IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARYLAND GREEN PARTY*, et al.*,	*	
***Plaintiffs*,**	*	
v.	*	**Civil Action No. _____**
LAWRENCE J. HOGAN, JR., in his Official Capacity as Governor of Maryland*, et al*.,	*	
***Defendants*.**	*	

* * * * * * * * *

MEMORANDUM IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION

Maryland Green Party ("Green Party"), Steven Andrew Ellis ("Ellis"), Libertarian Party of Maryland ("Libertarian Party"), and Robert S. Johnston, III ("Johnston") Plaintiffs, by undersigned counsel, submit the following memorandum in support of their Motion for Temporary Restraining Order and/or Preliminary Injunction.

INTRODUCTION

This First Amendment case arises out of the impact the COVID-19 pandemic has had and continues to have upon the ability of the Green Party and the Libertarian Party to collect signatures that Maryland law requires that for them to be granted party status and ballot access for the 2020 General Election. The 10,000-signature requirement of Maryland Code, Election Law ("EL") § 4-102, cannot be met under current circumstances. Maryland's 10,000-signature requirement under current conditions impermissibly burdens the Plaintiffs' First Amendment rights and must be reduced.

The Plaintiffs are likely to succeed on the merits of their First Amendment claim. Over the past month, several Federal District Courts have held that the First Amendment requires a reduction of analogous signature requirements in light of the COVID-19 pandemic. *See Libertarian Party of Ill., et al. v. Pritzker,* 2020 WL 1951687 (N.D. Il. April 23, 2020); *Esshaki v. Whitmer*, 2020 WL 1979126, at *2, *12 (E.D. Mich. Apr. 20, 2020), *aff'd in part and remanded*, 2020 WL 2185553. __ Fed. Appx. __ (6th Cir., May 5, 2020); *Garbett v. Herbert*, 2020 WL 2064101 (April 29, 2020).

On March 3, 2020, just prior to the full impact of the COVID-19 epidemic on Maryland, the United States Court of Appeals for the Fourth Circuit held that Maryland's 10,000-signature requirement survived scrutiny under the tests set forth in *Burdick v. Takushi*, 504 U.S. 428 (1992) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983*). See Johnston v. Lamone*, 2020 WL 1027805, 801 Fed. Appx. 116 (4th Cir. March 3, 2020). Since then the world has changed. The 10,000-signature requirement in light of emergency orders and social distancing standards imposed in the last two months is a significant burden on the Plaintiff's voting, associational, and expressive rights that cannot withstand First Amendment scrutiny.

The harm caused by Defendants to Plaintiffs is irreparable. In First Amendment cases, irreparable harm is presumed. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). If the political party Plaintiffs cannot appear on the November 2020 General Election ballot, that electoral opportunity never can be regained. The burden on the Defendants to lower the signature requirement is minimal. The Defendants' interest in regulating elections would not be significantly impacted by allowing political parties, who have regularly appeared on the ballot in recent elections, to appear again on the 2020 General Election ballot.

PROCEDURAL HISTORY

This action was commenced by the filing of a Complaint in this Court on May 19, 2020.

STATEMENT OF FACTS

The Plaintiffs incorporate by reference the Affidavits of Steven Andrew Ellis ("Ellis Aff."), Samuel H. Hobbs ("Hobbs Aff.") and Tim Willard ("Willard Aff.").

Maryland Code, Election Law ("EL") § 4-102 requires that a group of registered voters who seek to form a new political party submit a petition bearing the signatures of at least 10,000 registered voters to the State Board.

The Green Party has qualified as a Maryland political party for each statewide general election since 2000. The Libertarian Party has qualified as a Maryland political party for each statewide general election since 2002. Pursuant to EL § 4-103, a new political party retains its status as a political party until December 31 in the year of the second statewide general election following the party's qualification under EL § 4-102. Thereafter, a political party retains its status if: (i) the political party nominates a candidate for the highest office on the ballot in a statewide general election and that candidate receives at least 1% of the total vote for that office; or (ii) at least 1% of the State's registered voters are affiliated with the political party.

Neither the Green Party candidate for Governor on the 2018 general election ballot nor the Libertarian Party candidate for Governor on the 2018 general election ballot received at least 1% of the total vote for that office and less than 1% of the State's registered voters were affiliated with either party as of December 31, 2018. Thus, pursuant to EL 4-103, the Green Party and the Libertarian Party each lost their status as a political party and can only regain party status by complying with all of the requirements under EL § 4-102, including submitting a petition with 10,000 valid signatures.

On March 5, 2020, Governor Hogan issued a Proclamation declaring a State of Emergency and Existence of Catastrophic Health Emergency due to the COVID-19 pandemic. Governor Hogan issued subsequent orders closing non-essential businesses, forbidding large gathering of people, and requiring Marylanders to stay at home. The stay at home order was in effect statewide from March 30, 2020 through May 15, 2020. On May 13, 2020, Governor Hogan issued Order 20-05-13-01, which allowed certain businesses to re-open and gatherings to occur. However, Order 20-05-13-01, significantly limits large gatherings and allows local jurisdictions to impose more stringent orders. All of Governor Hogan's COVIC-19 pandemic orders can be found at https://governor.maryland.gov/covid-19-pandemic-orders-and-guidance/

Subsequent to Governor Hogan's issuance of Order 20-05-13-01, all of the most populous jurisdictions in Maryland, issued orders with greater restrictions than those in Order 20-05-13-01. Baltimore City, Montgomery County and Prince George's County still have stay at home orders in effect. Anne Arundel County, Baltimore County, Frederick County and Howard County have allowed only limited reopening of businesses.

Prior to Governor Hogan's March 5, 2020, Proclamation, the Green Party and the Libertarian Party each were engaged in petition drives to obtain the signatures of at least 10,000 voters prior to the August 3, 2020, deadline for submitting signatures to qualify as political parties for inclusion on the 2020 general election ballot. Hobbs Aff. ¶¶ 4-5.

As of early March 2020, the Green Party had obtained the signatures of approximately 5,000 individuals who represented that they were registered Maryland voters. *See* Hobbs Aff. ¶ 5. As of early March 2020, the Libertarian Party had obtained the signatures of approximately 3,000 individuals who represented that they were registered Maryland voters.

Pursuant to EL § 6-207, the State Board verifies signatures after a new party petition is submitted. The State Board has rejected a significant number of signatures when petitions have

been submitted in the past. Thus, substantially more than 10,000 signatures are required for a successful petition. Hobbs Aff. ¶ 5.

Since early March 2020, it has been virtually impossible for the Green Party or the Libertarian Party to collect signatures due to governmental restrictions. Notwithstanding Governor Hogan's Order 2020-05-13-01, this impossibility continues and likely will continue through August3, 2020.

The prime venues for collection of petition signatures historically have been large gatherings, such as fairs, festivals and sporting events, during warm weather months. Willard Aff. ¶ 4. Since March, all such events have been cancelled in Maryland and none are scheduled to resume until after August 3, 2020.

To obtain a signature on a petition, a solicitor must hand the petition and a pen to a prospective signer and then retrieve the signed petition. Such an exchange is impossible under the social distancing guidelines from the Centers for Disease Control, which provide:

- Stay at least 6 feet (about 2 arms' length) from other people
- Do not gather in groups
- Stay out of crowded places and avoid mass gatherings

https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html

See Willard Aff. ¶¶ 4-7.

On April 22, 2020, the State Board approved SBE Policy 2020-01 to allow electronic signatures on petitions. On May 1, 2020, Mr. Ellis had a telephone conference with State Board personnel to address several access issues with respect to SBE Policy 2020-01. Although Mr. Ellis and State Board personnel verbally agreed to a plan of action to address the issues, Mr. Ellis has received no response to his subsequent email follow up with State Board personnel. Ellis Aff. ¶¶ 9-10. Since May 1, 2020, the Green Party has been working to have a developer create an open

source online signature tool using the guidelines provided by the State Board. Ellis Aff. ¶ 11. This has involved several weeks of development and testing. Developing this system in a hurry, without access to the same identity verification tools the State Board uses in its online voter registration system has proved difficult, as the developer has tried to balance accessibility with security. *Id.* While the Green Party expects to have an online signature solution up and running soon, there is no way to predict or plan how effective online signature collection will be, there is no way to know if the site will be subject to security challenges, or to fraudulent use. *Id.*

Even if an online signature tool could be developed before August 3, 2020, past attempts to obtain signatures by mail, electronic, and social media solicitations have yielded very few positive results. The ability to submit electronic signatures is no substitute for in person solicitation. Ellis Aff. ¶¶4-8; Hobbs Aff. ¶ 8.

On April 30, 2020, Green Party counsel wrote to Governor Hogan and Administrator Lamone requesting that the 10,000 signature requirement be suspended under the Governor's emergency powers and that the State Board adopt a more flexible signature verification process than it has applied in the past. A copy of the letter is attached to the Complaint as Exhibit 1. Green Party counsel has received no response to the April 30, 2020, letter from Governor Hogan.

On March 31, 2020, Plaintiff Johnston submitted a Public Comment to the State Board requesting that it recommend that Governor Hogan exercise his emergency powers to reduce the 10,000 signature requirement. A copy of that Public Comment is attached to the Complaint as Exhibit 2.

ARGUMENT

I. STANDARD FOR PRELIMINARY INJUNCTIVE RELIEF

Injunction is an exceptional remedy, but a court may issue a temporary restraining order if it finds that specific verified facts clearly show that immediate and irreparable injury, loss, or damage will result prior to notice to the adverse party and the opportunity for a hearing on a preliminary injunction. Fed. R. Civ. P. 65(b). Plaintiffs certify by their undersigned counsel that they have already provided notice to counsel for the State Board of this request for a temporary restraining order and preliminary injunction.

A court may enter a preliminary injunction if the party seeking the injunction can make a clear showing that it is entitled to relief. *Winter v. Natural Resources Defense Council,* 555 U.S. 7, 129 S.Ct. 365, 375-76 (2008); *Real Truth About Obama, Inc. v. Federal Election Commission,* 575 F.3d 342, 345-46 (4th Cir. 2009);[1] *see also, Holbrook v. Univ. of Virginia,* 706 F. Supp. 2d 652, 654 (W.D. Va. 2010) (a preliminary injunction should be granted "if the moving party clearly establishes entitlement to the relief sought.") (quotations omitted).

A plaintiff seeking preliminary injunctive relief must establish:

> "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief; [3] that the balance of the equities tips in his favor; and [4] that an injunction is in the public interest.'

WV Ass'n of Club Owners and Fraternal Services, Inc. v. Musgrave, 553 F.3d 292, 298 (4th Cir. 2009) (quoting *Winter*, 129 S.Ct. at 374); *Real Truth About Obama,* 575 F.3d at 346 (same). All

[1] The Fourth Circuit's opinion in *Real Truth About Obama, Inc.* was vacated and remanded by the Supreme Court for further consideration in light of *Citizens United v. Federal Election Commission,* 558 U.S. 310, 130 S.Ct. 876 (2010), *see* 559 U.S. 1089, 130 S.Ct. 2371 (2010) (per curiam), but, on remand, the Fourth Circuit reissued the portion of the opinion articulating the standard for issuance of a preliminary injunction. 607 F.3d 355 (4th Cir. 2010).

four requirements must be met in order for a preliminary injunction to be granted. *Dewhurst v. Cnty. Aluminum Co.,* 649 F.3d 287, 290 (4th Cir. 2011).

As this is a non-commercial case involving constitutional rights, and a balance of hardships weighs significantly in Plaintiffs' favor, the security bond requirement of Rule 65(c) should be waived.

II. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS

The extraordinary circumstances from which this case arises make it any easy one to decide. Under Maryland law as it now exists, the party Plaintiffs have no lawful procedure by which they may qualify their candidates for Maryland's November 3, 2020 general election ballot, and Defendants have failed to take remedial action to correct this constitutional infirmity. Plaintiffs are entitled to the relief requested on that basis alone. Plaintiffs are also entitled to the relief requested because Maryland's petitioning requirements, as applied here, cannot withstand constitutional scrutiny under the analytic framework the Supreme Court established in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992).

1. Plaintiffs Are Entitled to Relief Because Maryland Has Failed to Provide Them with Any Procedure for Qualifying for the November 3, 2020 General Election Ballot.

When states fail to provide candidates and parties with a procedure by which they may qualify for the ballot, the Supreme Court and lower federal courts have not hesitated to remedy the defect by placing candidates and parties on the ballot by court order, provided that the candidates and parties can present evidence that they have a "modicum of support" among the electorate. In 1976, for instance, several states provided no procedure for independent candidates to qualify for the ballot. In each of these states, independent presidential candidate Eugene McCarthy sought relief in federal court, and without exception the courts ordered that he be placed on the ballot.

See McCarthy v. Briscoe, 429 U.S. 1317, 97 S. Ct. 10 (1976) (Powell, J. in Chambers) (placing McCarthy on Texas ballot); *McCarthy v. Askew*, 540 F.2d 1254, 1255 (5th Cir. 1976) (*per curiam*) (affirming order placing McCarthy on Florida's ballot); *McCarthy v. Noel*, 420 F. Supp. 799 (D. R.I. 1976) (placing McCarthy on Rhode Island ballot); *McCarthy v. Tribbitt*, 421 F. Supp. 1193 (D. Del. 1976) (placing McCarthy on Delaware ballot); *McCarthy v. Austin*, 423 F. Supp. 990 (W.D. Mich. 1976) (placing McCarthy on Michigan ballot). As Justice Powell observed in *McCarthy v. Briscoe*, the Supreme Court had followed the same procedure in 1968, when it ordered that several candidates who successfully challenged the constitutionality of Ohio's ballot access laws be placed on its ballot. *See McCarthy v. Briscoe*, *supra*, (citing *Williams v. Rhodes*, 89 S. Ct. 1, 21 L.Ed.2d 69 (Stewart, J., in Chambers, 1968)).

In 1980, Michigan had failed to enact a procedure for independent candidates to access the ballot following the decision in *McCarthy v. Austin*, *supra*, and two independent candidates running for president and vice-president filed suit. *See Hall v. Austin*, 495 F. Supp. 782 (E.D. Mich. 1980). Once again, a federal court ordered that the independent candidates be placed on Michigan's ballot. *See id.* at 791-92. The issue arose again in 1984, because Michigan still had not enacted a procedure for independent candidates to qualify for the ballot. An independent candidate for the State Board of Education filed suit, the district court again declared Michigan's ballot access scheme unconstitutional, and the Secretary of State was ordered to place the candidate on the ballot. *See Goldman-Frankie v. Austin*, 727 F.2d 603, 607-08 (6th Cir. 1984).

In *Williams*, the Supreme Court explained the rationale for federal courts to grant such relief: the Constitution does not permit states to restrict access to the ballot in a manner that "favors two particular parties – the Republicans and the Democrats – and in effect tends to give them a complete monopoly." *Williams v. Rhodes*, 393 U.S. 23, 32 (1968)). Here, the State of Maryland –

albeit with the unwanted intrusion of a global pandemic – has accomplished that same result. The filing deadline for Principal Party candidates – *i.e.*, Republicans and Democrats – to qualify for the primary election ballot was January 24, 2020. Consequently, such candidates were not impacted by Governor Hogan's various executive orders imposing emergency measures to contain the COVID-19 outbreak, and the Republican and Democratic nominees selected by means of Maryland's taxpayer-funded primary election are thereby automatically qualified to appear on the 2020 General Election ballot. Yet it would be unlawful – a violation of those same executive orders – for Plaintiffs to engage in effective petitioning, which is the only procedure that Maryland provides for them to qualify for the general election ballot. The grounds for this Court's intervention could not be clearer.

Maryland did not cause the outbreak of the COVID-19 virus, of course, but that is immaterial. Maryland is constitutionally required to provide its citizens with a lawful procedure to qualify for its general election ballot, and it has failed to do so. Certainly, Maryland could have adopted measures to remedy this constitutional defect. For instance, on March 17, 2020, in response to the COVID-19 emergency, Governor Hogan issued a Proclamation that rescheduled Maryland's primary election from April 28 to June 2. Yet, while Governor Hogan has issued several executive orders that impose sweeping changes to Maryland law – and which incidentally make it impossible for the Party Plaintiffs to qualify for Maryland's November 3, 2020 general election ballot – Defendants have not responded to counsel's April 30, 2020 letter to Governor Hogan seeking executive relief, or to the Public Comment that Plaintiff Johnston submitted to the State Board on March 31, 2020.

As Justice Powell explained, where a state fails to provide a procedure for candidates to demonstrate the support necessary to qualify for the ballot, "a court may properly look to available

evidence or to matters subject to judicial notice to determine whether there is reason to assume the requisite community support." *McCarthy*, 429 U.S. at 1323. Thus, in *McCarthy*, the Court placed the plaintiff-candidate on the ballot in reliance on the fact that he was "a nationally known figure" who had served two terms as a Senator and five terms as a United States Representative. *Id.* The Sixth Circuit expressly relied on *McCarthy* to grant the same relief in *Goldman-Frankie*. *See Goldman-Frankie*, 727 F.2d at 607. In that case, the Court found that the plaintiff's "demonstration of the requisite community support was not compelling" – she had twice previously run for statewide office and received a modest number of votes – but found it "sufficient to warrant the relief granted by the district court." *Id.* at 607-08 &n.4.

Here, Plaintiffs Green Party and Libertarian Party have much stronger evidence of the requisite community support. Indeed, the Green Party consistently demonstrated that support and enjoyed the status of a ballot-qualified political party from 2000 through 2018, and the Libertarian Party did so from 2002 through 2018.

2. Maryland's Statutory Scheme Cannot Withstand Constitutional Scrutiny as Currently Applied.

Plaintiffs are also entitled to the relief requested because Maryland's statutory scheme, as currently applied, cannot withstand constitutional scrutiny under the Supreme Court's *Anderson-Burdick* analytic framework. Under that analysis, a reviewing court must:

> first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789. This framework establishes a "flexible standard," according to which "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged restriction burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434. Under this standard, "reasonable, nondiscriminatory restrictions" are subject to less exacting review, whereas laws that impose "severe" burdens are subject to strict scrutiny. *See id.* (citations omitted). But in every case, "However slight [the] burden may appear ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 190 (2008) (citation and quotation marks omitted).

The burden that Maryland law imposes on Plaintiffs' First and Fourteenth Amendment rights as applied here is undeniably severe. For more two months it has been unlawful for Plaintiffs to attempt to comply with the only procedure that Maryland provides for them to qualify for the November 3, 2020 general election ballot. Further, the August 3, 2020 deadline for Plaintiffs to submit the petitions for party recognition is rapidly approaching, and there is no telling if and when the legal restrictions that prohibit Plaintiffs from petitioning will be lifted. And even if the legal restrictions are lifted, it will remain impossible, as a practical matter, for Plaintiffs to obtain signatures on nomination papers because doing so would present an unacceptable health risk not only to petition circulators and potential signers, but also to the general public.

In a case arising from factually indistinguishable circumstances, Chief Judge Pallmeyer of the Northern District of Illinois held that Illinois' petitioning requirements were unconstitutional as applied in the context of the COVID-19 pandemic. *See Libertarian Party of Ill., et al. v. Pritzker, et al.*, 2020 WL 1951687 (N.D. Il. April 23, 2020). As Judge Pallmeyer explained:

> The combined effect of the restrictions on public gatherings imposed by Illinois' stay-at-home order and the usual in-person signature

> requirements in the Illinois Election Code is a nearly insurmountable hurdle for new party and independent candidates attempting to have their names placed on the general election ballot. The problem is exacerbated … by the fact that the "window" for gathering such signatures opened at nearly the same time that Governor Pritzker first imposed restrictions. … Notably, from the outset of these proceedings, even Defendants have acknowledged that the ballot access restrictions must be relaxed, in some shape or form, to account for the havoc that COVID-19 has wreaked.

Id. at *4 (citations omitted). Accordingly, Judge Pallmeyer entered an order granting the plaintiffs' motion for a preliminary injunction. *See Libertarian Party of Ill.*, No. 1:20-cv-02112, Dckt. No. 27 (N.D. Il. April 23, 2020), *modified by* Dckt. No 36 (N.D. Ill. May 15, 2020). The order provides substantial relief from Illinois' petitioning requirements. Specifically, it: (1) grants the plaintiff political parties ballot access in Illinois' 2020 general election ballot for any office for which the parties were ballot-qualified in 2018 or 2016; (2) reduces the statutorily-imposed signature requirements for all other minor party and independent candidates by 90 percent; (3) enjoins enforcement of Illinois' requirement that nomination petitions be signed with "wet" handwritten signatures and instead authorizes nomination petitions to be signed electronically; (4) enjoins enforcement of Illinois' requirement that original nomination petitions be submitted, and instead authorizes the electronic submission of photocopies or digital reproductions; (5) enjoins enforcement of Illinois' notarization requirement; and (6) extends the filing deadline from June 22 to July 20, among other relief. *See id.*

In another recently decided case, a federal district court held Michigan's primary election ballot access requirements unconstitutional as applied during the COVID-19 pandemic. *See Esshaki v. Whitmer*, 2020 WL 1979126, at *2, *12 (E.D. Mich. Apr. 20, 2020) (recognizing signature-gathering challenges arising from the COVID-19 pandemic and the State of Michigan's stay-at-home directive, ordering that certain candidates "[s]hall be qualified for inclusion on the

August 4, 2020 primary election ballot if the candidate submits fifty percent of the number of valid signatures required by" a Michigan election law, and ordering Michigan's Director of Elections to "adopt and promulgate" appropriate "regulations providing for an additional optional procedure that allows the collection and submission of ballot petition signatures in digital form by electronic means such as email"). On appeal, the Sixth Circuit affirmed the "the district court's order enjoin[ing] the State from enforcing the ballot-access provisions at issue unless the State provides some reasonable accommodations to aggrieved candidates." *Esshaki v. Whitmer*, 2020 WL 2185553, __ Fed. Appx. __ (6th Cir., May 5, 2020). It was only in terms of remedy that the Sixth Circuit remanded the matter to the District Court: "we are instructing the State to select its own adjustments so as to reduce the burden on ballot access, narrow the restrictions to align with its interest, and thereby render the application of the ballot access provisions constitutional under the circumstances." *Id*. at *2. The Sixth Circuit also advised the State that the simplest way to proceed was for it to implement what the District Court had ordered, *id*., which is exactly what happened in the end. On May 8, 2020, Michigan agreed to reduce its signature collection requirement by 50 percent, which is what the District Court had previously required. *See* Richard Winger, *Michigan Secretary of State Now Agrees to 50% Cut in Number of Primary Petition Signatures*, Ballot Access News, May 8, 2020.[2]

And in Utah, Chief Judge Robert Shelby of the federal district court granted relief to a candidate seeking to run in the Republican Party primary election for governor. *See Garbett v. Herbert*, 2020 WL 2064101 (April 29, 2020). In that case, the plaintiff had collected approximately 21,000 signatures to comply with a 28,000-signature requirement by the April 13,

[2]https://ballot-access.org/2020/05/08/michigan-secretary-of-state-now-agrees-to-50-cut-in-number-of-primary-petitions/.

2020 filing deadline, and alleged that she would have complied with the requirement but for the burden imposed by the COVID-19 pandemic and the governor's ensuing orders imposing "stay at home" and "social distancing" requirements. In granting relief, the Court reasoned that the plaintiff had been prevented from petitioning for 32 percent of that statutory period, and therefore reduced Utah's signature requirement by the same percentage. *See id.* at *18.

The Massachusetts Supreme Judicial Court granted similar relief to candidates seeking access to Massachusetts' primary election ballot. *See Goldstein v. Galvin*; SJC-12931 (April 17, 2020) (unreported). In that case, the Commonwealth's high court reduced the applicable signature requirements by 50 percent, extended the applicable filing deadlines, and authorized the plaintiffs to collect signatures using electronic procedures. *See id.*

In each of the foregoing cases, the courts readily concluded that the challenged laws imposed severe burdens as applied in the context of the COVID-19 pandemic, and that the governors' orders were not narrowly tailored to serve the state's interests, because they failed to provide the plaintiffs with a lawful procedure to qualify for the ballot. The challenged provisions thus failed to withstand constitutional scrutiny under the *Anderson-Burdick* analysis. The same is true here.

Because petition circulation is substantially prohibited under Governor Hogan's orders and local regulations and practically impossible during the COVID-19 pandemic, the 10,000-signature requirement of EF 4-201 is unconstitutional as applied to Plaintiffs in the 2020 General Election cycle. The Plaintiffs urge this Court to reduce the 10,000-signature requirement by 90% to 1,000 signatures and enjoin the State Board's strict application of the standards for verification of

signatures.[3]

III. PLAINTIFFS WILL SUFFER IMMEDIATE AND IRREPARABLE INJURY

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976); *Newsom ex rel. Newsom v. Albemarle County School Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). *See also WV Ass'n of Club Owners and Fraternal Services, Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) ("…a plaintiff's claimed irreparable harm is "inseparably linked" to the likelihood of success on the merits of plaintiff's First Amendment claim.").

As the Third Circuit has explained, where a court concludes that ballot access requirements are likely unconstitutional as applied, "it clearly follows that denying [Plaintiffs] preliminary injunctive relief will cause them to be irreparably injured." *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3rd Cir. 1997). Specifically:

> Plaintiffs' voting and associational rights are burdened by their inability to nominate, support, and vote for candidates who represent their beliefs. If the plaintiffs lack an adequate opportunity to gain placement on the ballot in this year's election, this infringement on their rights cannot be alleviated after the election.

Id. Unless the Court grants Plaintiffs preliminary relief, they will suffer the same irreparable injury

IV. THE BALANCE OF EQUITIES FAVORS PLAINTIFF

The harm that Plaintiffs will suffer in the absence of the requested relief is plain: their candidates will be excluded from Maryland's November 3, 2020 General Election ballot; voters

[3] The verification issue was raised in *Johnston v Lamone*, 401 F. Supp. 3d 598, 606-08 (D. Md. 2019), *aff'd*, 801 Fed. Appx. 116 (4th Cir. 2020). This Court held, and the Fourth Circuit affirmed, that the issue was not ripe for review. Given the current exigent circumstance, the Plaintiffs believe that the issue now is ripe for review.

will be deprived of the opportunity to hear their political views and to associate with and support them; the Green Party and the Libertarian Party will be prevented from disseminating and building support for their platforms among the general electorate; and the Green Party and Libertarian Party will be denied the opportunity to win sufficient electoral support to retain ballot access in future election cycles. The Supreme Court has expressly relied on such harms to justify granting the relief that Plaintiffs request here. *See, e.g.*, *Norman v. Reed*, 502 U.S. 279, 288-89 (1992); *Anderson*, 460 U.S. at 793-94; *Williams*, 393 U.S. at 30-31. The Court's admonition in *Williams* applies equally here:

> The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.

Williams, 393 U.S. at 31. This Court's intervention is amply justified to prevent such harm to Plaintiffs' "most precious freedoms." *Id.* at 30.

By contrast, Defendants will not suffer any harm if the Court grants Plaintiffs the requested relief. The Green Party and the Libertarian Party have qualified for Maryland's General Election ballot with regularity in past election cycles, and there is no evidence that Maryland sustained any harm to its electoral processes as a result of their participation. On the contrary, as the Supreme Court has repeatedly observed, "[h]istorically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream." *Anderson*, 460 U.S. at 794; *see Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-86 (1979); *Sweezy v. New Hampshire*, 354 U.S. 234, 250-251 (1957). Thus, the continued participation of the Green Party and the

Libertarian Party in the electoral process will benefit, not harm, Defendants and the voters of Maryland generally.

Moreover, the relief that Plaintiffs request here is precisely the same relief that other states have granted of their own volition. On March 30, 2020, for example, Vermont enacted legislation providing that "a person shall not be required to collect voter signatures in order to have the person's name placed on any ballot in the year 2020." *See* An Act Relating to Government Operations in Response to the COVID-19 Outbreak, HB 681 (2020), available at https://legislature.vermont.gov/Documents/2020/Docs/BILLS/H-0681/H-0681%20As%20Passed%20by%20Both%20House%20and%20Senate%20Official.pdf (accessed April 2, 2020). The Secretary of State of Connecticut has likewise recommended to that state's Governor and Legislature that its petitioning requirements be eliminated, and that all currently qualified third parties in the state be granted "automatic ballot access for all races in November…" *See* Richard Winger, *Connecticut Secretary of State Asks Governor to Suspend Petitioning for General Election for Parties That Already Have Statewide Status for at Least One Office*, Ballot Access News (March 31, 2020), available at http://ballot-access.org/2020/03/31/connecticut-secretary-of-state-asks-governor-to-suspend-petitioning-for-general-election-for-parties-that-already-have-statewide-status-for-at-least-one-office/ (accessed May 18, 2020).

No harm will come to Defendants or the State of Maryland if the Court grants similar relief here. The balance of harms therefore weighs strongly in Plaintiffs' favor.

V. AN INJUNCTION IS IN THE PUBLIC INTEREST

Finally, granting Plaintiffs injunctive relief is in the public interest because, as the Supreme Court has observed, "all political ideas cannot and should not be channeled into the programs of our two major parties." *Williams v. Rhodes*, 393 U.S. 23, 39 (1968) (citation omitted). Yet that is

precisely what will happen in Maryland, due to the COVID-19 pandemic and Governor Hogan's ensuing executive orders. Further, "in the absence of legitimate, countervailing concerns," the Third Circuit has concluded, "the public interest clearly favors the protection of constitutional rights, including the voting and associational rights of alternative political parties, their candidates and their potential supporters." *Council of Alternative Political Parties*, 121 F.3d at 883-84.

Here, there are no legitimate countervailing concerns. Plaintiffs' request for injunctive relief arises because Defendants have failed to provide them with a lawful and constitutional procedure to qualify for Maryland's November 3, 2020 general election ballot. But "the enforcement of an unconstitutional law vindicates no public interest." *KA ex rel Ayers*, 710 F.3d at 114 (citing *ACLU v. Ashcroft*, 322 F.3d 240, 251 n. 11 (3rd Cir. 2003) ("Neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law")). Consequently, the public interest weighs in favor of granting Plaintiffs injunctive relief.

VI. NO BOND IS NEEDED AS SECURITY

Federal Rule of Civil Procedure 65(c) states that security is required for an injunction. Courts have often observed that security is not mandatory under Rule 65(c) and can be dispensed with at the discretion of the court. *See Pashby v. Delia*, 709 F.3d 307, 331-32 (4th Cir. 2013); *Zambelli Fireworks Mfg., Inc. v. Wood,* 593 F.3d 412, 426 (3rd Cir. 2010); *Moltan Co. v. Eagle-Picher Industries, Inc.,*55 F.3d 1171, 1176 (6th Cir. 1995). This is especially true in the context of voting rights and ballot access. *See*, *e.g.*, *Moore v. Brunner*, 2008 WL 232530, at *5 (S.D. Ohio 2008). No security is needed in this case, as preliminary relief threatens no financial harm to Defendant.

CONCLUSION

For the reasons stated above the Plaintiffs respectfully request that the Court prohibit the strict enforcement of EL § 4-102, EL § 6--203 and EL § 6-207, and (i) direct the Defendants to grant the Green Party or the Libertarian Party, as the case may be, new party status under EL § 4-102 if it submits a new party petition with 1,000 signatures of Maryland registered voters on or before August 3, 2020; and, (ii) direct Administrator. Lamone, not to disqualify any signature on a petition submitted by any of the Plaintiffs if that signature, whatever its form, can be matched to a registered Maryland voter.

Respectfully submitted,

May 19, 2020

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