2019, because they could have given up petitioning done in early April for petitioning done after June 28 and into early July. However, as the District Court noted, Mr. Pakko was clear that the LPAR had begun its petition drive in April of 2019 because they wanted to avoid the hot summer months and at a time when students were still in school and on college campuses, rather than when people were out of town and on vacation [PI order, ¶ 28]. It is pure speculation that giving up part of April for part of July would have brought in more signatures. Because the petitioning time before September 5, 2019, is so far removed from the general election in November of 2020, none of the months from April 1 through early September of 2019, are particularly good considering that

all the months involved are at times when people have lessened political interest. As the Eighth Circuit has stated:

> . . . most voters in fact look to third party alternatives only when they have become dissatisfied with the platforms and candidates put forward by the established political parties. This dissatisfaction often will not crystalize until party nominees are known [citations omitted]. Accordingly, it is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary. *McLain v. Meier*, 637 F.2d at 1164.

Besides the problem with the September 5, 2019, deadline, the previously mentioned cases of *Citizens to Establish a Reform Party in Arkansas v. Priest,* and *Green Party of Arkansas v. Daniels* present additional reasons why Secretary Thurston is not likely to succeed on appeal. This is partly because the new deadline for petition signatures of September 5, 2019, is much earlier than the January 2, 1996 deadline declared unconstitutional in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 692-693, 698, ¶ 17, and the 26,746 signatures required by the new law challenged herein is also worse than the 21,505 signatures in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 691, ¶ 2, 698-699, or the 24,171 signatures in *Green Party of Arkansas v. Daniels*, 445 F.Supp. 2d, at 1059-1060, 1061-1063, when 150 days was allowed for petitioning.

Additionally, while the Eighth Circuit in 2011 upheld the retention requirement of 3% of the vote for Governor for continued political party recognition in Arkansas and nomination by the political party for its party candidates by

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preferential primary election rather than nominating convention, it did so by noting that the Green Party could petition again under the 10,000 petition signature requirement. *Green Party of Arkansas v. Martin*, 649 F.3d 675, at 678, 683, n.8, 684, 684, n.10, 685 (8th Cir. 2011) [PI order, p. 32]. None of this bodes well for Secretary Thurston's contention that he is likely to succeed on the merits, particularly considering that the Arkansas General Assembly has a history of ignoring cases declaring laws unconstitutional in later legislation for both Independents—see *Moore v. Martin*, 854 F.3d 1021, 1026 (8th Cir. 2017), and *Moore v. Thurston,* 928 F.3d 753 (8th Cir. 2019), and new political parties—see, *American Party v. Jernigan*, 424 F.Supp. 943, 949 (E.D. Ark., W.D. 1977); *Citizens to Establish Reform Party v. Priest*, *Id.*, and *Green Party of Arkansas v. Daniels*, *Id.*

As the Eighth Circuit stated in considering the relationship of petition signatures required to the petition deadline:

> Admittedly, argument can be made that North Dakota's 3.3% signature requirement is valid. *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971) (Upholding 5% signature requirement); *Rock v. Bryant*, 459 F.Supp. 64 (E.D. Ark.), aff'd mem., 590 F.2d 340 (8th Cir. 1978) (upholding signature requirement of 3% of qualified electors or 10,000, whichever is less). However, the number of signatures required by North Dakota is significantly higher than that required in most states [citations omitted]. The Supreme Court has spoken on at least one occasion of 1% of the vote for governor as "within the outer boundaries of support the State may require before according political parties ballot position." *American Party of Texas v. White, supra*, 415 U.S. at 783, 94 S.Ct. at 1307. *McLain v. Meier*, 637 F.2d at 1163-1164.

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In the 2006 *Green Party* case, at a time when the Arkansas General Assembly had still not amended the 3% petition requirement to 10,000 petition signatures, it was noted that the 3% petition requirement had still not been complied with and was unconstitutional. Other than the equal protection problem addressed in the case of *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 695, ¶ 32, 698, ¶ 18--699, ¶ 21, it should also be considered that the independent alternative is not a substitute for reasonable minor party ballot access.

> A candidate who wishes to be a party candidate should not be compelled to adopt independent status in order to participate in the electoral process. As the Supreme Court has recognized, "the political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other." Storer v. Brown, supra, 415 U.S. at 745, 94 S.Ct. at 1286. The Constitution requires that the access requirements as to both party-backed and independent candidates be reasonable. *McLain v. Meier*, 637 F.2d at 1165.

While Secretary Thurston cites a number of cases which have upheld petition signature requirements of 3% or more, in each of those cases, the petitioning time allowed was seven months, one year, or an unlimited amount of time, the petition signature deadline was well into the year of the general election rather than 424 days before the general election, and the ballot access requirements for new political parties in other states had actually been complied with. Another state which has a petition signature requirement for new political parties in the year before the general election is Utah. Plaintiffs' Exhibit "1" admitted at the PI hearing and attached hereto, Affidavit of Richard Winger, ¶ 10, concerns the recognition of new political

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parties in Arkansas and Utah and a comparison of the number of signatures required (26,746 versus 2,000), the petition deadline (September 5 versus November 30, 2019), the amount of time to collect the signatures (90 days versus slightly over one year), and the fact that Arkansas and Utah are about the same population (Utah has approximately 147,280 more people than Arkansas). See, Utah Code Ann., §§ 28A-4-306(1)(a)(i) and 28A-8-103(2).

In comparing Arkansas and New Hampshire election law as to a second alternative for new political parties to have their candidates on the ballot by an individual nominating process for all candidates which exists in New Hampshire but not in Arkansas (except for President), in a case cited on pages 19-20 of Secretary Thurston's motion, *New Hampshire Libertarian Party v. Gardner*, 843 F.3d 20, 22 (1st Cir. 2016) the issues decided related to a challenge to a petitioning time period of "a bit more than seven months" with a petition deadline of "early August of the pertinent election year" and not to the 3% petition signature requirement.

Plaintiffs-Appellees also think it is important for the Eighth Circuit to note that, while the District Court found that the Reform Party in 1996 was the only party to ever have successfully petitioned for party formation in Arkansas under the old 3% petition requirement [PI order, p. 37, ¶ 3(a)], this finding was based on a citation to a 2006 stipulation entered into in *Green Party of Arkansas v. Daniels*, 445 F.Supp. 2d, at 1058, ¶ 6. However, the stipulation relied on by the District Court is actually

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incorrect. It is a mystery why the Green Party entered into an incorrect stipulation. A close look at *Citizens to Establish a Reform Party in Arkansas* makes clear that the Reform Party did not comply in 1996 with the 3% petition requirement. As the District Court noted in its decision, by the then petition deadline of January 2, 1996, ". . . the Reform Party representatives were required to file the Petition in the office of the Secretary of State, containing at least 21,505 signatures of qualified Arkansas electors. [A Petition] containing 28,546 signatures was filed with the Secretary of State by representatives of the Reform Party on January 2, 1996." *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 693, ¶¶ 19 and 20. However, after the Secretary of State finished verifying the petitions the Reform Party had turned in, the Secretary of State on February 16, 1996, rejected the Reform Party petitions to qualify as a new political party because ". . . the Petition contained 17,262 valid signatures, which was 4,243 signatures short of the required 21,505." *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 691, ¶ 2. Thus, the Reform Party did not qualify under the law then in place requiring valid petition signatures of 3% of the previous vote for governor, but was recognized and put on the Arkansas ballot in 1996 by court order because the District Court enjoined enforcement of the Arkansas law ". . . and Plaintiffs are deemed to have qualified as a new political party in view of the 17,262 signatures validated by Secretary of State Priest on February 16, 1996." *Citizens to Establish a Reform Party in Arkansas v.*

Priest, 970 F.Supp. at 699, ¶ 21. Additionally, the District Court issued a permanent injunction order against Secretary of State Priest to the effect that Plaintiffs were allowed ballot access for the November 1996 General Election and that the Reform Party could select its candidates for office by convention. *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 701, ¶ 28(d). The foregoing is important because the 3% requirement has never been complied with in Arkansas by any new political party or even an independent candidate.

Past election experience has been found to be a guide as to the constitutionality of an election law, particularly if a party has qualified with some regularity as opposed to if it has not. *McLain v. Meier*, 637 F.2d at 1165 (which struck down an election law in reliance on evidence that only one political party had complied with the law since 1939 until 1980); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 589-590 (6th Cir. 2006) (which struck down an election law in reliance on evidence that no political party since the year 2000 had complied with the law); and *Storer v. Brown*, 415 U.S. 724, 742 (1974) (which sets forth a usage test).

If the District Court found in 1996 that a January 2 petition deadline in the general election year was unconstitutional and unnecessarily difficult to comply with, it is not hard to imagine how the Court would have felt about a deadline four months earlier.

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> Only in the election year itself do issues begin to coalesce such that minority parties with opposing or different views may emerge. At such an early point in the election year, it is often difficult to get volunteers from the voting public to become involved in the petition collection process. As noted by the court in *American Party v. Jernigan*, 424 F.Supp. 943, 949 (E.D. Ark. 1977), the filing dates of either March or April in a general election year "would normally pass before any real political activity or interest therein could be expected." See also, *New Alliance Party v. Hand*, 933 F.2d 1568 (11th Cir. 1991) (early deadline places significant burden on minor political parties because voters are disinterested any length of time before an election). It is also more difficult to get volunteers for the minor parties, to attract media coverage, and to attract financial support early in the process, which impacts the petition process, and, therefore, ballot access, as well. See *Anderson v. Celebrezze*, 460 U.S. at 780, 792, 103 S.Ct. at 1565, 1572. Even the influence of increment weather is recognized as a rationale for finding early petition filing deadlines unconstitutional. E.g., *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, 593 F.Supp. 118, 121-122 (W.D. Okla. 1984) (inclement weather a hindrance to petition signature gathering, resulting in deprivation of constitutional rights). *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 698, ¶16.

Despite the foregoing cases, Secretary Thurston seems to believe a much earlier petition deadline is going to be upheld as necessary.

As the Eighth Circuit said in analyzing a new ballot access law for third parties in North Dakota after the number of petition signatures had been reduced:

> We have discussed above the burden on McLain's rights flowing from the difficulty of a third party to demonstrate its support over 200 days before the general election. Indeed, in McLain I we found unduly burdensome a filing deadline only 150 days before the general election when coupled with a requirement of 15,000 signatures. Having reduced the signature requirement to only 7,000 signatures, however, North Dakota's earlier filing deadline is considerably less burdensome on putative third party candidates than before. *McLain v. Meier*, 851 F.2d at 1050.

In contrast to the situation discussed in the above quote, the Arkansas ballot access law challenged herein is an increase of 2.6 times in the number of petition signatures required from the previous requirement and back to a percentage previously declared unconstitutional.

II. The District Court did not erroneously declare that Arkansas's ballot access regime imposes a severe burden.

Secretary Thurston in his motion engages in unsupported conclusions and misstatements—particularly in his interpretation of what the District Court held in its preliminary injunction order. Perhaps the most significant, unsupported conclusion and misstatement is his assertion that the District Court preliminarily enjoined the modicum of support requirement on the basis of the LPAR's supposed lack of resources to comply with that requirement. In fact, the District Court based its order to a significant extent on the history of the 3% modicum of support petition requirement and the failure of other political parties to comply with it, the Eighth Circuit's decision in *Green Party of Arkansas v. Martin*, *Id.* upholding a 3% retention requirement for a political party (which would then require the party to nominate its candidates in the next election by preferential primary election rather than by nominating convention) and which recognized for a political party not getting 3% of the vote retention requirement the workability and compliance with a 10,000 petition signature ballot access requirement, the changes in the petition filing deadline, the 90-day petitioning period, the distance between the deadline and

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periods of time which are closer to the general election when interest in politics is greater, the total lack of ballot overcrowding in Arkansas, and the extent that the LPAR had partially completed its petition drive in 2019. No legal case exists where a political party petition deadline more than a year before the general election, and with a petition signature requirement that has never been complied with, has been held not to constitute a severe burden, let-alone being held constitutional.

The problems the LPAR was having with complying with the law were not the only reason the Court granted the preliminary injunction. The District Court concentrated on the unnecessarily early petition deadline, the 90-day petitioning period, a general election more than a year away from the deadline, and the reinstated 3% signature petition requirement. Secretary Thurston nowhere in his motion explains why it is necessary to put back in place a requirement that was never complied with and twice held unconstitutional. Of further significance, Secretary Thurston's expert, Professor Hood noted that the LPAR's candidates at the top of the ticket had received 1.52% of the total statewide vote in Arkansas in 2012, 2.03% in 2014, 2.64% in 2016, and 2.9% in 2018. (PI order, ¶ 85). Thus, the LPAR had shown an increasing progression toward the 3% retention requirement approved by the Eighth Circuit in *Green Party of Arkansas v. Martin, Id.* Faced with the probability that the LPAR would successfully obtain the 10,000 petition signatures required for political party recognition again, the Arkansas General Assembly

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passed a new law restoring the twice constitutionally discredited 3% petition requirement for new party recognition and passed another new law which required a petition signature deadline of September 5, 2019. Secretary Thurston's argument that the District Court erroneously found the burden severe is absurd.

III. Arkansas's ballot access regime is not narrowly tailored to serve a compelling governmental interest.

The Eighth Circuit has recently held in a case from Arkansas that ". . . the State bears the burden of showing that the challenged statute is narrowly drawn to serve the State's compelling interest. *Moore v. Martin*, 854 F.3d at 1026. In no way has Secretary Thurston done this. When the Eighth Circuit upheld the 3% retention requirement as to a new political party obtaining at least 3% of the vote for governor, they did so because a political party could petition again for Arkansas ballot access by turning in 10,000 petition signatures of Arkansas registered voters by a deadline that was at least set during the general election year rather than in the year before. *Green Party of Arkansas v. Martin, Id.* The 10,000 petition signature requirement for new political party ballot access and recognition was a constitutional least drastic means to serve Arkansas' compelling state interests. The election laws challenged herein are not narrowly tailored to serve a compelling governmental interest.

While a number of cases are cited in Secretary Thurston's motion that are not on point, the *Swanson v. Worley, 490 F.3d 894 (11th Cir. 2007)* case will be useful to illustrate what Secretary Thurston misses in his argument on pages 16 and 17 of

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his motion suggesting that the fact that the Eleventh Circuit upheld a 3% petition requirement for ballot access for Alabama new political parties suggests that the District Court hereinbelow was wrong in its findings. In Alabama in the *Swanson* case, the signature petition deadline was the first primary election date, which at that time was on the first Tuesday in June of the election year. *Swanson v. Worley*, 490 F.3d 804, at 896. Of equal significance is the distinction in Alabama of an "... unlimited time to conduct the petitioning effort." *Swanson v. Worley*, 490 F.3d at 904. Also, important was the recent success of the Libertarian Party in getting on the Alabama ballot. As the Eleventh Circuit noted "The ability of minor party candidates in Alabama to qualify for the ballot in the past also bolsters the reasonableness of Alabama's three-percent signature requirement." *Swanson v. Worley*, 490 F.3d at 905.

In contrast, when Arkansas had a 3% petition requirement, even though there was sometimes a longer period of time to collect signatures, and the petition signature deadline was not in the late summer of the year before the general election, no political party was successful in complying with Arkansas's 3% petition signature requirement. Circumstantial evidence and a knowledge of how political parties use legislative power suggests that this was a reason why the Arkansas General Assembly earlier this year reinstated the never complied with 3% petition requirement with an emergency clause putting it into effect. The September 5, 2019,

deadline was just another guarantor that the new 3% petition signature requirement would accomplish the goal of keeping the LPAR off the ballot for 2020.

IV. A stay pending appeal is not necessary because there is no harm to the State of Arkansas or the public interest which would outweigh the harm to the Libertarian Party of Arkansas and its supporters.

While Secretary Thurston argues that failure to grant a stay pending appeal would result in harm to Arkansas and the public interest which would outweigh the harm to the LPAR, in fact, the result would be the opposite. There would be no harm to the State of Arkansas unless one confuses the interests of the Republican Party with the State. What would happen without the stay being granted is the same as happened in 2018 and 2016, i.e., the *status quo ante*, when the LPAR successfully petitioned with more than the 10,000 valid petition signatures needed. On the other hand, the harm to the LPAR and thousands of Arkansas voters would be the negation of Secretary Thurston's now completed obligation to validate for sufficiency the 18,702 petition signatures of Arkansas voters turned in on June 28, 2019. Validating these signatures has determined that there are 12,749 valid signatures. (Plaintiffs-Appellees Exhibit "6"). Not only would there be harm to the LPAR, but there would be harm to the public interest. The evidence below was very clear that the Arkansas ballot was never overcrowded (Plaintiffs' Exhibit "5").

The Supreme Court has explained that "strands of 'liberty'" are interwoven through questions of ballot access:

> In the present situation the state laws place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

"[V]oters can assert their preferences only through candidates or parties or both." *Anderson v. Celebrezze*, 460 U.S. 780, at 787 (1983). "The right to vote is 'heavily burdened' if that vote may be cast only for major-party candidates at a time when other parties or other candidates are 'clamoring for a place on the ballot.'" (internal citations omitted). "The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens." *Anderson v. Celebrezze*, 460 U.S. at 787-788.

V. It is not necessary to expedite this appeal further than the timeline currently set by this Court.

The Eighth Circuit on July 29, 2019, entered a corrected briefing schedule wherein briefing should be completed by approximately October 30, 2019. As noted in Plaintiffs-Appellees' Exhibit 6, the LPAR has turned in sufficient signatures pursuant to the preliminary injunction order to have Secretary Thurston recognize the LPAR as a political party which will nominate its candidates for the 2020 general election by nominating convention rather than the preferential primary election that will be used by the major parties. Since no Libertarian candidates will be appearing

on election ballots until November 3, 2020, there is no need to expedite the instant appeal further than the current timeline set by the Court.

WHEREFORE, premises considered, the Plaintiffs-Appellees request Appellant's Motion be denied.

Respectfully submitted this 19th day of August, 2019.

LIBERTARIAN PARTY OF ARKANSAS,
SANDRA CHANEY RICHTER,
MICHAEL PAKKO,
RICKY HARRINGTON, JR.,
CHRISTOPHER OLSON, and
MICHAEL KALAGIAS, Plaintiffs

s/ James C. Linger
JAMES C. LINGER, OBA#5441
Counsel for Plaintiffs-Appellees
1710 South Boston Avenue
Tulsa, OK 74119-4810
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that a true and exact copy of the foregoing has been served on all counsel of record via the Court's CM/ECF e-mail notification system on the 19th day of August, 2019.

s/ James C. Linger
James C. Linger

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 5,199 words.

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Dated this 19th day of August, 2019.

s/ James C. Linger
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Counsel for Plaintiffs-Appellees

Appellate Case: 19-2503 Page: 1 Date Filed: 08/19/2019 Entry ID: 4820510

NO. 19-2503

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LIBERTARIAN PARTY OF ARKANSAS, SANDRA CHANEY RICHTER,
MICHAEL PAKKO, RICKY HARRINGTON, JR,
CHRISTOPHER OLSON, and MICHAEL KALAGIAS,
Plaintiffs-Appellees,

v.

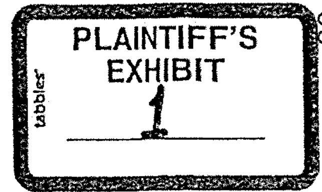
JOHN THURSTON, in his official capacity as
Secretary of State for the State of Arkansas,
Defendant-Appellant.

ATTACHMENT

PLAINTIFFS' EXHIBIT "1"

AFFIDAVIT OF RICHARD WINGER

ADMITTED AT THE PRELIMINARY INJUNCTION HEARING OF JUNE 4, 2019



IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LIBERTARIAN PARTY OF ARKANSAS,)
SANDRA CHANEY RICHTER,)
MICHAEL PAKKO,)
RICKY HARRINGTON, JR,)
CHRISTOPHER OLSON, AND)
MICHAEL KALAGIAS, ...Plaintiffs)
)
v.) Case No. 4:19-cv-214-KGB
)
JOHN THURSTON, in his official capacity as)
Secretary of State for the State of Arkansas,)
.....Defendant.)
)

AFFIDAVIT OF RICHARD WINGER

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

Richard Winger, being duly sworn, deposes and says that:

1. I am a resident of San Francisco, California, over 18 years of age, and make this Affidavit with the knowledge that it is to be used at the hearing on June 4, 2019, in support of Plaintiffs' Motion for Preliminary Injunction filed in this case on May 3, 2019. Because of previously made reservations for a boat trip on the Great Lakes, I will not be available to testify in person on June 4, 2019, in Little Rock, Arkansas, because I will be flying to Toronto on May 30 and not returning to San Francisco until June 12, 2019. I make this Affidavit based on my own personal knowledge and research that I have conducted in regard to the election and ballot access laws of Arkansas and the election history of Arkansas.

2. I consider myself an expert in the field of minor political parties, independent candidates, and election and ballot access laws in the United States, and have been so recognized by the Wall Street Journal, Time Magazine, Congressional Quarterly, and numerous Federal and State courts. I hold an A.B. Degree in Political Science from the University of California at Berkeley, have done further graduate study in Political Science at the University of California at Los Angeles, and have written numerous articles and various publications and journals on the subject of ballot access for minor parties and independent candidates and third party and independent candidate political statistics. Since 1985, I have been the publisher of Ballot Access News, a non-partisan newsletter that reports on developments in some areas of election law. As to my study, work, or testimony in the instant case, I will not be requesting any compensation to be paid me for any study, testimony, or work in this case. Further, I will not be requesting any compensation for any travel time or any time spent in the preparation of my Affidavit or any Court hearing or trial. However, I will be requesting compensation for any travel or lodging expenses for either testifying in person or by deposition. Examples of travel or lodging expenses which I would request compensation on, if necessary, would be airline tickets or a hotel bill.

3. I am familiar with the election laws of all 50 states and the District of Columbia as to ballot access for political parties and independent candidates. I am further familiar with the election results in the United States as to the major and minor political parties, and independent candidates for elective office. I have conducted research in this area for many years, and have made a particular study for the purpose of this Affidavit of the ballot access laws of the State of Arkansas, both past and present, and the history of major and minor political parties and independent candidates in Arkansas. Also, in preparation for this Affidavit, I have read and

reviewed various pleadings and documents filed in the instant case, namely: the Plaintiffs' Complaint, Defendant's Answer, Plaintiffs' Motion for Preliminary Injunction, Plaintiffs' Brief in Support of their Complaint and Motion for Preliminary Injunction, the Affidavit of Michael Pakko attached thereto, Defendant's Response to Plaintiffs' Motion for Preliminary Injunction, the Appendix of Deadlines for the 2020 Election attached thereto, the Declaration of Peyton Murphy with attached exhibits, and the Declaration of M.V. Hood III.

4. As an expert witness, I have testified in Federal Court in behalf of a number of ballot access lawsuits as set forth in my Curriculum Vitae, marked Exhibit "2" to this Affidavit, and made a part of this Affidavit as though fully set forth herein. In addition, I have advised various third party and independent candidates in regard to ballot access laws. Some of these parties and candidates include John Anderson's 1980 Independent Campaign for President, the Libertarian Party, the Green Party, the Reform Party, the Prohibition Party, the Socialists Workers' Party, the National Unity Party, the Conservative Party, the Populist Party, the American Independent Party, the New Alliance Party, the Communist Party, and the Constitution Party. I have been accepted as an expert witness in U.S. District Courts in ten states. More specifically, I testified and was accepted as an expert witness in two cases before the United States District Court for the Eastern District of Arkansas which have particular bearing on the instant case before this Court, namely: *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. 690 (E.D. Ark., 1996) and *Green Party of Arkansas v. Daniels*, 445 F.Supp.2d 1056 (E.D. Ark., W.D. 2006).

5. In the 1996 case of *Citizens to Establish a Reform Party in Arkansas v. Priest*, the 3% requirement in effect at that time required a new political party seeking recognition to turn in 21,505 valid signatures. I was one of two experts testifying in the *Reform Party* case, the other

being Allan J. Lichtman, Ph.D. At the time of the *Reform Party* decision in 1996, no new political party had been able to successfully qualify as a political party in Arkansas since a requirement had been established for party recognition of turning in petition signatures equal to 3% of the total vote in either the previous gubernatorial election or presidential election in Arkansas. The Reform Party, while turning in 28,546 signatures, only had 17,262 valid signatures, which left them 4,243 signatures short of the required number of petition signatures of 21, 505. There was some dispute as to the deadline for turning in petition signatures of either January 2, 1996, or May 7, 1996, but in either event the deadline was way after the current deadline in the instant case of either September 4 or 5 of the year before the general election. However, because the statutes and the District Court found the January 2, 1996, deadline to be the proper one, it was found that the deadline was 4 ½ months before the preferential primary election, more than 5 months prior to the general primary election, and 10 months preceding the general election of November 5, 1996. In contrast, the September 4 or 5, 2019, petition deadline we are concerned with in this case is now 6 months before the preferential primary election on March 3, 2020, almost 7 months before the general primary election on March 31, 2020, and about 14 months before the general election of November 3, 2020.

6. Between the beginning of government-printed ballots in Arkansas in 1891, until 1971, any political party could be on the Arkansas general election ballot for all offices merely by holding a convention, certifying its nominees, and sending the paperwork to the Arkansas Secretary of State. No petition was needed before 1971. In 1971, the Arkansas General Assembly imposed a petition requirement on political parties that had not polled as much as 7% of the vote in the last election. The new petition requirement was 7% of the last gubernatorial

vote. No new political party ever succeeded in completing the 7% petition. With one exception, there was never a problem with overcrowding. From 1971 through 1977, with a 7% petition requirement, no new political party successfully petitioned for ballot access without court intervention. From 1977 through 2007, with a 3% petition requirement, no new political party successfully petitioned for ballot access without court intervention, even with 150 days in which to collect petition signatures. As I testified in the *Green Party of Arkansas* case in 2006, the 3% signature requirement is not necessary to avoid a crowded or cluttered ballot. At that time, there had been only two independent candidates for statewide office in the 30 years since 1977 that had successfully petitioned for ballot access using a requirement of 10,000 valid petition signatures. See the current Ark. Code Ann., § 7-7-103(b)(1)(B). Subsequent to the *Green Party of Arkansas* case in 2006 and until now (2019), only a third independent candidate for statewide office (Trevor Drown) would successfully gather the 10,000 valid petition signatures in order to be an Independent candidate on the Arkansas ballot in 2010 for U.S. Senator.

7. The one exception as to ballot overcrowding referred to in paragraph 6 above relates to independent candidates for President of the United States on the Arkansas ballot from 1980 through 1996. In 1979, the Arkansas Attorney General wrote an opinion saying that the State of Arkansas had a gap in its ballot access laws because it was impossible for an independent Presidential candidate to get on the ballot. He said that until Arkansas passed a law for independent Presidential candidates to get on the ballot that Arkansas would be vulnerable to a lawsuit. In response to this, Arkansas for all Presidential elections from 1980 through 1996 let any group or any independent Presidential candidate on the ballot with no petition whatsoever. With no petitions required at all for a Presidential candidate who was not the nominee of either

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the Republican or Democratic parties to get on the Arkansas ballot, the Arkansas ballot had the following number of Presidential candidates for the following years: 1980-7; 1984-10; 1988-6; 1992-13; and 1996-13. The aforesaid numbers included the nominees of the Republican and Democratic parties. Therefore, in my opinion Arkansas did have a crowded election ballot **for President only** in 1992 and 1996. In 1997, the Arkansas General Assembly passed a bill saying that a group that just wanted to be on the Arkansas ballot for President needed to submit 1,000 valid petition signatures. Technically, the Arkansas General Assembly still had not provided a procedure for independent Presidential candidates. After I brought that to the General Assembly's attention, they finally passed another law saying independent Presidential candidates also needed to submit 1,000 valid petition signatures. This resulted in parallel laws in Arkansas so that unrecognized minor parties or independent Presidential candidates needed only 1,000 valid petition signatures to appear on the Arkansas ballot as a candidate for President of the United States. Since the 1,000 petition signature requirement was put in place, there has never been a Presidential election in Arkansas which had as many Presidential candidates on the ballot as appeared in 1992 and 1996.

8. Even under the previous law from 2007 through 2018 that allowed a new political party to be recognized with 10,000 valid petition signatures, the Arkansas ballot was not crowded. For the elections in 2008, 2010, 2016, and 2018, only one new political party qualified by petitioning for the Arkansas ballot. In 2012 and 2014, two new political parties qualified by petitioning for the Arkansas ballot (the Libertarian Party and the Green Party). There is so little competition for Arkansas partisan elective offices that only 34 of the 100 State Representative offices for the Arkansas General Assembly had a contested election on the November 2016

general election ballot. Further, in 2016, with only the Libertarian Party qualifying as a new party on the Arkansas ballot, in three of the four U.S. Representative races that year the only candidates in the November general election were the nominees of the Republican Party and the Libertarian Party. If not for the Libertarian Party being recognized in 2016, only one of the four U.S. Representative races in Arkansas would have been contested in the November 2016 general election. In 2018, there was only a slight improvement with 45 of the 100 State Representative offices for the Arkansas General Assembly being contested on the November 2018 general election ballot.

9. The U.S. Supreme Court ruled against a February petition deadline for newly-qualifying parties, in *Williams v. Rhodes*, 393 U.S. 23 (1968). The single most important issue in *Williams v. Rhodes* was the early petition deadline for newly-qualifying parties, because the plaintiffs in that case, officers of the American Independent Party, showed that their party would have been on the Ohio general election ballot except for the early deadline. After *Williams v. Rhodes*, courts were still not clear as to whether early petition deadlines for newly-qualifying parties and independent candidates were always unconstitutional, or only unconstitutional in conjunction with a very large number of signatures. However, the U.S. Supreme Court clarified this in 1983, in *Anderson v. Celebrezze*, 460 U.S. 780. In that case, Ohio's March 20 petition deadline for independent presidential candidates was held unconstitutional, even though the petition burden on plaintiff John B. Anderson was only 5,000 signatures, which was only about one-tenth of 1% of the number of registered voters in Ohio at the time (footnote one of the decision mentions the 5,000 signature requirement). Furthermore, the case involved the 1980 presidential election, and as the decision notes, five presidential candidates other than John

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Anderson had successfully met the Ohio deadline that year, each using the independent candidate petition procedure (see footnote 12).

10. In considering the new petition deadline of September 4 or 5, 2019, which Arkansas has now put in place, for petitions seeking recognition of a new political party in Arkansas, it is interesting to compare Arkansas with the State of Utah. The reason for this is that Arkansas and Utah are the only States that require petitioning for new party recognition that set petition deadlines before January 1, 2020, for the November 3, 2020, general election. In every way, the comparison is not favorable to Arkansas. While Arkansas's petition deadline is September 4 or 5, 2019, Utah's deadline is November 30, 2019—almost three months later. While Arkansas, until very recently, use to have a petition signature requirement for new party formation of 10,000 valid petition signatures, the new requirement of 3% of the last gubernatorial vote in Arkansas is now 26,746 valid petition signatures—which dwarfs Utah's petition signature requirement of 2,000 valid petition signatures. As to the time period in which petition signatures are allowed to be gathered, Arkansas allows no more than 90 days while Utah currently allows one year, four days, and five hours. See Utah Code Ann., §§ 28A-4-306(1)(a)(i) and 28A-8-103(2). Finally, Arkansas and Utah are somewhat similar because they both have six electoral votes and four U.S. Representatives in Congress. However, Utah is slightly larger according to the 2018 census figures with a population of 3,161,105 compared to Arkansas's 2018 census figure of a population of 3,013,825.

11. In regard to the Secretary of State's Response to Plaintiffs' Motion for Preliminary Injunction filed on May 24, 2019, I would point out several mistakes and omissions that were made. First, Arkansas only has one method for an unqualified political party to appear on the

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ballot for office (other than President) with the party label. Unlike Arkansas, New Hampshire has two methods for an unqualified political party to appear on the ballot with the party label next to the candidates of that party. The new political party and its supporters can do the 3% petition that the Secretary of State's Response mentioned, or it can also complete the independent candidate petitions for each of its nominees. Unlike Arkansas, in New Hampshire the independent procedure lets a candidate choose a party with label which goes on the ballot. The New Hampshire independent petitions, with party label, never exceed 3,000 signatures. Because New Hampshire has that relatively easy method, the New Hampshire Libertarian party has appeared on the New Hampshire ballot for federal or state office in every election from 1974 through 2018. I mention this because the Secretary of State's Response suggests that New Hampshire has a 3% petition as its only method to get on the ballot—which is not true. Furthermore, the case of *New Hampshire Libertarian Party v. Gardner*, 843 F.3d 20 (1st Cir. 2016) was not a challenge to the Constitutionality of the 3% petition requirement. The only issue in that case was whether the petitioning period was too restrictive. The petitioning period ran from January 1 to mid-August of any election year, a period which is 7 ½ months long. Secondly, the Secretary of State in his response is incorrect to state that the Secretary of State did not appeal the District Court's decision in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. 690 (E.D. Ark. 1996) to the U.S. Court of Appeals for the Eighth Circuit. Not only did the Secretary of State appeal, but briefs were filed by both sides in the Eighth Circuit (8th Cir. Case No. 96-3238), the Eighth Circuit set a hearing date for oral argument of April 16, 1997, but then just before the oral argument the Secretary of State moved to dismiss the appeal. On June 19, 1997, the Eighth Circuit entered a judgment in favor of the appellees and

against the appellant secretary of state in a dismissal " . . . in accordance with Rule 42(b), Federal Rule of Appellate Procedure, subject to the following conditions: (1) Appellant agrees that Appellees are the prevailing parties in all respects concerning the appeal; (2) if the parties cannot agree on the amount of fees and costs appellees are entitled to appellant agrees to the reopening of the case in the district court for the limited purpose of determining the amounts [96-3238] [866820], Mandate shall issue forthwith." A copy of the docket for the Eighth Circuit Court of Appeals case of *Citizens to Establish a Reform Party in Arkansas, et al., Plaintiff-Appellee v. Sharon Priest, Secretary of State for the State of Arkansas, Defendant-Appellant*, Eighth Circuit Court of Appeals Docket No. 96-3238, is marked Exhibit "3", attached hereto, and made a part of this Affidavit as though fully set forth herein. The aforesaid docket was downloaded on May 24, 2019, by me using the Pacer service center.

12. Arkansas has had government-printed ballots since 1891. Before 1971, the year the first petition requirement was put into effect for the recognition of new political parties in Arkansas, there was no problem with overcrowding on the Arkansas ballot. The previous requirements of 7% and 3%, along with the newly enacted 3% requirement replacing the 10,000 petition signature requirement, were changes that were not made for any election-administration reason; they were made because legislators desired to reduce competition in elections.

13. In the preparation of this Affidavit, I have reviewed the decisions of the United States District Court for the Eastern District of Arkansas in the cases of *Citizens to Establish a Reform Party in Arkansas v. Priest*, and *Green Party of Arkansas v. Daniels*, and have reviewed and consulted the pleadings in this case, the election results, ballots, and laws of Arkansas and the other 49 states and the District of Columbus, the work of other election experts, and my

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personal research. I understand that any false statements made herein will subject me to the penalties of perjury.

Further Affiant sayeth not.

Richard Winger

Subscribed and sworn to before me this 28 day of May, 2019.

Notary Public

Commission (and Expiration):

(SEAL)

Please see attached California Jurat

CALIFORNIA JURAT WITH AFFIANT STATEMENT GOVERNMENT CODE § 8202

☐ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

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2 ____________________

3 ____________________

4 ____________________

5 ____________________

6 ____________________

Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

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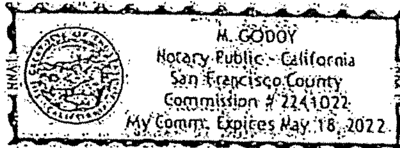
State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this [illegible] day of [illegible], 20[illegible], by
Date *Month* *Year*

(1) [illegible]
(and (2) ____________________),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature [illegible]
Signature of Notary Public



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NO. 19-2503

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LIBERTARIAN PARTY OF ARKANSAS, SANDRA CHANEY RICHTER,
MICHAEL PAKKO, RICKY HARRINGTON, JR,
CHRISTOPHER OLSON, and MICHAEL KALAGIAS,
Plaintiffs-Appellees,

v.

JOHN THURSTON, in his official capacity as
Secretary of State for the State of Arkansas,
Defendant-Appellant.

ATTACHMENT

PLAINTIFFS' EXHIBIT "3"

EIGHTH CIRCUIT DOCKET STATEMENT, DOCKET NUMBER 96-3238, CITIZENS TO ESTABLISH A REFORM PARTY IN ARKANSAS V. PRIEST

ADMITTED AT THE PRELIMINARY INJUNCTION HEARING OF JUNE 4, 2019

Appellate Case: 19-2503 Page: 2 Date Filed: 08/19/2019 Entry ID: 4820510

General Docket
Eighth Circuit Court of Appeals

Court of Appeals Docket #: 96-3238
Nature of Suit: 3441 Voting
Citizens to, et al v. Sharon Priest
Appeal From: U.S. District Court for the Eastern District of Arkansas - Little Rock
Fee Status: paid - cs

Docketed: 08/28/1996
Termed: 06/19/1997

Case Type Information:
1) Civil
2) Private
3) null

Originating Court Information:
District: 0860-4 : LR-C-96-185
Court Reporter: Pegge Merkel, Court Reporter
Trial Judge: George Howard, Junior, U.S. District Judge
Date Filed: 03/08/1996
Date Order/Judgment:
07/31/1996

Date NOA Filed:
08/23/1996

Prior Cases:
None

Current Cases:
None

Party	Counsel
Citizens to Establish a Reform Party In Arkansas, an unincorporatd political association with its principal place of business in Fort Smith, County of Sebastian, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] CUDDY & LANHAM 470 Evergreen Woods Bangor, ME 04401-0000
Keith Carle, an individual residing in Jonesboro, County of Craighead, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)
Billie Deeter, an individual residing in North Little Rock, County of Pulaski, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)
John Goodson, an individual residing in Fort Smith, County of Sebastian, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)
Wayne Grommet, an individual residing in Jonesboro, County of Craighead, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)
Paul Schallf, an individual residing in Fort Smith, County of Sebastian, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)
Lanny West, an individual residing in Fort Smith, County of Sebastian, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)
Sharon West, an individual residing in Fort Smith, County of Sebastian, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)
Deborah Kraus, an individual residing in Fort Smith, County of Sebastian, State of Arkansas Plaintiff - Appellee	Samuel W. Lanham, Jr. [COR LD NTC Retained] (see above)

v.

Sharon Priest, Secretary of State for the State of Arkansas Defendant - Appellant	Angela Sue Jegley, Assistant U.S. Attorney Direct: 501-340-2617 [COR LD NTC Attorney General] U.S. ATTORNEY'S OFFICE Eastern District of Arkansas Firm: 501-340-2600 Suite 500 425 W. Capitol Avenue Little Rock, AR 72201

Appellate Case: 19-2503 Page: 3 Date Filed: 08/19/2019 Entry ID: 4820510

Citizens to Establish a Reform Party In Arkansas, an unincorporatd political association with its principal place of business in Fort Smith, County of Sebastian, State of Arkansas; Keith Carle, an individual residing in Jonesboro, County of Craighead, State of Arkansas; Billie Deeter, an individual residing in North Little Rock, County of Pulaski, State of Arkansas; John Goodson, an individual residing in Fort Smith, County of Sebastian, State of Arkansas; Wayne Grommet, an individual residing in Jonesboro, County of Craighead, State of Arkansas; Paul Schallf, an individual residing in Fort Smith, County of Sebastian, State of Arkansas; Lanny West, an individual residing in Fort Smith, County of Sebastian, State of Arkansas; Sharon West, an individual residing in Fort Smith, County of Sebastian, State of Arkansas; Deborah Kraus, an individual residing in Fort Smith, County of Sebastian, State of Arkansas

Plaintiffs - Appellees

v.

Sharon Priest, Secretary of State for the State of Arkansas

Defendant - Appellant

Appellate Case: 19-2503 Page: 4 Date Filed: 08/19/2019 Entry ID: 4820510

Appellate Case: 19-2503 Page: 5 Date Filed: 08/19/2019 Entry ID: 4820510

08/28/1996	Civil Case Docketed. Dist. Ct. Office: Little Rock (LLB) [Entered: 08/28/1996 07:02 AM]
08/28/1996	CERTIFIED copies notice of appeal, docket entries, [96-3238] and judgment of 7/31/96 from district court[750043] (LLB) [Entered: 08/28/1996 07:04 AM]
08/28/1996	BRIEFING SCHEDULE: [96-3238] Method of apndx due on 9/9/96 DR aplnt due on 9/9/96 DR aplee due on 9/17/96 Transcript due on 10/7/96 Apndx due on 10/17/96 Aplnt brief due on 10/17/96 Aplee brief due on 11/18/96 reply brief due on 12/2/96 (LLB) [Entered: 08/28/1996 07:07 AM]
09/09/1996	APPEARANCE for appellee, attorney Samuel W. Lanham [96-3238] [754007] (LLB) [Entered: 09/09/1996 01:14 PM]
09/16/1996	APPEARANCE for appellant, attorney Angela S. Jegley [96-3238] [756797] (LLB) [Entered: 09/16/1996 01:52 PM]
09/16/1996	DESIGNATION of record received from Appellant Sharon Priest. Type of appendix: joint [96-3238] (LMT) [Entered: 09/19/1996 11:31 AM]
10/04/1996	MOTION of aplnt, Sharon Priest, for extension of time to file brief until 11/1/96 . [96-3238] [764789] w/service 10/3/96 (LMT) [Entered: 10/04/1996 02:28 PM]
10/04/1996	ORDER filed:granting appellant motion for extension of time to file brief [764789-1] [764795] Aplnt brief now due on 11/1/96 . (LMT) [Entered: 10/04/1996 02:32 PM]
10/17/1996	RECORDS received: Transcript, consisting of 4 Volumes of proceedings held on 7/23/96 - 7/26/96. Location STL. [96-3238] (STL) [Entered: 10/17/1996 01:47 PM]
10/17/1996	RECORDS received: Exhibits, Located in: STL, consisting of one envelope containing plaintiff's exhibits 1 - 14 and defendant's exhibits 1 - 17. [96-3238] (STL) [Entered: 10/17/1996 01:49 PM]
11/04/1996	RECORDS received: Joint Appendix, consisting of 2 Volume(s) 3 copies. [96-3238] (LMT) [Entered: 11/06/1996 03:39 PM]
11/04/1996	BRIEF FILED - Brief of Appellant- Sharon Priest 32 pgs w/addendum - 10 copies - w/service 10/31/96 . [96-3238] [777367] (LMT) [Entered: 11/06/1996 03:53 PM]
11/19/1996	MOTION of aplee, Citizens to Establish a Reform Party, et al. for extension of time to file brief until 12/17/96 . [96-3238] [781875] w/service 11/18/96 (LMT) [Entered: 11/20/1996 11:07 AM]
11/20/1996	ORDER filed:granting appellee motion extension of time to file brief [781875-1] [781876] Aplee brief now due on 12/17/96. (LMT) [Entered: 11/20/1996 11:09 AM]
12/17/1996	BRIEF FILED - Brief of Appellee - Citizens to, Keith Carle, Billie Deeter, John Goodson, Wayne Grommel, Paul Schallf, Lanny West, Sharon West, Deborah Kraus. 48 pgs - w/addendum - 10 copies - w/service 12/16/96 . [96-3238] [792247] (LMT) [Entered: 12/17/1996 02:50 PM]
12/20/1996	TO SCREENING - to dcm. [96-3238] [793617] (F) [Entered: 12/20/1996 11:15 AM]
12/26/1996	RETURNED from Screening (20) [96-3238] (F) [Entered: 01/02/1997 12:15 PM]
01/03/1997	BRIEF FILED - Reply brief - Sharon Priest . 16 pgs - 10 copies - w/service 12/30/96 . [96-3238] [797327] (LMT) [Entered: 01/03/1997 11:20 AM]
02/24/1997	*SET FOR ARGUMENT* - April in St. Louis. [96-3238] (F) [Entered: 02/24/1997 10:39 AM]
04/11/1997	MOTION of aplnt, Sharon Priest, for Continuance of oral argument. [836495]. TO COURT. w/service 4/11/97 (F) [Entered: 04/11/1997 10:51 AM]
04/11/1997	MOTION of aplnt, Sharon Priest, to dismiss case [96-3238] [836605]. TO COURT. w/service 4/11/97 (F) [Entered: 04/11/1997 12:55 PM]
04/11/1997	RESPONSE of aplees, Citizens to Establish a Reform Party, et al. in support of appellant motion for continuance and in objection to appellant motion to dismiss. [836495-1] [96-3238] [836648] [836605-1] [836648] . TO COURT. (F) [Entered: 04/11/1997 02:13 PM]
04/11/1997	JUDGE ORDER: Appellant's motion for a continuance of oral argument has been considered by the Court and is granted. This case is hereby removed from the April 1997 calendar. Appellant's motion to dismiss this appeal is ordered held in abeyance until appellee responds to the motion. Appellees' response is due within 30 days from the date of this order. [836495-1] [96-3238] [836745] [96-3238] [836745] (F) [Entered: 04/11/1997 03:24 PM]
04/11/1997	CASE REMOVED FROM CALENDAR. [96-3238] (F) [Entered: 04/11/1997 03:27 PM]
05/07/1997	MOTION of aplnt, Sharon Priest, to dismiss case [96-3238] [851209]. TO COURT. w/service 5/2/97 (F) [Entered: 05/13/1997 09:38 AM]
06/05/1997	RESPONSE of aplees in support of appellant motion to dismiss case filed by Sharon Priest [851209-1] [861655] . TO COURT. (F) [Entered: 06/06/1997 11:33 AM]

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06/19/1997	☐	JUDGMENT: Theodore McMillian, J. S. Henley, C. A. Beam granting appellant motion to dismiss case to which the appellee responded and did not object to the dismissal. [851209-1] [96-3238] [866820] The case is dismissed in accordance with Rule 42(b), Federal Rule of Appellate Procedure, subject to the following conditions: (1) appellant agrees that appellees are the the prevailing parties in all respects concerning the appeal; (2) if the parties cannot agree on the amount of fees and costs appellees are entitled to appellant agrees to the reopening of the case in the district court for the limited purpose of determining the amounts. . [96-3238] [866820]. Mandate shall issue forthwith. [96-3238] [866820] (PAW) [Entered: 06/19/1997 02:08 PM]
02/25/1998	☐	Record Sent out of the office to lower court at the end of appellate proceedings. Records Included: 4 vols of proceedings TR; 1 folder Exh; . [96-3238] (JJF) [Entered: 02/25/1998 08:33 AM]

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Appellate Case: 19-2503 Page: 7 Date Filed: 08/19/2019 Entry ID: 4820510

NO. 19-2503

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LIBERTARIAN PARTY OF ARKANSAS, SANDRA CHANEY RICHTER,
MICHAEL PAKKO, RICKY HARRINGTON, JR,
CHRISTOPHER OLSON, and MICHAEL KALAGIAS,
Plaintiffs-Appellees,

v.

JOHN THURSTON, in his official capacity as
Secretary of State for the State of Arkansas,
Defendant-Appellant.

ATTACHMENT

PLAINTIFFS' EXHIBIT "4"

LETTER OF JUNE 30, 2017 FROM ARKANSAS SECRETARY OF STATE MARK MARTIN TO MICHAEL PAKKO

ADMITTED AT THE PRELIMINARY INJUNCTION HEARING OF JUNE 4, 2019

ARKANSAS SECRETARY OF STATE

MARK MARTIN

June 30, 2017

Mr. Michael Pakko
P.O. Box 13497
Little Rock, AR 72214

RE: New Political Party Petition – Libertarian Party of Arkansas

Dear Mr. Pakko,

In accordance with Arkansas Code Annotated § 7-7-205, the Office of the Secretary of State hereby notifies you that the new political party petition submitted to our office on June 17, 2017, is sufficient. For a new political party, the required number of signatures is 10,000. The total number of signatures submitted was 15,108 and, after checking each submitted signature, 12,749 were valid.

Before our office provides a certificate officially recognizing the Libertarians as a new political party in Arkansas, please submit an affidavit, signed by the officers of the party, under oath, that complies with the provisions of Arkansas Code Annotated § 7-3-108(b). Please submit the originally signed affidavits to the following address:

Leslie Bellamy
Director of Elections
Arkansas Secretary of State
500 Woodlane Ave., Suite 026
Little Rock, AR 72201

We look forward to receiving your affidavits, and should you have any questions, you may contact the Elections Division at (501)-682-5070.

Yours Very Truly,

Kelly Boyd
Chief Deputy Secretary of State

Room 256 State Capitol • Little Rock, Arkansas 72201-1094
501-682-1010 • Fax 501-682-3510
e-mail: arsos@sos.arkansas.gov • www.sos.arkansas.gov

NO. 19-2503

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LIBERTARIAN PARTY OF ARKANSAS, SANDRA CHANEY RICHTER,
MICHAEL PAKKO, RICKY HARRINGTON, JR,
CHRISTOPHER OLSON, and MICHAEL KALAGIAS,
Plaintiffs-Appellees,

v.

JOHN THURSTON, in his official capacity as
Secretary of State for the State of Arkansas,
Defendant-Appellant.

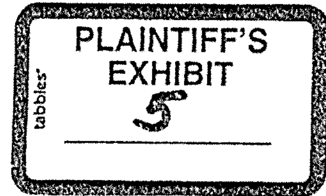
ATTACHMENT

PLAINTIFFS' EXHIBIT "5"

LIBERTARIAN PARTICIPATION IN ARKANSAS ELECTIONS, 2016 AND 2018

ADMITTED AT THE PRELIMINARY INJUNCTION HEARING OF JUNE 4, 2019

Appellate Case: 19-2503 Page: 1 Date Filed: 08/19/2019 Entry ID: 4820510



Libertarian Participation in Arkansas Elections, 2016 and 2018

	Number of Contests	Unopposed	Opposed by Libertarian Only	Number of Libertarian Candidates	% Unopposed	% Unnoposed w/o Libertarians
2018						
State Constitutional Offices	7	0	2	7	0.0%	28.6%
U.S. Congress	4	0	0	4	0.0%	0.0%
State Senate	18	8	3	4	44.4%	61.1%
State Representative	100	54	5	8	54.0%	59.0%
2016						
U.S. Congress	4	0	3	4	0.0%	75.0%
State Senate	17	12	2	2	70.6%	82.4%
State Representative	100	66	6	9	66.0%	72.0%

Appellate Case: 19-2503 Page: 1 Date Filed: 08/19/2019 Entry ID: 4820510

NO. 19-2503

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LIBERTARIAN PARTY OF ARKANSAS, SANDRA CHANEY RICHTER,
MICHAEL PAKKO, RICKY HARRINGTON, JR,
CHRISTOPHER OLSON, and MICHAEL KALAGIAS,
Plaintiffs-Appellees,

v.

JOHN THURSTON, in his official capacity as
Secretary of State for the State of Arkansas,
Defendant-Appellant.

ATTACHMENT

PLAINTIFFS-APELLEES' EXHIBIT "6"

LETTER OF JULY 29, 2019 FROM ARKANSAS SECRETARY OF STATE JOHN THURSTON TO MICHAEL PAKKO

Appellate Case: 19-2503 Page: 2 Date Filed: 08/19/2019 Entry ID: 4820510

JOHN THURSTON

ARKANSAS SECRETARY OF STATE

July 29, 2019

Dr. Michael Pakko
21400 Lake Vista Drive
Roland, AR 72135

RE: New Political Party Petition – Libertarian Party of Arkansas

Dear Dr. Pakko,

On June 28, 2019, you submitted a new political party petition to our office. Arkansas Code Annotated § 7-7-205(a)(2) requires that petition to "contain at the time of filing the signature of registered voters in an amount that equals or exceeds three percent (3%) of the total votes cast for the Office of Governor in the immediately preceding general election for Governor." Three percent of the total votes cast for the Office of Governor in the 2018 general election is 26,746. The total number of signatures submitted with your June 28 petition was 18,702. Our office checked each submitted signature, and 12,749 signatures were valid. Thus, you have not satisfied the petition requirements for new political parties under Arkansas law.

Despite your failure to satisfy Arkansas law, the U.S. District Court for the Eastern District of Arkansas has preliminarily enjoined our office from complying with Arkansas law when reviewing your petition. I have attached that order for your reference. Pursuant to that preliminary-injunction order, we are currently required to recognize the Libertarian Party of Arkansas as a new political party as long as you were to submit at least 10,000 valid signatures to our office. Because you have complied with the terms of that court's order, we currently must recognize the Libertarian Party of Arkansas as a new political party in Arkansas.

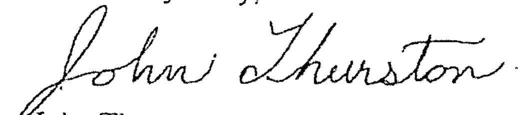
Please be aware that our office has appealed that order to the U.S. Court of Appeals for the Eighth Circuit. If we prevail on that appeal, then the court order preliminarily enjoining our office from complying with Arkansas law will no longer have any effect. In that event, we will be required to comply with Arkansas law as written and to not recognize the Libertarian Party of Arkansas as a new political party.

Before our office provides a certificate that the Libertarian Party of Arkansas has complied with the court order requiring us to recognize it as a new political party in Arkansas—despite your failure to satisfy the petition requirements for new political parties under Arkansas law—please submit an affidavit, signed by the officers of the party, under oath, that complies with the provisions of Arkansas Code Annotated § 7-3-108(b). Please submit the original, signed affidavits to the following address:

Leslie Bellamy
Director of Elections
Arkansas Secretary of State
500 Woodlane Ave., Suite 026
Little Rock, AR 72201

We look forward to receiving your affidavits, and should you have any questions, you may contact the Elections Division at (501) 682-5070.

Yours Very Truly,



John Thurston
Arkansas Secretary of State