

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

DAN WHITFIELD and GARY FULTS, )

.....Plaintiffs )

v. )

Case No. 4:20-cv-00466-KGB

JOHN THURSTON, in his official capacity as )

Secretary of State for the State of Arkansas, )

.....Defendant.)

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR COMPLAINT  
AND MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs filed their complaint on April 29, 2020 (Dkt. No. 1) and their motion for preliminary injunction with two attached exhibits and a brief in support on April 30, 2020 (Dkt. Nos. 8 and 9). Joint Stipulations of Fact were sent to the Court on May 8, 2020, and filed with permission on May 11, 2020 (Dkt. No. 11). The Defendant filed a brief in opposition to Plaintiffs' motion for preliminary injunction with four exhibits attached and an answer to the complaint on April 14, 2010 (Dkt. Nos. 12 and 13). On May 15, 2020, pursuant to a previous order of the Court (Dkt. No. 10) and conferences and agreements of counsel, the Court filed an order (Dkt. No. 14) which set a hearing on Plaintiffs' pending motion for preliminary injunction, which will be consolidated with a trial on the merits pursuant to Federal Rule of Civil Procedure 65(a)(2), on May 27, 2020, beginning at 9:00 a.m. CT. Along with other conditions for the hearing and the setting of other deadlines for filing of pleadings and the exchange of witnesses and exhibits, the Court allowed by agreement of the parties for the plaintiffs to file a reply brief in support of their motion for preliminary injunction on or before May 18, 2020. Having reviewed Defendant's brief in opposition to Plaintiffs' motion for preliminary injunction and the four exhibits attached thereto, Plaintiffs now file their reply brief with responsive exhibits attached.

## ARGUMENT AND AUTHORITIES

While Arkansas does have a right to properly supervise elections, election restrictions which impact Independent candidates and their supporters must be necessary to serve a compelling state interest. The questions as to necessity which are not adequately answered by Defendant in his brief are: (1) Why is it necessary for Arkansas independent candidates to file their political practices pledge, affidavit of eligibility, and notice of candidacy during the one-week party filing period in early November (November 4, 2019 and ending at noon on November 11, 2019) of the year before the general election even though Independent candidates do not participate in primary elections, runoff primary elections, or new political party nominating conventions? (2) Why is it necessary for Arkansas independent candidates other than for President to collect their signatures in only 90 days? (3) Why is it necessary for the 90-day petitioning period to be not earlier than 90 calendar days before the deadline for filing petitions to qualify as an Independent candidate unless the number of days is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election? (4) Why is it necessary for Arkansas independent candidates to file their petition signatures by noon on May 1, 2020, when they will not appear on the general election ballot until the November general election and ballots are not even printed until late August or early September 2020? (5) Why is it necessary for the non-Presidential Arkansas Independent candidate petitions to be filed by noon on May 1 of the general election year after only a 90-day petitioning period and a petition signature requirement that is the fourteenth highest among the states<sup>1</sup> even though

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<sup>1</sup> See Plaintiffs' Exhibit "3" attached hereto, Declaration of Richard Winger, ¶7; and Plaintiffs' Exhibit "5" attached hereto, 2020 Ballot Access for a New Party or Independent Candidate, U.S. Senate. The foregoing ranking for Arkansas does not even consider "... that the 90 day petitioning period is a relatively small petitioning period compared to most States and is particularly dangerous because of the reduction of effective petitioning time that can be caused by bad weather and/or a disease like COVID-19."

there are very few Independent candidates in Arkansas during normal times and the Arkansas general election ballot is not overcrowded?<sup>2</sup> Under the standard of review set forth by the U.S. Supreme Court and the U.S. Court of Appeals for the Eighth Circuit, the Defendant has failed to show that there is a compelling state interest that would be served by a ballot access law that is both narrowly drawn and necessary. As has been stated by the Eighth Circuit:

[W]e review the statute under a form of strict scrutiny referred to as the “compelling state interest test” by first determining whether the challenged statute causes a burden of some substance on a plaintiff’s rights, and if so, upholding the statute only if it is “narrowly drawn to serve a compelling state interest.” *Libertarian Party of N.D. v. Jaeger*, 659 F.3d 687, 693 (8<sup>th</sup> Cir. 2011) (quoting *McLain v. Meier*, 851 F.2d 1045, 1049 (8<sup>th</sup> 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. See *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 222, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989).” *Moore v. Martin*, 854 F.3d 1021, 1026 (8<sup>th</sup> Cir. 2017).

Testimony and evidence as to the Independent petition drive and in response to Defendant’s brief and four attached Exhibits (Dkt. No. 12) will be presented by the Plaintiffs at the May 27, 2020, hearing for preliminary injunction based on the Declarations of Dan Whitfield and Gary Fults that were attached to Plaintiffs’ Motion for Preliminary Injunction (Plaintiffs’ Exhibits “1” and “2”), and the additional Exhibits attached hereto: Plaintiffs’ Exhibit “3”, the Declaration of Richard Winger; Plaintiffs’ Exhibit “4”, Richard Winger Curriculum Vitae; Plaintiffs’ Exhibit “5”, the chart of 2020 Ballot Access for a New Party or Independent Candidate, U.S. Senate; Plaintiffs’ Exhibit “6”, the Amended Order of April 30, 2018, Dkt. No. 96, in *Moore v. Martin*, Case No. 4:14-cv-00065-JM; Plaintiffs’ Exhibits “7” and “8”, the Letters of John Thurston to Dr. Michael Pakko of July 29, 2019, and December 10, 2019, respectively; Plaintiffs’ Exhibit “9”, the Supplemental Declaration of Dan Whitfield; Plaintiffs’ Exhibit “10”,

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<sup>2</sup> Further, this Court has previously taken testimony that a 10,000 petition signature requirement statewide in Arkansas is a “challenging endeavor” which requires significant manpower to collect 10,000 signatures in 90 days. *Libertarian Party of Arkansas v. Thurston*, 394 F.Supp.3d 882, 893-894, ¶25 (E.D. Ark. W.Div. 2019).

the Supplemental Declaration of Gary Fults; Plaintiffs' Exhibit "11", the Entry in Ballotpedia for Meghan Cox; and Plaintiffs' Exhibit "12", Administrative Order Five in the United States District Court for the Eastern District of Arkansas, filed April 17, 2020. All the foregoing indicates why Defendant's brief and supporting exhibits fail to appreciate the harm in having a petition drive well before the general election in Arkansas when many of the political issues for the next election are not yet well formed or known, new political developments, deadly diseases, and bad weather are constantly occurring, and there is no necessity to have independent candidate petitions so early in the political election cycle and with candidate declaration dates in early November of the year before the general election, a petition signature deadline of noon on May 1 of the general election year, a 90-day petitioning period directly before May 1, and a relatively high signature requirement. Combined and considered together with the effects of COVID-19, the laws in question are unnecessary and unconstitutional—particularly this year. Further, the evidence will show that Arkansas has never been plagued by an overcrowded ballot as to Independent candidates or even Republicans, Democrats, or Libertarians. Defendant has not shown otherwise in his brief and attached exhibits (Dkt. No. 12).

Plaintiffs set forth several cases and laws in their initial brief (Dkt. No. 9, pp. 8-9) which have crafted certain responses in regard to petitioning and ballot access in various states because of the advent of COVID-19 and various remedies which have reduced the number of signatures required for a candidate to be placed on the ballot or taken other steps. See, *Libertarian Party of Illinois v. Pritzker*, No. 20-CV-2112 (N.D. Ill., E.Div., Apr. 23, 2020)(reducing the statutory requirement to 10% of the normal requirement because the Plaintiffs could not rely on their usual signature-gathering methods); *Esshaki v. Whitmer*, No. 2:20-CV-1083-TGB, 2020 WL 1910154, at \*12 (E.D. Mich. Apr. 20, 2020) (reducing the statutory signature requirement by 50 percent);

*Goldstein v. Sec'y of Commonwealth*, No. SJC-12931, 2020 WL 1903931, at \*9 (Mass. Apr. 17, 2020) (same); N.Y. Exec. Order No. 202.2 (Mar. 14, 2020) (reducing the statutory signature requirement to 30 percent of normal); H. 681, 2019-2020 Gen. Assemb., Adjourned Sess. (Vt. 2020) (suspending the statutory signature requirement entirely; and *In re: State Question No. 805, Initiative Petition No. 421, Manning v. Rogers*, Case No. 118,719 (Sup. Ct. Okla., March 18, 2020) (tolling the 90-day circulation period for initiative petitions during the declaration of emergency by the Oklahoma Governor until he lifts the declared state of emergency and the Secretary of State calculates a new deadline). Defendant does not really question these responses and remedies other than suggesting that the Court herein find some other remedy than limiting the required ballot signatures to 20% to 30% of the statutory requirement because it was not until March 11, 2020, that the Governor of Arkansas declared a state of emergency and it was not until March 26, 2020, that the Governor limited large gatherings (Dkt. No. 12, pp. 26-27). However, Defendant puts far too much credence on official actions of government officials and not enough on the fear that has been engendered in Arkansas voters from the COVID-19 and the fact that the worst effects according to testimony by the Plaintiffs who were actually trying to petition in Arkansas occurred after February of 2020 (See Plaintiffs' Exhibits "1", "2", "8", and "9", Declarations of Dan Whitfield and Gary Fults and Supplemental Declarations of Dan Whitfield and Gary Fults, respectively). The period of petitioning time that was most damaged by the COVID-19 was the last couple of months which normally would have been more productive because at least they were closer to the general election when political interest normally starts to pick up.

Defendant refers in his brief to the *Moore v. Martin* case, Case No. 4:14-cv-00065-JM, 2018 WL 10320761, and the fact that the Eighth Circuit in dismissing the appeal as moot

referenced a soon to be obsolete statute. However, Defendant fails to note that the Eighth Circuit refused to vacate the District Court decision because of its judicial precedential value. *Moore v. Thurston*, 928 F.3d 753, 758-759 (8<sup>th</sup> Cir. 2019). Contrary to Defendant's assertions, the District Court decision in *Moore v. Martin* in 2018 still has precedential value because it further allowed the political practices pledge, affidavit of eligibility, and notice of independent candidacy to be filed on the same day as the petition deadline of May 1<sup>st</sup> (see Plaintiffs' Exhibit "6", Amended Order of April 30, 2018, Dkt. No. 96, *Moore v. Martin, Id.*)—which is not allowed under the new law in question herein. Of additional significance in the District Court's decision in *Moore v. Martin*, the District Court specifically found that Independent candidate petitions have been timely processed when the Independent petition deadline was either May 1<sup>st</sup> or May 29<sup>th</sup> of the election year, at the state level, there are no conflicting petition filing deadlines between May 1<sup>st</sup> and July 6<sup>th</sup>, the number of Independent candidates who filed petitions to run for office in Arkansas from 2006 through 2016 that were processed varied from a high of ten candidates having their petitions processed to one candidate having his petition processed, but with no processed petitions for an Independent statewide candidates at all, the Secretary of State can and has hired, trained, and used temporary workers to verify petition signatures when needed, and that a trained worker can verify 4-5 petition signatures per minute. *Moore v. Martin*, 2018 WL 10320761, at \*2-3.<sup>4</sup>

Further, while Defendant in his brief questions the applicability of the case of *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, 593 F.Supp. 118 (W.D. Okla. 1984), to the extent it invalidated a 90-day petitioning period partly because of bad weather and its negative effect on petitioning, Defendant in his brief fails to mention the fact as noted in Plaintiffs' initial

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<sup>3</sup> *Moore v. Thurston*, 928 F.3d at 757.

<sup>4</sup> Also see Plaintiffs' Exhibit "3", Declaration of Richard Winger, pp. 6-7, ¶18.

brief that the *Libertarian Party of Oklahoma* case was specifically referenced by this Court in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. 690, 698 (E.D. Ark. 1996) and the recent decision by this Court also noting that bad weather can have an effect on petitioning as proved by the testimony of witnesses. *Libertarian Party of Arkansas v. Thurston*, 394 F.Supp.3d at 894, ¶29, 897, ¶49, and ¶53. However, Defendant does not think this is significant even though the COVID-19 effect has had a far greater impact on petitioning than was the effect of bad weather in the aforesaid three cases. Of further consideration, the Court should consider the Tenth Circuit's decision in *Blomquist v. Thomson*, 739 F.2d 525, 528-529 (10<sup>th</sup> Cir. 1984), wherein the Tenth Circuit Court reversed the District Court's refusal to accept a partial compromise agreed to by the parties wherein a petition signature requirement of 8,000 signatures in Wyoming due by June 1 of the general election year would be reduced to 1,333 due to the shortened time for obtaining signatures because of a newly passed law by the Wyoming legislature which, in effect, reduced the normal petitioning time from one year to only two months. *Blomquist v. Thomson*, 739 F.2d at 526, 528-529.

Contrary to Defendant's assertions in his brief, the issuance of the proposed preliminary injunction would be in the public interest rather than adverse to the public interest. Particularly, the harm to voters and the public is the damage to "political dialogue and free expression" that is done when candidates and their supporters are unnecessarily restricted from participating in the public discourse. *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, at 594 (6<sup>th</sup> Cir. 2006). Arkansas at present has far too little electoral competition existing on its general election ballot, see Plaintiffs' Exhibit "3", Declaration of Richard Winger, pp. 3-5, ¶¶5-6. As the Eighth Circuit has said 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 (8<sup>th</sup> Cir. 1980), and must be "narrowly

drawn to serve a compelling state interest.” *Libertarian Party of N.D. v. Jaeger*, 659 F.3d at 693 (quoting *McLain v. Meier*, 851 F.2d 1045, at 1049 (8<sup>th</sup> 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 at 1026.

### CONCLUSION

“A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and—of particular importance—against those voters whose political preferences lie outside the existing political parties . . . . By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity in competition in the marketplace of ideas. Historically, political figures outside the two major parties have been fertile sources of new ideas and new programs; many other challenges to the status quo have in time made their way into the political mainstream. . . . In short, the primary values protected by the First Amendment—“a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,” *New York Times Co. v. Sullivan*, 376 U.S. 254, at 270 (1964)—are served when election campaigns are not monopolized by the existing political parties.” *Anderson v. Celebrezze*, 460 U.S. 780, 793-794 (1983).

It should be remembered that Independent candidates are different from the candidates of major parties or new political parties because they will only appear on a general election ballot and do not require the State to conduct primary elections or oversee nominating conventions. Less regulation is required of Independent candidates than of political parties and their candidates. Even to the extent that the Defendant in his brief makes conclusionary justifications of preventing election fraud or the showing of a modicum of support for Independent candidates, the Defendant has failed to show why the combined requirements herein are necessary to serve a compelling state interest under the unique circumstances of this case because

“even when pursuing a legitimate interest, a state may not choose means that **unnecessarily restrict** constitutionally protected liberty,” *Kusper v. Pontikes*, 414 U.S. 51, 58-59 (1973), and we have required that states



adopt the **least drastic means** to achieve their ends. *Lubin v. Panish*, [415 U.S. 709, 716 (1974)]; *Williams v. Rhodes*, 393 U.S. [23, at 31-33 (1968).] **This requirement is particularly important where restrictions on access to the ballot are involved.** [Emphasis added]. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, at 185 (1979).

WHEREFORE, premises considered, the Plaintiffs herein pray that this Court, after proper hearing herein, will grant the relief requested in their Complaint filed herein by declaring the ballot access and election laws in question herein unconstitutional, grant Plaintiffs' Motion for Preliminary Injunction forthwith by ordering the number of petitions required for these Independent candidates to have ballot access in Arkansas for the November 3, 2020, general election to be reduced to a reasonable number under the circumstances or the placement of them on the Arkansas ballot for November 3, 2020, and/or such other and further relief as the Court finds equitable and just.

Respectfully submitted this 18<sup>th</sup> day of May, 2020.

DAN WHITFIELD and GARY FULTS,  
Plaintiffs

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*Counsel for Plaintiffs*

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

DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )  
 )  
v. )  
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JOHN THURSTON, in his official capacity as )  
Secretary of State for the State of Arkansas, )  
.....Defendant.)  
\_\_\_\_\_ )

Case No. 4:20-cv-00466--KGB

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**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "3"**

**DECLARATION OF RICHARD WINGER**

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

DAN WHITFIELD and GARY FULTS, )  
.....Plaintiffs )

v. )

Case No. 4:20-cv-466-KGB

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

DECLARATION OF RICHARD WINGER

I, Richard Winger, of legal age and being first duly sworn, do hereby depose and say:

1. I am a resident of San Francisco, California, 76 years of age, and make this Declaration in support of Plaintiffs' Motion for Preliminary Injunction filed in the instant case. I make this Declaration based on my own personal knowledge and research that I have conducted in regard to the election and ballot access laws of Arkansas, the election history of Arkansas, my knowledge of the ballot access laws of the other 49 states and the District of Columbia, and my knowledge of recent petitioning and legal cases in the United States addressing problems of petitioning because of the effects of the coronavirus (COVID-19).

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 Declaration 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. However, I do note that due to my age, 76 years old, I am in that group of individuals who are at great risk from COVID-19 and possible death so that I do not think at present that it would be safe for me to travel from San Francisco to Little Rock, Arkansas.

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 Declaration 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 Declaration, I have read and reviewed various pleadings and documents filed in the instant case, namely: the Plaintiffs' Complaint, the Joint Stipulations of Fact, Defendant's Answer, Plaintiffs' Motion for Preliminary Injunction, Plaintiffs' Brief in Support of their Complaint and Motion for Preliminary Injunction, the first Declarations of Dan Whitfield and Gary Fults, Defendant's

Response to Plaintiffs' Motion for Preliminary Injunction, the Declaration of Peyton Murphy with attached exhibits, the Declaration of Meghan Cox, and the Supplemental Declarations of Dan Whitfield and Gary Fults..

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 Plaintiffs' Exhibit "4" to this Declaration, and made a part of this Declaration 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, 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); and an affidavit of my testimony was received in evidence by this Court in the case of *Libertarian Party of Arkansas v. Thurston*, 394 F.Supp.3d 882 (E.D. Ark., W.D. 2019); and in the case of *Moore v. Martin*, 4:14-cv-00065-JM, 2018 WL 10320761 (E.D. Ark., W.D. 2018).

5. 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. As to Independent candidates, from 1891 to 1955 only 50 signatures were need for statewide independent candidates with a submission deadline of 20 days before the Arkansas general election. Since 1977, when the non-presidential statewide petition was set at 10,000 signatures, there have been only three successful petition drives for non-presidential statewide office: John Black in 1978 for U.S. Senate; Rod Bryan in 2006 for Governor; and Trevor Drown in 2010 for U.S. Senate. See Ark. Code Ann., § 7-7-103(b)(1)(B). Since 2010 no other statewide independent candidate has successfully petitioned for ballot access in Arkansas—even in normal times. Presidential independent candidates, pursuant to Ark. Code Ann. §7-8-302(6)(A), only need 1,000 signatures, due by noon on the first Monday in August—which is August 3, 2020 this year, so the above observation does not include presidential petitions.

6. The Arkansas ballot has not been crowded. 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. This year there is no Democratic candidate on the ballot in Arkansas for U.S.

Senator and in State House District 27 the Republican incumbent has never had an opponent on the ballot in the November general election and won't again this year if Gary Fults is unsuccessful in his bid to be on the Arkansas ballot as an Independent candidate for State House district 27.

7. I have read the Declaration of Meghan Cox filed in this case on May 14, 2020, along with the Answer and brief of the Defendant Secretary of State and the Declaration of Peyton Murphy with exhibits, all of which were filed on May 14, 2020. I disagree with Meghan Cox's Declaration opinion that Arkansas ballot access for Independent candidates is "quite easy" compared to other States. For example, in Oklahoma, Independent candidates have the option of simply paying a filing fee for ballot status--for U.S. Senate it is \$2,000 and for State House it is \$500. Okla. Stat. tit 26, §5-112. Of course, the filing fee option avoids problems for petitioning like COVID-19. For an overview of the State requirements for a new party or independent candidate for U.S. Senate see my attached 2020 chart for all 50 states, marked Plaintiffs' Exhibit "5" to this Declaration, and made a part of this Declaration as though fully set forth herein. About half the states use percentages of some base, and half the states use a flat number. To compare the states, I use the vote within each state for president in the last presidential election as the denominator. I feel this is the best way. In the past I have used the number of registered voters, but I gave that up as not being the best standard to use to compare states. North Dakota doesn't have voter registration. Some states have same-day voter registration, and still others cut off registration 30 days before the election. That means the number of registered voters is a faulty denominator for comparing states. Also, some states cannot give a precise number of registered voters for any given deadline. Further, some states have active voters and inactive

voters, which adds another aspect of arbitrariness. The vote for president in each state in the last election gives a reliable basis of comparison, in my opinion, because it shows how many truly active voters there are in a state. The median percentage of the 50 states is .29%. Arkansas' percentage is .88%, making it the 14<sup>th</sup> hardest state by percentage even without considering that the 90 day petitioning period is a relatively small petitioning period compared to most States and is particularly dangerous because of the reduction of effective petitioning time that can be caused by bad weather and/or a disease like COVID-19.

8. In considering the new petition deadline of May 1, 2020, by 12:00 noon (which Arkansas has now put in place for independent candidate petitions seeking ballot access for Independent candidates in Arkansas), I see no reason that the deadline--in light of Judge Moody's Amended Order of January 31, 2018, in *Moore v. Martin, Id.*, could not also be for May 1, 2020 for the filing of the independent candidate political practice pledge, affidavit of eligibility, and notice of candidacy—which the District Court in *Moore* allowed after remand from the Eighth Circuit as per Judge Moody's Amended Order of April 30, 2018, see Dkt. No. 96 in the *Moore v. Martin* case, marked Plaintiffs' Exhibit "6" to this Declaration, and made a part of this Declaration as though fully set forth herein. Of further consideration from Judge Moody's Amended Order of January 31, 2020, which the Eighth Circuit declined to vacate and let stand as judicial precedent, see *Moore v. Thurston*, 928 F.3d 753, 758-759 (8<sup>th</sup> Cir. 2019), I note that it is significant that the District Court's opinion let stand by the Eighth Circuit stated in the following numbered paragraphs that: (20) "Independent candidate petitions have been timely processed when the independent petition deadline was either May 1<sup>st</sup> or May 29<sup>th</sup> of the election year." (21) "At the state level, there are generally no conflicting petition filing deadlines



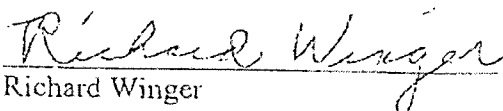
Jones; and Exhibit B—John Thurston letter to Roderick Talley, both dated May 13, 2020), I have certain concerns. Neither of these letters (Exhibits A and B) state the number of petition signatures required for the office sought, the number of petition signatures that were turned in, or the number of petition signatures that were found to be valid. In contrast, on July 29, 2019, Mr. Thurston sent a letter to Dr. Michael Pakko which stated the number of petition signatures required by law for the Libertarian Party, how many signatures had been turned in, and how many signatures were valid. Thereafter, more than four months later, Mr. Thurston sent another letter to Dr. Pakko on December 10, 2019, admitting that a wrong count of valid petition signatures had been given on July 29, 2019, and that the correct count of valid signatures was 14,779 rather than the previous count of 12,747—which amounted to an additional 2,030 valid signatures (copies of the aforesaid letters of Mr. Thurston to Dr. Pakko of July 29, 2020, and December 10, 2020, are marked Plaintiffs' Exhibits 7 and 8, respectively, attached to this Declaration, and made a part of this declaration as though set forth herein). Such a large “wrong count” not only brings up a question of competency and attention to work, but is a cause for concern as to the reason for the lack of details in the aforesaid letters to Ms. Jones and Mr. Talley of May 13, 2020, the failure so far to report on the signatures for the Plaintiffs turned in on May 1, 2020, and the possibility of future “wrong counts” as to valid petition signatures.

11. In the preparation of this Declaration, 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*, *Green Party of Arkansas v. Daniels*, *Libertarian Party of Arkansas v. Thurston*, and *Moore v. Martin*, and the Eighth Circuit's decisions in *Moore v. Martin and Moore v. Thurston*. 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 personal research.

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

Dated at San Francisco, California, this 17 day of May, 2020.

  
Richard Winger

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF ARKANSAS  
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DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )

v. )

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

Case No. 4:20-cv-00466--KGB

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**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "4"**

**RICHARD WINGER CURRICULUM VITAE**

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Richard Winger Curriculae Vitae  
3201 Baker Street  
San Francisco, California 94123  
Updated Oct. 11, 2019

#### EDUCATION

BA, Political Science, University of California, Berkeley, 1966  
Graduate study, Political Science, UCLA, 1966-67

#### EMPLOYMENT

*Ballot Access News*, Editor 1985-Present

Editor of newsletter covering legal, legislative and political developments of interest to minor parties and independent candidates. Researcher of ballot access laws of all 50 states from years 1888-present; well versed in how ballot access laws of each state work historically and how they compare to each other. Responsible for reading all statutes, regulations, legal opinions, and state attorney general opinions on rights of political parties and the publications of minor parties.

On the Editorial Board of *Election Law Journal*, published by Mary Ann Liebert, Inc., Larchmont, N.Y., since 2001.

#### PUBLICATIONS

Wrote a chapter or two in each of these books:

*The Best Candidate: The Law of Presidential Nomination in Polarized Times* to be published by the Cambridge University Press, 2020, editors Eugene D. Mazo and Michael R. Dimino. My chapter is "The Nomination of Presidential Candidates by Minor Parties."

*America Votes! A Guide to Modern Election Law and Voting Rights*, 2<sup>nd</sup> edition, 2012, published by the American Bar Association's Section of State and Local Government Law, editor Benjamin E. Griffith.

*Others, Vol. 2, Third Parties During The Populist Period*, by Darcy G. Richardson (2007: iUniverse, Inc., New York). Wrote the book's Appendix, "Early Ballot Access Laws for New and Minor Parties."

*Democracy's Moment*

edited by Ronald Hayduk and Kevin Mattson (2002: Rowman & Littlefield, Lanham, Md.)

*The Encyclopedia of Third Parties in America*

edited by Immanuel Ness and James Ciment (2000: M.E. Sharpe, Inc., Armonk, N.Y.)

*Multiparty Politics in America*

edited by Paul S. Herrnson (1997: Rowman & Littlefield, Lanham, Md.)

*The New Populist Reader*

edited by Karl Trautman (1997: Praeger, Westport, Ct.)

Additional articles published in these periodicals:

*University of Arkansas Little Rock Law Review*, Vol. 29, #4, summer 2007

*Wall Street Journal*, October 1984 and also October 1988 (exact dates unknown)

*The Long Term View*, Mass. Sch. of Law, vol. 2 #2 (spring 1994)

*American Review of Politics*, U. of Akron, vol. 16, Winter 1995

*California Journal*, July 1977

*Election Law Journal* (two articles), Vol. 1 #2 (2002) and Vol. 5 #2 (2006)

*Cleveland State Law Review*, Vol. 45 #1 (1997)

*Chronicles Magazine*, November 1994

*Price Costco Connection*, Dec. 1995

*Fordham Urban Law Journal*, Vol. 32 #3 (May 2005)

*Fordham Law Review*, Vol. 85 #3 (December 2016)

*Oklahoma Politics*, Vol. 8 (October 1999)

*Harvard Law Record*, internet, April 25, 2016

Also, I wrote "Election Law Decisions" in all issues of the newsletter of the American Political Science Association's Section on Representation and Electoral Systems, 2005-2014. The publication appeared twice each year.

I wrote articles for "Voice for Democracy", the newsletter of Californians for Electoral Reform, in these issues: Spring 2012, February 2014, August 2014, November 2014, and February 2015.

NATIONAL INTERVIEWS on Minor Parties, Independents, Ballots and Ballot Access

*NBC*

*National Public Radio*

*ABC*

*Pacifica Radio*

*CNN*

*MSNBC*

*C-SPAN*

CASES: TESTIMONY or AFFIDAVITS (political party or candidate prevailing, or case pending)

**Alabama:** Hall v Bennett, U.S. Dist. Ct., 212 F.Supp.3d 1148 (m.d. 2016).

**Alaska:** Libertarian Party v Coghill, state superior court, 3rd dist., 3AN-92-08181, 1992: court enjoined petition deadline for minor party presidential petitions.

**Arizona:** Campbell v Hull, 73 F Supp 2d 1081 (1999). Az. Libt. Party v Hull, superior ct., Maricopa Co. 96-13996, 1996: deadline for submitting presidential elector candidates too early. Nader v Brewer, 531 F 3d 1028 (9<sup>th</sup> cir., 2008). De La Fuente v Hobbs, 19-16868 (pending in 9<sup>th</sup> circuit): signature requirement for independent candidates.

**Arkansas:** Citizens to Establish a Reform Party v Priest, 970 F Supp 690 (E.D. Ark. 1996). Green Party of Ark. v Priest, 159 F.Supp.2d (E.D. Ark. 2001). Green Party of Ark. v Daniels, U.S. District Court, 448 F.Supp 2d 1056 (E.D.Ark. 2006). Moore v Martin, 854 F 3d 1021. Libertarian Party of Arkansas v Thurston, e.d., 4:19cv-214 (2019): signature requirement for new parties.

**California:** California Democratic Party v Jones, 530 US 567 (2000). California Justice Committee v Bowen, 2012 WL 5057625 (C.D.Cal.): deadline for new party qualification too early.

**Colorado:** Ptak v Meyer, 94-N-2250, U.S. Dist. Ct., 1994. Signature requirement for independent legislative candidates.

**Florida:** Libt. Party of Fla. v Mortham, 4:96cv258-RH, n.d. 1996: Libertarian

vice-presidential candidate put on ballot even though he was not on the petition. Reform Party v Black, 885 So.2d 303 (Fla. 2004).

**Georgia:** Bergland v Harris, 767 F 2d 1551 (11th cir., 1985). Remanded case back to U.S. District Court; before District Court acted, legislature substantially eased law, so case became moot. Green Party of Georgia v Kemp, 171 F Supp 3d 1340 (n.d. 2016), affirmed, 674 F.Appx. 974 (11<sup>th</sup> cir., 2017). Libertarian Party of Georgia v Raffensperger, n.d., 1:17cv-4660: number of signatures for U.S. House; law upheld on September 23, 2019 but either a rehearing request or an appeal will be filed.

**Hawaii:** Libt. Party of Hi. v Waihee, cv 86-439, U.S. Dist. Ct., 1986: petition deadline for new parties.

**Illinois:** Nader v Ill. State Bd. of Elections, 00-cv-4401, U.S. Dist. Ct., N.D., 2000: petition deadline enjoined. Lee v Ill. State Bd. of Elections, 463 F.3d 763 (7<sup>th</sup> cir. 2006). Jones v McGuffage, 921 F Supp 2d 888 (N.D. Il, 2013). Libertarian Party of Illinois v Scholz, 164 F Supp 3d 1023 (n.d. 2016), affirmed 872 F.3d 518 (7<sup>th</sup> cir., 2017). Gill v Scholz, central dist., 3:16cv-3221: case pending in 7<sup>th</sup> circuit on 5% petition requirement for independent candidates for U.S. House; U.S. District Court put candidate on ballot, but 7<sup>th</sup> circuit stayed that action. Jones v McGuffage, n.d., 1:12cv-9997: number of signatures in special U.S. House elections; judge reduced number of signatures.

**Iowa:** Oviatt v Baxter, 4:92-10513, U.S. Dist. Ct., 1992: signature requirement for U.S. House candidates.

**Kansas:** Merritt v Graves, 87-4264-R, U.S. Dist. Ct., 1988: independent petition deadline, requirement that independent petitions not be circulated outside of circulator's home precinct, and requirement that voters could only register in qualified parties. This case should not be confused with another by the same name decided in December, 1988.

**Kentucky:** Libt. Pty. of Ky. v Ehrler, 776 F Supp 1200 (E.D. 1991). Sweeney v Crigler, e.d., 2:19cv-46 (2019): deadline for declaration of candidacy.

**Maine:** Libertarian Party of Me v Dunlap, 2:16cv-2: deadline for new party.

**Maryland:** Dixon v Md. State Adm. Bd. of Elec. Laws, 878 F 2d 776 (1989, 4th cir.). Green Party v Bd. of Elections, 832 A 2d 214 (Md. 2003).

**Michigan:** Graveline v Johnson, 336 F.Supp.3d 801 (e.d. 2018), affirmed, 747 F Appx 408 (6<sup>th</sup> circuit 2018). Number of signatures for independent candidates.

**Montana:** Kelly v Johnson, U.S. Dist. Ct. 08-25 (2012): independent candidate petition deadline. Breck v Stapleton, 259 F.Supp.3d 1126 (2017). Montana Green Party v Stapleton, 6:18cv-87.

**Nebraska:** Bernbeck v Gale, 4:18cv-3073 (2018). Number of signatures for independent candidates.

**Nevada:** Libt Pty. of Nev. v Swackhamer, 638 F Supp 565 (1986); Fulani v Lau, cv-N-92-535, U.S. Dist. Ct., 1992: minor party and independent petition deadline.

**New Jersey:** Council of Alternative Political Parties v Hooks, 999 F Supp 607 (1998); Council of Alternative Political Parties v State Div. of Elections, 781 A 2d 1041 (N.J.Super. A.D. 2001).

**New York:** Molinari v Powers, 82 F Supp 57 (E.D.N.Y. 2000). Schulz w Williams, 44 F 3d 48 (2nd cir., 1994). Green Party of N.Y. v N.Y. State Bd. of Elections, 389 F.3d 411 (2<sup>nd</sup> cir., 2004).

**North Carolina:** Obie v N.C. Bd. of Elections, 762 F Supp 119 (E.D. 1991). DeLaney v Bartlett, 370 F.Supp.2d 373 (M.D. 2004). Edwards v Berger, Wake County Superior Court, 18-cvs-9749 (2018): state could not give party labels to some candidates, but not all candidates, for the same office.

**Ohio:** Libertarian Party of Ohio v Blackwell, 462 F.3d 579 (6<sup>th</sup> cir. 2006).

Libertarian Party of Ohio v Husted, U.S. Dist. Ct., middle district, 2:13cv-935 (2014): state could not create a new petition in September of odd year before election and expect it to be used in following year.

**Oklahoma:** Atherton v Ward, 22 F Supp 2d 1265 (W.D. Ok. 1998). De La Fuente v Zirriax, had been pending in 10<sup>th</sup> circuit, 17-6010, then legislature eased requirement for independent presidential candidates so case became moot.

**Pennsylvania:** Patriot Party of Pa. v Mitchell, 826 F Supp 926 (E.D. 1993).

**South Dakota:** Nader v Hazeltine, 110 F Supp 2d 1201 (2000). Libertarian Party of South Dakota v Krebs, 2018, 4:15cv-4111.

**Tennessee:** Libt Party v Goins, U.S. Dist. Ct., 793 F Supp 1064 (M.D. 2010). Green Party of Tennessee v Hargett, 7 F.Supp.3d 772 (m.d. 2014), aff'm, 791 F.3d 684 (6<sup>th</sup> cir. 2015): this is the case that struck down the law on how a party remains on the ballot, and should not be confused with the case of the same name on the requirements for a party getting on the ballot.

**Texas:** Pilcher v Rains, 853 F 2d 334 (5th cir., 1988).

**Virginia:** Libt. Pty of Va. v Quinn, 3:01-cv-468, U.S. Dist. Ct., E.D. (2001): court ordered state to print "Libertarian" party label on ballot next to names of candidates.

**West Virginia:** State ex rel Browne v Hechler, 476 SE 2d 559 (Supreme Court 1996). Nader v Hechler, 112 F.Supp.2d 575 (S.D.W.V., 2000). McClure v Manchin, 301 F Supp 2d 564 (2003).

CASES: TESTIMONY or AFFIDAVITS (political party or candidate not prevailing)

**Alabama:** Swanson v Bennett, 490 F.3d 894 (11<sup>th</sup> cit. 2007). Stein v Chapman, 774 F.3d 689 (11<sup>th</sup> cir., 2014). De La Fuente v Merrill, m.d., 2:16cv-755: whether sore loser law applies to presidential primaries.

**Arizona:** Indp. Amer. Party v Hull, civ 96-1240, U.S. Dist. Ct., 1996: petition deadline for new parties. Browne v Bayless, 46 P 3d 416 (2002). Arizona Libertarian Party v Hobbs, 925 F.3d.1085 (2019).

**Arkansas:** Langguth v McKuen, LR-C-92-466, U.S. Dist. Ct., E.D., 1992: petition deadline for independent candidates. Christian Populist Party v Sec. of State, 650 F Supp 1205 (E.D. 1987). Green Party of Ark. V Martin, 649 F.3d 675 (8<sup>th</sup> cir. 2011).

**California:** Socialist Workers Party v Eu, 591 F 2d 1252 (9th cir., 1978). Independent Party v Padilla, 184 F.Supp.3d 791 (Cal.,e.d. 2016). De La Fuente v Padilla, 930 F.3d 1101 (9<sup>th</sup> cir. 2019).

**D.C.:** Libertarian Party v D.C. Bd. of Elections, 682 F.3d 72 (D.C. Cir. 2012).

**Florida:** Fulani v Smith, 92-4629, Leon Co. Circuit Court, 1992: deadline for write-in filing. Libertarian Party of Fla. v State of Fla., 710 F 2d 790 (11th cir., 1983). U.S. Taxpayers Party v Smith, 871 F.Supp. 426 (n.d. Fla. 1993).

**Georgia:** Libertarian Party of Ga. v Cleland, U.S. Dist. Ct., n.d., 1:94-cv-1503-CC, U.S. Dist. Ct., N.D. (1994): number of signatures. Amendola v Miller, U.S. Dist. Ct, n.d., 1:96cv-2103 (1997): number of signatures. Esco v Secretary of State, E-53493, Fulton Co. Superior Court, 1998: number of signatures. Cartwright v Barnes, 304 F 3d 1138 (11<sup>th</sup> cir., 2002): number of signatures. Coffield v Kemp, 599 F.3d 1276 (2010): number of signatures.

**Idaho:** Nader v Cenarrusa, cv 00-503, U.S. Dist. Ct., 2000: number of signatures.

**Illinois:** Libt Party v Rednour, 108 F 3d 768 (7th cir., 1997). Nader v Keith, 385 F.3d 729 (7<sup>th</sup> cir. 2006). Summers v Smart, 65 F.Supp. 3d 556 (n.d. Ill. 2014).

**Kansas:** Hagelin for President Committee v Graves, 804 F Supp 1377 (1992).

**Maine:** *Maine Green Party v Diamond*, 95-318, U.S. Dist. Ct., 1995: definition of qualified party. *Maine Green Party v Secretary of State*, 96-cv-261, U.S. Dist. Ct., 1996: definition of political party.

**Maryland:** *Ahmad v Raynor*, R-88-869, U.S. Dist. Ct., 1988: number of signatures. *Creager v State Adm. Bd. of Election Laws*, AW-96-2612, U.S. Dist. Ct., 1996: number of signatures.

**Missouri:** *Manifold v Blunt*, 863 F 2d 1368 (8th cir. 1988).

**New Hampshire:** *Werne v Gov. of N.H.*, 84 F 3d 479 (1st cir., 1996).

**New Mexico:** *Parker v Duran*, 180 F Supp 3d 851 (2014).

**North Carolina:** *Nader v Bartlett*, 00-2040, 4th cir., 2000: number of signatures.

**North Dakota:** *Libertarian Party of N.D. v Jaeger*, 659 F 3d 689 (2011).

**Ohio:** *Schrader v Blackwell*, 241 F 2d 783 (6th cir., 2001). *State ex rel Fockler v Husted*, State Supreme Court, 2016-1863: rules for primary ballot access. *Libertarian Party of Ohio v Ohio Secretary of State*, state appeals court, 10<sup>th</sup> dist., 16APE-07-496: definition of political party.

**Oklahoma:** *Rainbow Coalition v Okla. State Elec. Bd.*, 844 F 2d 740 (1988). *Nader v Ward*, 00-1340, U.S. Dist. Ct., 1996: number of signatures. *Clingman v Beaver*, 544 U.S.581.

**Oregon:** *Libt Party v Roberts*, 737 P 2d 137 (Ore. Ct. of Appeals, 1987).

**Tennessee:** *Green Party of Tennessee v Hargett*, 882 F.Supp.2d 959 (m.d. 2012) and 953 F.Supp.2d 816 (m.d. 2013) (not to be confused with the case of the same name on how a party remains on the ballot). The final decisions are not reported and are 2016 US Dist Lexis 109161 (2016) and Sixth Circuit case 16-6299 (2017).

**Texas:** *Texas Indp. Party v Kirk*, 84 F 3d 178 (5th cir., 1996). *Nat. Comm. of U.S. Taxpayers Party v Garza*, 924 F Supp 71 (W.D. 1996). *Kennedy v Cascos*, 214 F.Supp.3d 559 (w.d. Tex, 2016).

**Virginia:** *Wood v Meadows*, 207 F 3d 708 (4th cir., 2000).

**Washington:** *Washington State Republican Party v Washington State Grange*, 876 F.3d 794 (2012).

**West Virginia:** *Fishbeck v Hechler*, 85 F 3d 162 (4th cir., 1996).

**Wyoming:** *Spiegel v State of Wyoming*, 96-cv-1028, U.S. Dist. Ct., 1996: petition deadline.

#### QUALIFIED EXPERT WITNESS

*Fishbeck v Hechler*, 85 F 3d 162 (4th cir. 1996, West Virginia case)

*Council of Alternative Political Parties v Hooks*, 999 F Supp 607 (1998, N.J.)

*Citizens to Establish Reform Party v Priest*, 970 F Supp 690 (E.D. Ark, 1996)

*Atherton v Ward*, 22 F Supp 2d 1265 (W.D.Ok. 1998)

*Calif. Democratic Party v Jones*, 530 US 567 (2000)

*Swanson v Bennett*, not reported, U.S. Dist. Ct., m.d.Ala. (02-T-644-N)

*Clingman v Beaver*, 544 U.S. 581.

*Green Pty v N.Y. Bd. Elec.*, 267 F Supp 2d 342 (EDNY 2003), 389 F.3d 411 (2<sup>nd</sup> 2004)

*Lawrence v Blackwell*, 430 F.3d 368 (6<sup>th</sup> cir. 2005)

*Hall v Merrill*, 212 F.Supp.3d 1148 (Alabama m.d. 2016)

*Graveline v Johnson*, 336 F.Supp.3d 801 (e.d. Mi. 2018), aff'm 747 F Appx 408 (6<sup>th</sup> cir. 2018)

*Green Party of Tennessee v Hargett*, 882 F.Supp.2d 959 (m.d. Tn. 2012); also 953 F.Supp.2d 816 (same)

*De La Fuente v Padilla*, 930 F.3d 1101 (9<sup>th</sup> cir. 2019)



**De La Fuente v State of Arizona**, 2:16cv-2419 (2019)

CASES IN WHICH DECISION MENTIONED MY EVIDENCE AND EITHER STRUCK DOWN OR ENJOINED THE LAW

**Hall v Merrill**, 212 F.Supp.3d 1148 (m.d. Ala. 2016), footnote 10. Eleventh Circuit later ruled that case was moot when it was decided and therefore vacated the decision, 902 F.3d 1294.

**Citizens to Establish a Reform Party in Arkansas v Priest**, 970 F.Supp.690 (e.d. 1996) at 695.

**Green Party of Arkansas v Priest**, 159 F.Supp.2d 1140 (e.d. 2001). Decision cites my evidence at p. 1143 but doesn't name me.

**Green Party of Arkansas v Daniels**, 445 F.Supp.2d 1056 (e.d. 2006) at 1059ff

**Libertarian Party of Arkansas v Thurston**, e.d. 4:19cv-214 (July 3, 2019)

**California Justice Committee v Bowen**, 2012 WL 5057625 (Oct. 18, 2012)

**Green Party of Georgia v Kemp**, 171 F.Supp.3d 1340 (n.d. 2016); aff'm, 674 F Appx 974 (11<sup>th</sup> cir. 2017)

**Gill v Scholz**, U.S. Dist. Ct., n.d. Ill. 16cv-3221. Court enjoined law and put candidate on ballot. Then the 7<sup>th</sup> circuit issued a one-sentence order removing the candidate from the ballot but not explaining why. Then another U.S. District Court Judge upheld law. Case is pending in the 7<sup>th</sup> circuit.

**Jones v McGuffage**, 921 F.Supp.2d 888 (2017) at 893.

**Lee v Keith**, 463 F.3d 763 (7<sup>th</sup> cir. 2006) at 766 (decision uses my evidence but does not name me)

**Libertarian Party of Illinois v Illinois State Bd. of Elections**, 164 F.Supp.3d 1023 (n.d. 2016). See footnote four.

**Graveline v Johnson**, 336 F.Supp.3d 801, aff'm 747 F Appx 408 (6<sup>th</sup> cir. 2018)

**Breck v Stapleton**, 6:18cv-87 (2017).

**Green Party of N.Y. v N.Y. State Board of Elections**, 389 F.3d 411 (2004) at 421

**Libertarian Party of Ohio v Blackwell**, 462 F.3d 579 (6<sup>th</sup> cir. 2006) at 589

**Libertarian Party of Ohio v Husted**, 2014 WL 11515569 (s.d. Oh. Jan. 7, 2014)(opinion misspells my surname as "Wagner")

**Libertarian Party of South Dakota v Krebs**, 290 F.Supp.3d 902 (2018)

**Libertarian Party of Tennessee v Goins**, 793 F.Supp.2d 1064 (m.d. 2010) at 1068

**Green Party of Tennessee v Hargett**, 882 F.Supp.2d 959 (m.d. 2012) at 976ff; on remand, 953 F.Supp.2d 816 (m.d. 2013) under heading "Parties' Expert Proof"

LIST OF ALL CASES IN LAST FOUR YEARS IN WHICH I TESTIFIED AT TRIAL OR AT DEPOSITION

**Green Party of Georgia v Kemp** (deposition 2015)

**Green Party of Tennessee v Hargett** (trial 2016)

**Libertarian Party of Illinois v Illinois State Election Board** (deposition 2017)

**De La Fuente v Padilla** (deposition 2017, California)

**Kennedy v Cascos** (court hearing 2016, Texas)

**Libertarian Party of South Dakota v Krebs** (trial 2018)

**Libertarian Party of Georgia v Raffensperger** (deposition 2019)

**Montana Green Party v Stapleton** (deposition 2019)  
**Sweeney v Crigler** (deposition 2019)

**SPEAKING ENGAGEMENTS: Colleges and Scholarly Meetings**

Panel of New York City Bar Association, 1994. Ballot access.  
Amer. Political Science Assn., nat. conventions of August 1995 and August 1996. Papers.  
Capital University School, law school class, Columbus, Ohio, 1996. Guest lecturer.  
Cal. State U., course in political science, Hayward, 1993 and 1996. Guest lecturer.  
San Francisco City College, course in political science, 1996 and 1997. Guest lecturer.  
Providence College, R.I., Oct. 1997, seminar on ballot access.  
Harvard U., JFK School of Gov't, Oct. 18, 1995, guest lecturer, ballot access.  
Voting Integrity Project national conference, Apr. 1, 2000, speaker on ballot access.  
Center for Voting & Democracy nat. conference, Nov. 30, 2003, speaker on ballot access.  
Robert Dole Institute of Politics, U. of Kansas, one of 5 panel members, Oct. 25, 2007.

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

DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )

v. )

Case No. 4:20-cv-00466--KGB

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

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**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "5"**

**2020 BALLOT ACCESS FOR A NEW PARTY OR  
INDEPENDENT CANDIDATE, U.S. SENATE**

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## 2020 BALLOT ACCESS FOR A NEW PARTY OR INDEPENDENT CANDIDATE, U.S. SENATE

STATE	LEGAL REQUIREMENT	ELECTION CODE REFERENCE	REQUIRED	%
Ala	3% of gub. vote in 2018	17-9-3(a)(3)	51,588	2.43
Alas	1% of 2016 vote cast	15.25.160	3,213	1.01
Az	3% of reg. indps as of March 2020	16-341.E	37,769	1.47
Ark	number stated in law	7-7-103(2)	10,000	.88
Cal	65 sigs., then place 1 <sup>st</sup> or 2 <sup>nd</sup> in pri	Elec. code sec. 8062	65	.00+
Colo	number stated in law	1-4-801	10,500	.38
Ct	number stated in law	9-453(d)	7,500	.46
Del	1% of Dec. 2019 registration	Title 15, §3002	7,118	1.60
Fla	pay filing fee	99.0955	0	.00
Ga	1% of reg. voters, Oct. 2018	21-2-170	64,534	1.57
Hi	number stated in law	Title 2, 12-6	25	.00+
Id	number stated in law	34-708, 34-617ff	1,000	.14
Il	number stated in law	10 ILCS 5/10-3 & court order	2,500	.05
In	2% of 2018 sec of state vote	3-8-6-3	44,935	1.64
Io	number stated in law	Title 4, §45.1	1,500	.10
Kan	number stated in law	25-303	5,000	.42
Ky	number stated in law	Title 10, §118.315(2)	5,000	.26
La	just pay filing fee	Title 18, §464.B(1)	0	.00
Me	number stated in law	Title 21, §494.5	4,000	.53
Md	number stated in law	Art. 33, sec. 5-703(e), amd 2017	10,000	.36
Ma	number stated in law	Chap. 53, §6	10,000	.30
Mi	number stated in law & court ruling	168.544 & court ruling	12,000	.25
Mn	number stated in law	204B.08	2,000	.07
Ms	number stated in law	23-15-359	1,000	.08
Mo	number stated in law	Title 9, §115.321	10,000	.36
Mt	5% of winner vote Senate 2018	13-10-601	12,694	2.55
Neb	number stated in law	32-504(2)(c)	4,000	.47
Nev	number stated in law	Title 24, §293.200	250	.02
NH	number stated in law	Title 4, §655:42	3,000	.40
NJ	number stated in law	19:13-5	800	.02
NM	2% of 2018 gub. vote	1-8-51	13,932	1.75
NY	number stated in law	Chap. 17, §6-142	15,000	.20
NC	1.5% of 2016 gub. vote	163-122	70,666	1.49
ND	number stated in law	16.1-11-30	1,000	.29
Oh	number stated in law	3517.01	5,000	.09
Ok	just pay filing fee	Title 26, §5-112 & 6-106	0	.00
Ore	1% of 2016 pres. vote	§249.735	20,014	1.00
Pa	court order of June 30, 2016	<i>Constitution Party v Cortes</i>	5,000	.08
RI	number stated in law	17-14-7	1,000	.22
SC	number stated in law	7-11-70	10,000	.48
SD	1% of 2018 gub. vote	12-7-1	3,393	.92
Tn	number stated in law	2-505	25	.00+
Tx	1% of 2018 gub. vote	Elec. code 142.007	83,435	.93
Ut	number stated in law	20A-9-501	1,000	.09
Vt	number stated in law	Title 17, §2402(b)	500	.17
Va	number stated in law	24.2-506	10,000	.25
Wa	pay fee, then place 1 <sup>st</sup> or 2 <sup>nd</sup> in primary	29A.24.091	0	.00
WV	1% of 2018 U.S. Senate vote	3-5-23	5,861	.82

"Requirement" is the no. of signatures to get on the Nov. ballot. "%" means the requirement, divided by the number of votes cast for president in 2016. Chart prepared May 16, 2020. When states have more than one procedure, the easier one is listed. Although not every state has a US Senate election in 2020, any state could have one if a special election were called.

2020 BALLOT ACCESS FOR A NEW PARTY OR INDEPENDENT CANDIDATE, U.S. SENATE

STATE	LEGAL REQUIREMENT	ELECTION CODE REFERENCE	REQUIRED	%
Wis	number stated in law	Title 2, §8.20(4)	2,000	.07
Wy	2% of 2018 US House vote	22-4-402(d)	4,018	1.57

"Requirement" is the no. of signatures to get on the Nov. ballot. "%" means the requirement, divided by the number of votes cast for president in 2016. Chart prepared May 16, 2020. When states have more than one procedure, the easier one is listed. Although not every state has a US Senate election in 2020, any state could have one if a special election were called.

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF ARKANSAS  
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DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )  
v. )  
JOHN THURSTON, in his official capacity as )  
Secretary of State for the State of Arkansas, )  
.....Defendant.)

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Case No. 4:20-cv-00466--KGB

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**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "6"**

**AMENDED ORDER OF APRIL 30, 2018,  
DKT. NO. 96, IN MOORE v. MARTIN,  
CASE NO. 4:14-cv-00065--JM**

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

MARK MOORE and MICHAEL HARROD

PLAINTIFFS

v.

4:14CV00065 JM

MARK MARTIN in his official capacity as  
Arkansas Secretary of State

DEFENDANT


AMENDED ORDER

The Court's Amended Order of January 31, 2018 is amended as follows:

38. Plaintiff may file his petition to run for office as an independent candidate, political practices pledge, affidavit of eligibility, and notice of candidacy on or before May 1, 2018.

IT IS SO ORDERED this 30<sup>th</sup> day of April, 2018.

NUNC PRO TUNC January 25, 2018.

  
James M. Moody Jr.  
United States District Judge

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

DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )

v. )

Case No. 4:20-cv-00466--KGB

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

---

**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "7"**

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

---





JOHN THURSTON

ARKANSAS SECRETARY OF STATE

July 29, 2019

Dr. Michael Pakko  
1400 Lake Vista Drive  
Fayetteville, 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 § 7-7-05(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.

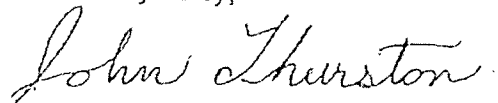
Before our office provides a certificate that the Libertarian Party of Arkansas has complied with the court order requiring us to recognize it as a new political party in Arkansas—despite your failure to satisfy the petition requirements for new political parties under Arkansas law—please submit an affidavit, 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:

State Capitol • Suite 256 • 500 Woodlane Street • Little Rock, Arkansas 72201-1094  
501-682-1010 • Fax 501-682-3510  
e-mail: [arsos@sos.arkansas.gov](mailto:arsos@sos.arkansas.gov) • [www.sos.arkansas.gov](http://www.sos.arkansas.gov)

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,

A handwritten signature in cursive script that reads "John Thurston".

John Thurston  
Arkansas Secretary of State

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

DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )

v. )

Case No. 4:20-cv-00466--KGB

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

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**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "8"**

**LETTER OF DECEMBER 10, 2019, FROM JOHN  
THURSTON, ARKANSAS SECRETARY OF  
STATE, TO DR. MICHAEL PAKKO**

---



JOHN THURSTON  
—  
ARKANSAS SECRETARY OF STATE

December 10, 2019

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

RE: New Political Party Petition – Libertarian Party of Arkansas

Dear Dr. Pakko,

This letter supersedes the letter sent to your attention on July 29, 2019. Our office inadvertently included the wrong count of valid signatures in the original letter. We apologize for this occurrence.

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 14,779 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.

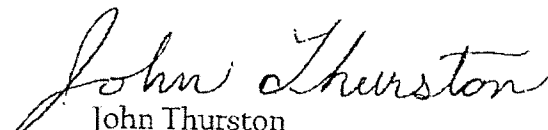
Please be aware that our office has appealed that order to the U.S. Court of Appeals for the Eighth Circuit. If we prevail on that appeal, then the court order preliminarily enjoining our office from complying with Arkansas law will no longer have any effect. In that event, we will be required to comply 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

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

DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )  
 )  
v. )  
 )  
JOHN THURSTON, in his official capacity as )  
Secretary of State for the State of Arkansas, )  
.....Defendant.)  
\_\_\_\_\_ )

Case No. 4:20-cv-00466--KGB

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**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "9"**

**SUPPLEMENTAL  
DECLARATION OF DAN WHITFIELD**

---

DECLARATION OF DAN WHITFIELD

I, Dan Whitfield, of legal age and being first duly sworn, do hereby depose and say:

1. I am a Plaintiff in the above-entitled action, a current Independent candidate for U.S. Senator from Arkansas, conducted a petition drive to appear on the 2020 general election ballot in Arkansas as an Independent candidate for U.S. Senator, and make this second Declaration in support of Plaintiffs' Motion for Preliminary Injunction filed in the instant case and as a Supplemental Declaration to my previous Declaration dated April 29, 2020.

2. I make this declaration based on my own personal knowledge. I am over 18 years of age, a resident of Bella Vista, Arkansas, a registered voter in the State of Arkansas, and a citizen of the United States of America.

3. I have read the Declaration of Meghan Cox filed in this case on May 14, 2020, along with the Answer and brief of the Secretary of State, Mr. Thurston, along with the Declaration of Peyton Murphy, also filed on May 14, 2020.

4. Meghan Cox has never spoken with me or questioned me as to my petitioning campaign to obtain ballot access as an Independent candidate for the United States Senate from Arkansas in 2020. Therefore, she does not know that I had more than 600 private volunteers request petition sheets to be mailed to them to be signed by their friends and family, that I had 27 publicly identified volunteers in which Arkansas voters could contact in order to sign a petition for my candidacy, that I had petitions placed in 12 businesses for people to sign which were directly affected by COVID-19, that I had 150 members in my volunteers Facebook group, that my wife and daughter went door to door collecting while I was at work, that my volunteers went door to door collecting, that I sat in front of federal building for hours collecting myself, and also that I am still receiving petition signatures by mail in which some were in my PO Box on May 1,

2020—and I was unable to turn in due to traveling to Little Rock. When my petitions were turned in on May 1, 2020, before noon, there were 6,514 petition signatures for my independent United States Senate bid for this year. I live streamed the entire turn-in process on May the first.

5. After February, it was very difficult in conducting my petition drive because of the advent of the coronavirus and the resulting fear of it by both voters and my petitioners. While I have read Meghan Cox's suggestions and plans for what she could have done for my petitioning effort, I believe I did do some of those things but the reality was that my petitioning really went down hill after February and I cannot afford what I assume are the high costs charged by someone like Meghan Cox. 98.1% of my petitions came from unpaid supporters. I did not spend tens of thousands of hard-working Arkansas donations on petitioning as we are a 100% grassroots campaign that takes no money from political parties, political action committees, corporations, or billionaires. Also, it is one thing to speculate and make conjectures of what could have been done, and something else to try to do it as my campaign has done. I am sure that but for the coming of the coronavirus (COVID-19), my petitioning drive would have been successful this year, particularly with the Democratic candidate for United States Senate dropping out after the filing deadline.

6. I also see where Meghan Cox in her Declaration does not mention that since the requirement for statewide independent candidate petitions was set at a minimum of 10,000 valid petition signatures, only three statewide independent candidates have successfully petitioned for ballot access in Arkansas (1978—John Black for United States Senate, 2006—Rod Bryan for Governor, and 2010—Trevor Drown for United States Senate), and none have been able to meet the 10,000 requirement since 2010. I would like to reiterate that 98.1% of our signatures this year were from unpaid volunteers.



7. As an Independent candidate, I had to declare my candidacy during the party filing period of November 4 through 11, 2019, almost one year before the general election and many months before the political parties even select their nominees in Arkansas by primary election or nominating convention. Meghan Cox comments about this notice requirement but doesn't say anything about the early dates in November of 2019 when we had to have our notice of candidacy and other papers in. In fact, she doesn't mention the dates in November at all as to the party filing period. I see no reason for this omission by her or even this early requirement for Independent candidates in Arkansas. All this was done by me in planning my petition campaign to begin in February.

8. I have personal knowledge of the facts alleged in the aforesaid Motion filed herein and the Complaint filed in this action, and I understand that any false statements made herein will subject me to the penalties of perjury.

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

Dated at Bella Vista, Arkansas, this 17<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_  
DAN WHITEFIELD

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

DAN WHITFIELD and GARY FULTS )

.....Plaintiffs )

v. )

Case No. 4:20-cv-00466--KGB

JOHN THURSTON, in his official capacity as )

Secretary of State for the State of Arkansas, )

.....Defendant.)

---

**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "10"**

**SUPPLEMENTAL  
DECLARATION OF GARY FULTS**

---

DECLARATION OF GARY FULTS

I, Gary Fults, of legal age and being first duly sworn, do hereby depose and say:

1. I am a Plaintiff in the above-entitled action, a current Independent candidate for State Representative for State House District 27 in Arkansas, conducted a petition drive to appear on the 2020 general election ballot in Arkansas as an Independent candidate for State Representative, and make this second Declaration in support of Plaintiffs' Motion for Preliminary Injunction filed in the instant case and as a Supplemental Declaration to my previous Declaration dated April 28, 2020.

2. I make this declaration based on my own personal knowledge. I am over 18 years of age, a resident of Hensley, Arkansas, a registered voter in the State of Arkansas, and a citizen of the United States of America.

3. I have read the Declaration of Meghan Cox filed in this case on May 14, 2020, along with the Answer and brief of the Secretary of State, Mr. Thurston, along with the Declaration of Peyton Murphy, also filed on May 14, 2020.

4. Meghan Cox has never spoken with me or questioned me as to my petitioning efforts this year. If she had she would have learned that both my wife and I had upper respiratory illnesses for several weeks in February 2020, which affected the beginning of my petitioning efforts this year. I have had a petitioning company which has been successful in Arkansas previously in petitioning for state amendments and initiatives since 2011, and even with my illness in February, I thought I could be successful by May 1, 2020, in getting the 286 valid petition signatures I needed. The events of the last several months are unprecedented in the petitioning process. I have successfully gotten two different amendments and initiatives placed on the Arkansas ballot: 2012 and 2016. On March 2, 2020, we had begun to have paid

canvassers and at that time had five out gathering and in normal times there would be festivals, concerts, and other large events in every county and thousands of signatures would have been gathered. As to my candidacy I had three petitioners helping me but experienced increasing difficulty from early March to late April. It was particularly difficult in conducting a petition drive in the months of March and April because of the advent of the coronavirus and the resulting negative impact on trying to approach Arkansas registered voters to sign petitions. My petitioners were very discouraged. Meghan Cox does not mention that most people are afraid of catching the coronavirus. I believe I could have achieved the necessary petition signatures if the coronavirus had not happened. Because of the foregoing, I also tried to gather signatures by mailing petitions to voters, but was not successful to any significant extent. I mailed out petitions to 820 voter addressees in State House District 27 with multiple registered voters at each address. This cost me \$900.00. Out of the 820 letters I mailed I got 62 signatures returned. This cost took all my campaign funds plus some personal expenses.

5. I have looked at Meghan Cox's statements of what I should have done; however, I do not see where she was involved in any petitioning in Arkansas this year under our difficult and unique circumstances. Also, I do not have the funds to pay for someone like her and her organizations. In fact, the money I spent previously and on the unsuccessful mailings was all I could afford. I did not even have funds to pay legal fees.

6. I also see where Meghan Cox stated in her Declaration that she is an independent registered voter. However, her entry in Ballotpedia (Plaintiffs' Exhibit "11" attached as a part of this Declaration) shows her heavily involved with Republican candidates and causes.

7. I had hoped to submit around 500 petition signatures in order to have 286 valid petition signatures for State House District 27. On May 1, 2020, I turned into the Secretary of

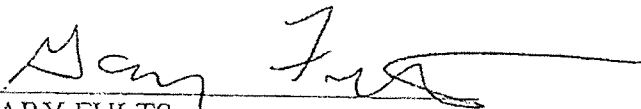
State's office in Little Rock petition signatures for my Independent candidacy for State House District 27 numbering 128, of which I believe at least 108 were valid.

8. In a letter signed on April 6, 2020, six Independent candidates—including myself, sent a letter to Governor Hutchinson asking him to reduce the number of signatures required due to the amount of time lost because of the coronavirus threat. I see where only two candidates were successful, although it is not shown how many signatures were turned in or how many were valid for Ms. Jones or Mr. Talley.

9. I have personal knowledge of the facts alleged herein, and I understand that any false statements made herein will subject me to the penalties of perjury.

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

Dated at Hensley, Arkansas, this 17 day of May, 2020.

  
GARY FULTS

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

DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )  
 )  
v. )  
 )  
JOHN THURSTON, in his official capacity as )  
Secretary of State for the State of Arkansas, )  
.....Defendant.)  
\_\_\_\_\_ )

Case No. 4:20-cv-00466--KGB

---

**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "11"**

**ENTRY IN BALLOTPEDIA  
FOR MEGHAN COX**

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# BALLOT

Subscribe to *Documenting America's Path to Recovery* to find out about states' reopening plans

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VISIT SITE

# Meghan Cox

Meghan Cox co-founded the Lincoln Strategy Group with Nathan Sproul.

## Career

Meghan Cox co-founded the firm Lincoln Strategy Group, formerly known as Sproul and Associates. Lincoln Strategy Group is a campaign management and corporate public affairs firm with offices in Phoenix, London, Barcelona, and Washington, D.C..

Cox has led corporate grassroots campaigns for Americans for Clean Coal Electricity, Wynn Las Vegas, The Navajo Nation, Philip Morris International, British American Tobacco, the National Restaurant Association and the National Realtors Association. She has also directed grassroots campaign efforts for Schwarzenegger for Governor, Dan Coats for Senate (R-IN), Scott Brown for Senate (R-MA), Dan Sullivan for Senate (R-AK), Roy Blunt for Senate (R-MO) and Mike Rounds for Senate (R-SD).

Cox studied political science at Arizona State University. In 2016, she was named one of the top 40 political consultants under the age of 40 by the American Association of Political Consultants (AAPC). In 2018, she was named as one of the most outstanding women in business by the *Phoenix Business Journal*.

## Recent news

The link below is to the most recent stories in a Google news search for the terms **Meghan Cox Arizona**. These results are automatically generated from Google. Ballotpedia does not curate or endorse these articles.

### Meghan Cox - Google News

Meghan Cox



#### Basic facts

**Organization:** Lincoln Strategy Group

**Role:** Co-founder

**Location:** Tempe, Ariz.

**Education:** Arizona State University

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

DAN WHITFIELD and GARY FULTS )  
.....Plaintiffs )  
 )  
v. )  
 )  
JOHN THURSTON, in his official capacity as )  
Secretary of State for the State of Arkansas, )  
.....Defendant.)  
\_\_\_\_\_)

Case No. 4:20-cv-00466--KGB

---

**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "12"**

**ADMINISTRATIVE ORDER FIVE  
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
FILED APRIL 17, 2020**

---



**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
APR 17 2020  
OPEN COURT  
JAMES W. McCORMACK, CLERK  
BY: \_\_\_\_\_  
DEPUTY CLERK

IN RE: COURT OPERATIONS DURING THE COVID-19 PANDEMIC

ADMINISTRATIVE ORDER FIVE

The United States District Court for the Eastern District of Arkansas remains open to the public. Between mid-March and mid-April, the clerk’s office opened more than two hundred cases and closed a similar number. More than twenty-three hundred orders have been entered. Counsel have filed more than two thousand documents. And the Court has held ninety-three hearings, a third of them by video conference. Almost thirteen hundred people remain under the supervision of the pretrial services and probation office. All this work has been done by the dedicated people who make our Court go: lawyers, clerk’s office staff, U.S. marshals, probation officers, the cleaning crew, court security officers, maintenance workers, chambers staff, and judges.

There are now more than sixteen hundred confirmed cases of COVID-19 in Arkansas. The peak in active cases statewide is expected in early May—a date that has been pushed back as physical distancing has slowed the virus’s spread. To maintain that pattern, public-health officials continue to recommend distancing, avoiding gatherings of more than ten people, and wearing masks in public. The Court, too, must extend some of the steps it has taken to respond to the virus—reducing risk, while continuing to do the public’s law business in the teeth of uncertainty.

First, all civil and criminal jury trials scheduled through 29 May 2020 are continued pending further order of the Court. The Court hopes that jury trials will resume in June and is planning for that resumption.

Second, all grand jury proceedings through 29 May 2020 are continued pending further order of the Court. The Court expects to summon one of the grand juries for a June session.

Third, because of the Court's inability to call and retain safely an adequate number and cross section of jurors – and because following public-health recommendations will affect the availability of clients, counsel, members of the public, and court staff to be present in the courtroom – the Court specifically finds that the ends of justice served by continuing all criminal jury trials and grand jury proceedings scheduled between now and May 29th outweigh both the public's interest and each defendant's interest in a speedy trial or speedy indictment. The period of delay caused by the continuances implemented in this Administrative Order are therefore excluded under the Speedy Trial Act. 18 U.S.C. § 3161(h)(7)(A) & (B).

Fourth, any criminal defendant seeking an exception to this Administrative Order may do so for good cause. The defendant must file a motion with the district judge assigned to the matter. No exception will be granted, however, without the concurrence of the chief judge after consultation with the Court.

Fifth, all the judges of this Court will continue to hold hearings, conferences, and bench trials in civil and criminal cases in accordance with

the guidelines in Administrative Orders Two and Three. When practicable, they will do so by video conference or telephone. Each judge retains complete authority to manage his or her docket.

Sixth, all active and senior United States district judges and all United States magistrate judges for the Eastern District of Arkansas have concurred in this Administrative Order.

So Ordered.

*D.P. Marshall Jr.*

\_\_\_\_\_  
D.P. Marshall Jr.

Chief Judge

*17 April 2020*