# RECORD NO. 20-13356

In The

# United States Court Of Appeals
# For The Eleventh Circuit

**LIBERTARIAN PARTY OF ALABAMA,**
***Plaintiff – Appellant,***

**v.**

**JOHN HAROLD MERRILL,**
**Secretary of State for the State of Alabama,**
***Defendant – Appellee.***

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT**
**FROM THE MIDDLE DISTRICT OF ALABAMA**

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# BRIEF OF APPELLANT

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**David I. Schoen (SCHO036)**
**DAVID I. SCHOEN, ATTORNEY AT LAW**
**2800 Zelda Road, Suite 100-6**
**Montgomery, AL 36106**
**(334) 395-6611 – Telephone**
**(917) 591-7586 – Facsimile**
**DSchoen593@aol.com**
**Schoenlawfirm@gmail.com**

***Counsel for Appellant***

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

**LIBERTARIAN PARTY OF ALABAMA,**

**Appellant,** **Docket No. 20-13356-J**

**v.**

**JOHN HAROLD MERRILL,**
**Secretary of State of the State of Alabama,**

**Appellee.**

## APPELLANT'S CERTIFICATE OF INTERESTED PERSONS ("CIP") (Amended)[1]

The undersigned counsel for Appellant hereby certifies that the following persons have an interest in the outcome of this case:

1. Adams, Jerusha T., Magistrate Judge;

2. Alabama Attorney General's Office;

[1] Appellant has amended its Certificate of Interested Persons to match the Certificate of Interested Persons entered by the Appellee in the above-captioned case on September 21, 2020. Appellant respectfully submits that the Appellee's Certificate of Interested Persons includes people who do not full within the description provided in 11th Cir. R. 26.1-2 of persons who have an interest in the outcome of the case. For example, some are simply witnesses in the case below whose deposition the Appellee chose to take, one is an individual employee of the Alabama Secretary of State's Office, and three others are simply expert witnesses in the case. However, all persons included in the Appellee's CIP are included in this Amended CIP and will be included in future CIP filings in the interest of erring by over-inclusion, rather than under-inclusion.

3. Alabama Secretary of State's Office;

4. Bowdre, A. Barrett;

5. Boyd, Elijah;

6. Dillman, Frank;

7. Doyle, Stephen Michael, Magistrate Judge;

8. Frankel, Paul;

9. Helms, Clay S.;

10. Hershey Morjorie R.;

11. LaCour, Edmund G., Jr.;

12. Lane, Laura;

13. Libertarian Party of Alabama;

14. Marks, Emily C., Chief U.S. District Judge;

15. Marshall, Steve;

16. Merrill, John H.;

17. Messick, Misty Shawn Fairbank;

18. Redpath, William;

19. Reeves, Michael E.;

20. Schoen, David I.;

21. Shelby, J. Matthew;

22. Sinclair, Winfield James;

23. Ward, Douglas;

24. Winger, Richard.

Respectfully Submitted,

/s/ David I. Schoen
Counsel for Appellant

David I. Schoen, Attorney at Law
2800 Zelda Road, Suite 100-6
Montgomery, Alabama 36106
Tel. 334-395-6611; Fax: 917-591-7586
E-Mail: Dschoen593@aol.com; Schoenlawfirm@gmail.com

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## STATEMENT REGARDING ORAL ARGUMENT

The Court would benefit from holding oral argument, under Rule 34, Federal Rules of Appellate Procedure, for a number of significant reasons. This case involves an important constitutional issue that implicates the First and Fourteenth Amendment rights of Alabama voters and candidates for elective political office. The decision below is irreconcilable with every decision on the exact issue involved in this case from every court around the country that has decided it, including a summary affirmance by the United States Supreme Court on the exact issue. *See* 11th Cir. R. 28-1(c).

## STATEMENT OF JURISDICTION

The lower court had jurisdiction in this 42 U.S.C. §1983 ballot access - election law civil action pursuant to 28 U.S.C. §1331. This Court has jurisdiction to hear this appeal from the district court's final judgment granting the Appellee's motion for summary judgment under 28 U.S.C. §1291.

## STATEMENT OF THE ISSUE

Whether it violates the First and Fourteenth Amendments to the United States Constitution for Alabama to discriminate against minor political parties by providing copies of the computerized, taxpayer-funded, state voter registration list free of charge to major political parties, while requiring minor political parties to pay an exorbitant fee ($35,912.76) to obtain a copy?

## STATEMENT OF THE CASE

### A. The Course of Proceedings

On January 23, 2019, Appellant, Libertarian Party of Alabama "LPA" or "Appellant") filed a Complaint in the United States District Court for the Middle District of Alabama, seeking declaratory relief and permanent injunctive relief under 42 U.S.C. §1983, challenging the constitutionality of Alabama's law that expressly discriminates against minor political parties by providing for Alabama's major political parties to receive copies of the State's taxpayer-funded electronically maintained voter registration list free of charge, while requiring

minor political parties to pay approximately $36,000 to obtain a single copy of the list - a list that is distributed in a single email [ECF# 1] *See* §§17-4-33; 17-4-38, *Code of Alabama* (1975)(as amended).[1]

On February 19, 2019, the Appellee filed a motion to dismiss under Rule 12(b)(6) [ECF# 5]. On March 5, 2019, the LPA filed its response in opposition to the motion to dismiss [ECF# 7]. On March 12, 2019, the Appellee filed its reply [ECF# 8]. On July 14, 2019, while the motion to dismissed remained under advisement in the district court, the LPA filed a notice of recent relevant authority [ECF# 9].

On August 28, 2019, the lower court denied the Appellee's motion to dismiss [ECF# 10]. On September 11, 2019, the Appellee filed his Answer to the Complaint [ECF# 12].

On January 30, 2020, after the LPA provided its expert reports pursuant to Rule 26 of the Federal Rules of Civil Procedure, Merrill filed objections to the reports [ECF# 18]. The lower court issued an Order directing the LPA to show the cause as to why its expert reports should not be stricken on January 31, 2020 [ECF# 19]. The LPA filed its response to the Show Cause Order on February 8, 2020 [ECF# 20] and Merrill filed his reply on February 10, 2020 [ECF# ]

On April 21, 2020, Appellee Merrill filed his evidentiary submission in support of a summary judgment motion, [ECF# 28], and filed his motion for

[1] The relevant Code provisions are provided in an Addendum.

summary judgment with supporting memorandum on April 22, 2020 [ECF## 29, 30]. Also, on April 22, 2020, Merrill filed motions once again to exclude the testimony of the LPA's to exclude testimony from the LPA's expert witnesses [ECF## 31, 32]. On April 23, 2020, the lower court ordered the LPA to respond to the motions to exclude the testimony of its expert witnesses [ECF# 33].

On May 28, 2020, the LPA filed its responses to Merrill's motions for summary judgment and to exclude the LPA's expert testimony [ECF## 38, 39]. The LPA filed a supplement to its response to the motions to exclude testimony on June 1, 2020 [ECF# 40]. On June 3, 2020, Merrill filed his reply in further support of his motions to exclude the testimony of the LPA's expert witnesses [ECF# 42]. On June 4, 2020, Merrill filed his reply in support of his motion for summary judgment [ECF# 43]. On June 8, 2020, Merrill filed a response to the Court's Show Cause Order [ECF# 44]. The district entered an Order granting the LPA leave to file its supplemental response on the motions to exclude the LPA's expert witnesses' testimony and giving Merrill additional time to file a response to the LPA's supplemental response [ECF# 45]. On June 16, 2020, Merrill filed its supplemental reply in further support of its motion to exclude the LPA's expert testimony [ECF# 46].

On June 19, 2020, the LPA filed notice of recent relevant authority [ECF# 47]. On June 24, 2020, Merrill filed his response to the LPA's notice of recent relevant authority, [ECF# 48], and on June 25, 2020, the LPA filed its reply to the

response [ECF# 49]. On July 15, 2020, the LPA filed an additional notice of relevant recent authority [ECF# 50]. On August 4, 2020, Merrill filed a notice of recent relevant authority [ECF# 51] and the LPA filed a response to that notice also on August 4, 2020 [ECF# 52].

On August 5, 2020, the lower court issued its memorandum Opinion and Order granting summary judgment in favor of Appellee Merrill, overruling Merrill's objections to the expert reports submitted by the LPA and denying Merrill's motions to exclude the testimony of the LPA's expert witnesses [ECF# 53] and it issued its final judgment [ECF# 54]. On September 2, 2020, the LPA timely filed its notice of appeal [ECF# 55].

## B. Statement of the Facts

The following is a summary of facts in the record below that are directly relevant to the issues in this appeal. Fed. R. App. 28(a)(7); 11th Cir. R. 28-1(h)(i)(ii). Other relevant facts will be discussed in the Argument section.

### 1. The Appellee Provides the Voter Registration List, Paid For by Alabama Taxpayers, Free of Charge to the Democrative and Republican Parties, and to Many People, Groups, and Agencies Inside and Outside of Alabama, While Charging Alabama Minor Political Parties $35,912.76.

The Appellee ("Merrill") is required by Alabama law to compile and maintain a current statewide voter registration list at public expense and to maintain it in electronic/digital format. *See e.g.*, §17-4-38.1, Code of Alabama (1975).

The voter registration list compiled and maintained by the Appellee is used as the official list at voting locations to determine who is eligible to cast a vote in any given election and officials at each local election location have full access to all statewide voter registration information. §17-4-33(9); [ECF# 12 at ¶7].

The voter registration list must contain, *inter alia*, the name, address, and voting location for each registered voter and each voter's voting history. §§17-4-33(2)&(4).

The major political parties - in Alabama, historically this means the Republican and Democratic parties - get copies of the statewide voter registration list for free under §17-4-33(10). The list is provided for free to many others as well:

The Administrative Office of the Courts gets a free statewide voter registration list each year. §17-4-38(f). Any chief elections officer of any one or of all 50 states, can have a free copy of Alabama's statewide voter registration list, simply by asking for it and agreeing to reciprocate with a free copy of their state's list and Merrill is free to enter into any agreement he likes with any other state regarding the exchange of voter registration lists. §17-4-38(g). [ECF# 12 at ¶18]

Merrill also provides the computerized statewide voter registration list or "immediate electronic access to the information in it" free of charge to any election official in the state under 52 U.S.C. §§21083(a)(1)(A)(v) and (viii) and coordinates

the computerized list with and provides it for free to a whole host of other state agencies, including the head of the state motor vehicle authority. [ECF# 28-2 at 143].

Merrill also provides a free copy of the list to members of the legislature "to facilitat[e] communication between Members of the Alabama Legislature and the constituents whom they have been elected to represent." [ECF# 28-2 at 144]. Merrill also provides the list to other parties in litigation, when he deems it to have been properly demanded. [ECF# 28-2 at 144; 148].[2]

Perhaps most significantly, notwithstanding his claims of hardship or burden in having to produce the statewide voter registration list for free to Alabama's own minor political parties [ECF# 5-1 at ¶¶33-34], Merrill acknowledged that he joined the Electronic Registration Information Center, Inc "ERIC" in October of 2015. Since then Merrill has provided and continues to provide a free copy of a "data file containing the statewide voter registration list to ERIC **on a monthly basis** ...." [ECF# 28-2 at 149](Emphasis added).[3]

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[2] The Appellee's assertion that it produces the list for free in litigation in "complying with its responsibilities as a litigant in State or federal court" [ECF# 28-2 at 144], is disingenuous. In this case, Merrill refused to produce the list in discovery, asserting that "[T]he statewide registration list is 'not relevant to any party's claim or defense. Fed. R. Civ. P. 26(b)(1)." [ECF# 38-1].

[3] Merrill also agreed to provide Alabama's statewide voter registration list to other states' Secretary of State's offices through a Memorandum of Understanding for Interstate Voter Registration Data Comparison into which the Appellee entered. [ECF# 28-2 at 149].

In discovery, Merrill acknowledged that all that would be required to provide the LPA with a copy of the state voter registration list would be to send by email. All of this rather sharply undercuts the lower court's findings that the state's claimed "administrative interests" justify the discriminatory fee imposed on minor parties. [ECF# 53 at 21-23].

**2. The Statewide Voter Registration List is Vitally Important to a Political Party Seeking Ballot Access and the Election of Its Candidates.**

It is indisputable that the voter registration list in Alabama is very valuable to a political party. The evidence is uncontroverted. Having the list gives a political party a distinct advantage in seeking to gain ballot access and get votes, along with other major benefits. This undeniable fact is supported by the case law cited below, by political researchers, by the testimony of the witnesses Merrill e deposed, by experienced fact witness William Redpath [ECF# 38-5 Pages 2-3] and expert witness Richard Winger [ECF# 38-6, ¶¶6-8]. The following are just some of the ways the list is important to a minor political party seeking ballot access, seeking to grow and bring its message to a larger audience of Alabama citizens, and seeking to get candidates, voters, and to win elections - the goals of the LPA, all as established in the unrebutted testimony of these key witnesses:

A. The voter registration list allows a political party to know the number of voters in a political voting location so as to know what voting locations the political party might want to prioritize in its efforts to gain support among the electorate.

B. The voter registration list allows a political party, among other advantages, to reach out directly to registered voters by name and at their home, to solicit their support at the ballot box and with the party's platform, to communicate political speech directly to voters to whom the political speech on specific political issues might most directly apply and to introduce specific voters to prospective or active candidates most relevant to such voters.

C. The voter registration list is vitally important to a party's ability to grow and disseminate its political message and to seek out and have its members associate with politically like-minded voters in order to solicit and obtain ballot access signatures and to win elections for party candidates.

A political party which does not have copy of the voter registration list is placed at a distinct disadvantage in its efforts to gain ballot access and to solicit and win votes. [ECF## 38-5; 38-6].

The following are some examples from uncontroverted record testimony by LPA officers and candidates of ways the voter registrations lists are vitally important in the ballot access petitioning process, the educating and advocacy process, building a party, and for campaigning and getting votes:

**[ECF# 28-19 - LPA Chair, Laura Lane**] - at 84-85 (voter registration list to validate signatures; at 92-93 - voter registration list for dividing up voters to contact and walk the precinct, use it for mailing like Democrats and Republicans do, send out educational materials to voters on the list, at 94-95 - use the voter list to go door to door; for ballot access, campaigning, and educating voters, at 96 - will probably get it for the presidential campaign, at 97-98 - need the statewide list to have a better chance of reaching out to field candidates];

[**ECF# 28-16 - Matt Shelby**] - at 23-25 - voter registration list is very important to have to petition for ballot access signatures; list provides a good guide for targeting registered voters for ballot access signature petitions; at 33 - to check signatures; at 36 - when canvassing to identify homes with registered voters and skip homes without registered voters; without the list likely would have cost him a lot more time and would have ended up with 100 invalid signatures; at 37; 57 - with the information on the voter list, he could get prospective voters to talk more easily; at 53 - would have liked to have had an updated voter registration list for Baldwin County because of its dynamic growth, but too expensive for him to buy; 55-56 - main things he used the list he had for was door-to-door canvassing and mailings];

**[ECF# 28-15 - Frank Dillman]** - at 32-33- - used voter list most productively to knock on doors; at 34 - would have liked to have had a voter list for whole area of the office he was seeking, but he could not afford it; at 38 - used the list for

campaigning over the phone; at 46-47 - used the list to know which houses to go to and which to filter out; at 53; 76 - he had to buy the list to get it; at 58 - he would have liked to have had a list for 2018 campaign; at 59-60 - list would be most important to him for current campaign];

**[ECF# 28-14 - Michael E. Reeves]** - at 25-26 - used list to focus on going door to door for ballot access signatures, targeting only registered voters, but only list he had was old and not so useful and he could not afford a new list; 27- list is very important to held ensure signatures for petition are from valid registered voters; at 43 - would consider using the list for mailers; at 48 - could not afford to buy an updated list];

**[ECF# 28-18 - Doug Ward]** - at 48 - getting ballot access petition signatures without a voter registration list is almost impossible; at 51 - list helps cut down time dramatically going door to door for signatures; at 52 - list helps make sure signature is written in same manner as registration to avoid having signatures invalidated; at 56-57 - list would be a great help in validating signatures; at 58 - data provided by the list is everything; at 59 - with the information from the list he could have gotten more volunteers and more resources in a shorter period of time; at 61 - he could not afford the list; at 73-74 - when he finally got a list, he was able to see the error in signatures he had obtained that were rejected because

they did not match the name exactly as it appeared on the list;[4] at 85 - he considered buying a list from Nationbuilder for less money than Merrill charges (and ended up getting one), but found out Nationsbuilder lists were outdated; at 93-94 - once ballot access is achieved, the registration list is very important for campaigning; at 97 - the list is important for going door to door and sending personalized mailings to registered voters];

**[ECF# 28-17 - Elijah Boyd]** - at 29; 42 - used the voter registration list to contest invalidated signatures; 35-36 - used list when gathering ballot access signatures to find the streets registered voters lived on; at 59 - with the list the petitioning process goes more smoothly, he can target voters' houses and address them by name].

**3. The LPA is Bona Fide Minor Political Party.**

As Merrill acknowledged, the LPA has had unique success among minor parties in Alabama, achieving statewide access in 2000 and putting candidates on the ballot following that achievement. [ECF# 12 at ¶3]. That alone establishes its bona fides as a vibrant minor party.

Its bona fides are indisuputable:

[4] Mr. Ward's ballot access petition was rejected by Merrill as just barely short of the number of valid signatures he needed [ECF# 28-18 at 71]. When he finally was able to buy a registration list he had to pay Merrill $80 just to get to see which signatures on the petition he had turned in the Appellee had considered invalid, so he could then match them with the registration list [ECF# 28-18 at 73-75; 76].

**Expert Witness Richard Winger Declaration [ECF# 38-6, ¶¶10-19]:**

The Alabama Libertarian Party has been continuously organized since 1976. It has always had party officers, has always sent a delegation to the national Libertarian convention (the party has national conventions in all even years), has had a webpage since webpages became widespread.

In addition to appearing on the Alabama ballot by party name, the LPA also has nominated write-in candidates. In 2006, for example, it nominated Loretta Nall for Governor. She was credited by the state with 235 write-in votes. The true total was probably higher, but not all counties broke down all the write-ins. Also in 2006 it had a write-in candidate for US House, District One, Dick Coffee. Also in 2006 it had a candidate for State House, 79th district, on the ballot, Dick Clark, who got 396 votes, 3.12%. In 2004, the party ran Richard Coffee as a write-in for US House, 1st District. In 2014 the party had 5 write-in candidates for state legislature. St Sen 18 Laura Pate; St Sen 20 Leigh LaChine; Rep 44 Rebecca Joy Kallies; Rep 48 Emily Green; Rep 52 Christopher Allen. Also in 2014 it had a write-in US House candidate, Dist. 6, Aimee Love. In 2018 the party got two candidates on the ballot for legislature, Rep 10 Elijah Boyd; Rep 96 J. Matthew Shelby. They both got over 5%. So, including President, the party has nominated candidates in every single election year in this century except 2010.

Among other national accomplishments, Libertarian Presidential candidates in recent years have received a significant amount of votes nationally. Compare, e.g., Libertarian Ed Clark in 1980 got over 1% of the popular vote at 921,128 votes and then Libertarian Gary Johnson got 1,275,923 votes in 2012, and 4,489,233 votes (3.27%) in 2016.

In the year 2000, the Libertarian Party of Alabama made a strong showing in terms of ballot access and, in one particular statewide race, in terms of votes (over 20%).

Over the past decade Libertarians got over 20% of the vote for statewide office in races in Arkansas, Georgia, and Texas. And, of course, as mentioned, the LPA did so in a 2000 race.

The Libertarian Party has over 600,000 registered voters in the nation (and only 31 states have registration by party; Alabama does not). Also the Libertarian Party has elected partisan office-holders in about half the states. Notably, the Libertarian Party has elected state legislators in Alaska, New Hampshire, and Vermont, and has had sitting state legislators (who switched to the Libertarian Party after they were elected) in Nebraska and Nevada. The Libertarian Party has polled over 1,000,000 votes for its US House candidates in most congressional elections in this century. It is the only third party that has run candidates for US House in a majority of districts, since 1918.

At its national convention the Libertarian Party has delegates participating from all 50 states, including 13 from Alabama for 2016, who attended the convention in Orlando, Florida. The LPA also chooses a national committee representative.

The relationship between the national Libertarian Party and the Alabama Libertarian Party is the same kind of relationship as between the national Republican Party and the Alabama Republican Party, or between the Alabama Democratic Party and the national Democratic Party.

Votes for the Libertarian Party candidate for President of the United States (appearing on Alabama's ballot as an Independent, because of Alabama's prohibitively onerous ballot access requirements to appear under a third-party label) appear to be rising: 2000: 5,893 votes; 2004: 3,512 votes; 2008: 4,991 votes ; 2012: 12,328 votes; 2016: 44,467 votes. See also Mr. Redpath's Declaration [ECF# 38-5]

The following information linked to online sites further advances the point:

The LPA's by-laws and other information, easily accessed through the LPA's website further make the point.[5] Finally, the Libertarian Party has fielded a candidate for President in every Presidential election since 1976. In 2016, the Libertarian Party candidate, Gary Johnson and his running mate, William Weld were on the ballot in all 50 states and received almost 4.5 million votes, including over 44,000 in Alabama.[6]

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5 https://lpalabama.org/about/bylaws/.

6 https://www.newyorker.com/magazine/2016/07/25/gary-johnson-the-third-party-candidate.

### C. Standard of Review

This Court reviews a district court's grant of summary judgment *de novo*, "viewing the evidence and all reasonable inferences in the light most favorable to the non-moving party." *Furman v. Warden*, 2020 U.S. App. LEXIS 28856, *11 __ Fed. Appx. __, 2020 WL 5496295 (11th Cir. September 11, 2020); *Mickell v. Bell*, 2020 U.S. App. LEXIS 32516, *8 (11th Cir. October 15, 2020).

## SUMMARY OF THE ARGUMENT

It violates the First and Fourteenth Amendments to the United States Constitution for Alabama to charge minor political parties an exorbitant fee ($35,912.76) to obtain a copy of the state's taxpayer-funded computerized voter registration list, while providing it free of charge to major political parties.

## ARGUMENT

### Alabama Law that Provides for Major Political Parties to Receive Copies of the State's Taxpayer-Funded Computerized Voter Registration List Free of Charge, but Requires Minor Political Parties to Pay An Exorbitant Fee ($35,912.76) to Obtain a Copy Violates the First and Fourteenth Amendments to the United States Constitution.

### A. Introduction

This case presents a simple, straightforward, single legal issue: whether it violates the First and Fourteenth Amendments to the United States Constitution for

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https://en.wikipedia.org/wiki/Gary_Johnson_2016_presidential_campaign#cite_note-139
*See also*, LNC2020.com.

Alabama to discriminate against minor political parties by charging them an exorbitant fee ($35,912.76) to obtain the State's taxpayer-funded computerized voter registration list, while providing it for free to the major parties (Democrats and Republicans). This issue has been resolved in favor of the Appellant's position by each court around the country that has considered it, in a history of unbroken decisions extending back 50 years.

Our courts have long recognized that minor political parties play a significant role in our political system and that their participation in the process implicates fundamental constitutional rights of candidates who seek to run under a minor party banner and voters who wish to cast their vote for a minor party candidate and otherwise support minor political parties. *Williams v. Rhodes*, 393 U.S. 23, 32 (1968); *Williams v. Rhodes*, 393 U.S. 23, 39 (Douglas, J., Concurring), *quoting from, Sweezy v. New Hampshire*, 354 U.S. 234, 250-251 (1957).

**B. Summary Judgment Standard**

This Court reviews a district court's grant of summary judgment *de novo*, "viewing the evidence and all reasonable inferences in the light most favorable to the non-moving party." *Furman v. Warden*, 2020 U.S. App. LEXIS 28856, *11 __ Fed. Appx. __, 2020 WL 5496295 (11th Cir. September 11, 2020); *Mickell v. Bell*, 2020 U.S. App. LEXIS 32516, *8 (11th Cir. October 15, 2020). Indeed, as this Court recently reaffirmed, "When considering a motion for summary judgment, ...

courts must construe the facts and draw all inferences in the light most favorable to the nonmoving party and when conflicts arise between the facts evidenced by the parties, they must credit the nonmoving party's version." *Teel v. Lozada*, 2020 U.S. App. LEXIS 30358, *8-*9 __ Fed. Appx. __, 2020 WL 5652354 (11th Cir., September 23, 2020), quoting from, *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1252 (11th Cir. 2013). "[C]redibility determinations and the weighing of evidence are jury functions, not those of a judge." *Id*. "Even where the parties agree on the facts, if reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment." *Glasscox v. Argo*, 903 F.3d 1207, 1212 (11th Cir. 2018); *Teel, Id*.

**C. Substantive Legal Analysis on the Merits**:

**1. A Long Line of Voter Registration List Cases Are Dispositive and Unequivocally Demonstrate the District Court's Error in This Case.**

The exact issue in this case was decided over fifty years ago. Since then, in an unbroken line of authority, it has been held that it violates the First and Fourteenth Amendments to the United States Constitution to charge minor political parties a fee, let alone an extraordinarily exorbitant fee as in the instant case, for a copy of the state voter registration list, while providing it free of charge to major political parties.

**a. The United States Supreme Court's Summary Affirmance in *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984 (S.D.N.Y.) (three-judge court), *summarily affirmed*, 400 U.S. 806 (1970) is Dispositive**.

The leading case that demonstrates that the Alabama statutes and Merrill's practice complained of herein violate Plaintiff's constitutional rights is *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984, 997 (S.D.N.Y.)(three-judge court), *summarily affirmed*, 400 U.S. 806 (1970). The issue presented in that case is precisely the issue presented in the instant case and it must be given binding precedential effect as a matter of law.[7] *See also, Schultz v. Williams*, 44 F.3d 48, 60 (2d Cir. 1994). In these cases, the courts expressly held that a New York law

[7] "A summary affirmance of the Supreme Court has binding precedential effect." *Hardwick v. Bowers*, 760 F.2d 1202, 1207 (11th Cir. 1985), *citing*, *Hicks v. Miranda*, 422 U.S. 332, 344, 95 S. Ct. 2281, 2289, 45 L. Ed. 2d 223 (1975). While it is true that the precedential effect of summary affirmances extends only to "the precise issues presented and necessarily decided by those actions" the United States Supreme Court repeatedly has made clear that they are, nevertheless, to that extent, binding decisions on the merits. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 400, 499 (1981). They prevent " ... lower courts from coming to opposite positions on the precise issues presented and necessarily decided by those actions." *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). The lower court in the instant case simply dismissed the summary affirmance in *Socialist Workers Party v. Rockefeller* and all voter registration cases since then out of hand, summarily finding that "those cases are not binding on this Court" and that it did not find them "persuasive ...." [ECF# 53 at 9-10]. As for the summary affirmance, it dismissed the effect with a footnote to the general principle that its effect only extends to the precise issues presented and decided; but it never explains how the issue in this case is in any way distinguishable from the "precise issue" in *Socialist Workers Party v. Rockefeller*. [ECF# 53 at 9, n.4]. The issues absolutely are precisely the same in every material regard.

which provided for the state's major political parties to get free copies of the voter registration list, but charged the minor parties a fee for the list, violated the Fourteenth Amendment's Equal Protection Clause, even though the State also made copies available for viewing at polling places free of charge. 314 F. Supp. at 995. These courts made clear in no uncertain terms that while a State is not required to provide free lists to anyone, when it provides it free of charge to some, it cannot do so by providing them "only for the large political parties and deny(ing) them to those parties which can least afford to purchase them." 314 F. Supp. at 996.[8]

**b. Every Other Voter List Case Supports the LPA**

The analysis in each of the voter registration list cases from around the country on the precise issue raised in the instant case is compelling and makes

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[8] Every court that has considered this issue has understood *Socialist Workers Party v. Rockefeller* to have settled the precise issue before this Court. Consider the court's characterization of the case in *Fusaro v. Cogan*, 930 F.3d 241, 256, n.8 (4th Cir. 2019):

> "Nearly fifty years ago, the Supreme Court expressed support for constitutional limits on the government's ability to restrict access to voter registration lists in a summary affirmance of an Equal Protection claim. *See Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984 (S.D.N.Y.), judgment aff'd, 400 U.S. 806, 91 S. Ct. 65, 27 L. Ed. 2d 38 (1970). In that case, a three-judge district court panel struck a New York regulation that provided free copies of the state's voter list only to major political parties. The court ruled that the restriction violated the Equal Protection Clause and explained: "The State is not required to provide such lists free of charge, but when it does so it may not provide them only for the large political parties and deny them to those parties which can least afford to purchase them." *Id*. at 996.

clear the folly of Appellee's position to the contrary and the lower court's error in this case fifty years after the question was definitively settled.

In *McCarthy v. Kopel*, No. C 76-45 (N.D. Iowa, February 6, (1978) (unpublished) [Copy provided at ECF# 7-1], Plaintiffs were independent candidates for president and vice-president, seeking Iowa's voter registration lists. The relevant statute in Iowa provided that the two parties receiving the highest number of votes in the last general election got free copies of the voter registration list, while all others had to pay for the list. Plaintiffs sought a declaratory judgment that this discrimination in favor of major parties with respect to the voter registration lists violates the Equal Protection Clause of the Fourteenth Amendment and a permanent injunction prohibiting enforcement of the statute that so provided. The Court granted Plaintiffs' summary judgment motion, declared the statute to be void for its violation of the Equal Protection Clause, and permanently enjoined its enforcement.

The Court noted at the outset of its analysis that without question the distinction between providing the voter registration list free of charge to major parties while charging minor parties and non-party candidates, discriminates against minor party and non-party candidates. *Id.*, at 3.

It posited the question as whether the purported state interests claimed to support the statute were "sufficiently important" to "warrant the obvious burden"

or whether the statute "unfairly and unnecessarily burdens the political opportunity of a non-party candidate." *Id*.

The Court declined to decide whether strict scrutiny/compelling interests analysis or a slightly less stringent standard should apply to this circumstance (finding the circumstances presented to be somewhere between campaign financing cases and ballot access cases); but it noted that "when the state moves to regulate the electoral process which is inextricably linked to fundamental constitutional rights, its purposes must be important and its methods narrowly tailored to fostering those interests." *Id.* at 6. It also required the use of least restrictive means to further any proffered state interest and found that missing in such a statutory scheme as well. *Id.* at 7.

The Court ultimately found that a statute which discriminates in favor of major parties and against minor parties and independents with respect to the cost of voter registration lists, unconstitutionally favored the two party system and a "rigid status quo[9]" and created an "unfair burden" on those who try to use a political system that is meant to foster their interests in articulating "political choice." *Id*. It struck down the Iowa statute as a violation of the Equal Protection Clause. *Id*. at 7-8.

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[9] This principle, as articulated in this case and many more, of course shreds the notion asserted by this Appellee that there is a legitimate state interest in "subsidizing" the status quo, effectively cementing the monopoly the Democrats and Republicans have. [*See* ECF# 30 at 35].

In *Libertarian Party of Oregon v. Paulus*, Civil No. 82-521FR (D. Oregon, September 3, 1982) (unpublished)[Relevant Excerpts at ECF# 7-2][10], the court again considered a state statute that discriminated between major and minor parties with respect to its voter registration lists, providing them for free to the major parties, while charging a fee to the minor parties.

The court's analysis speaks for itself and is fully consistent with the cases previously described herein. Additionally, the court in this case expressly rejected the purported "administrative interest" the Appellee herein speculates might arise if, in his straw man argument, the list were to be provided free of charge to anyone. *See Paulus*, at 17.[11] The court in *Paulus* struck down this same kind of discrimination with the voter registration lists as unconstitutional.

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[10] Much of the lengthy unpublished decision has nothing to do with the specific issue before this Court; so only relevant excerpts were provided. Appellant proffered the entire decision to the lower Court.

[11] The sole purported state interest Appellee claimed initially in this case to attempt to justify the burden on Plaintiff's fundamental constitutional rights is the purely speculative "administrative interest" in possibly being overburdened with requests if Alabama broadens who gets the list for free. [ECF# 5-1 at ¶¶33-35]. Plaintiff is a well established political party in Alabama that has gotten ballot access in many instances in the State in a variety of election contests and is not claiming every requestor must get a list for free. That might be fair; but it is beyond this case. As alleged in the Complaint, if a representative from all other 49 states requested a free copy of the voter registration list and agreed to provide their own list in return, the Appellee would have to satisfy every one of the 49 requests. [Doc. 1 at ¶18] Surely, Appellee is not asserting that there are 50 parties that hold the status of this Plaintiff in Alabama. And of course, even if there were, there has been no showing either that all would request the list or that sending an email to 50 or more recipients is a full-time overly burdensome task. Appellee certainly has

In *Libertarian Party of Indiana v. Marion County Bd. of Voter Registration*, 778 F. Supp. 1458 (S.D. Ind. 1991), the court again was confronted with a similarly discriminatory scheme with respect to voter registration lists and again struck the same down as unconstitutional. The decision has been cited with approval by this Court, including on the issue presented in the instant case. *See Fulani v. Krivanek*, 973 F.2d 1539, 1545 (11th Cir. 1992)[12]; *See also, Green Party v. Land*, 541 F. Supp. 2d 912, 919 (E.D. Mich. 2008) (citing with approval).

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made no such showing. In his motion for summary judgment, Appellee has somehow discovered additional purported state interests to justify the discrimination. They are all at least as equally unavailing and will be addressed.

[12] This Court's recent decision in *Indep. Party of Fla. v. Sec'y, State of Fla.*, 967 F.3d 1277 (11th Cir. 2020), while mostly irrelevant for the issues before the Court in this case, is significant on this point and particularly in its reference with approval to the continued vitality of *Fulani*. Indeed, it went a step further than just reaffirming *Fulani's* continued viability. This Court expressly distinguished the scheme in *Fulani* (similar to the issue before the Court in the instant case) from what was at issue in the case before it, noting that, while some differences in treatment among political parties can be justified, a state law, like that in *Fulani*, that provides a fee-waiver for major parties, but not for minor parties, cannot withstand an Equal Protection challenge. *Indep. Party of Fla*, 967 F.3d at 1284. In applying these principles in *Fulani*, as noted, this Court struck down on Equal Protection grounds a state law that discriminated against minor parties with respect to a fee-waiver provision. Parties for elective office had to pay a fee of 10 cents per signature to have each signature verified. The law provided for a waiver of the fee upon a showing of undue hardship. However, the fee-waiver only applied to major parties. The fee could not be waived for undue hardship for a minor party. *Fulani*, 973 F.2d at 1540 & n.4. The court held that while it might be permissible to charge a verification fee to all parties, *Id.* at 1542; applying the fee-waiver in a manner that discriminated against minor parties and in favor of major parties could not pass Equal Protection analysis. *Id*. at 1544-1547. *See also, Clean-up '84 v. Heinrich*, 590 F. Supp. 928, 932-33 (M.D. Fla. 1984), *aff'd on other grounds,* 759

In *Libertarian Party of Indiana*, the court used the analytical framework for ballot access cases developed in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). This Court recently reaffirmed the application of *Anderson* analysis to both First Amendment and Equal Protection challenges. *Indep. Party of Fla.*, 967 F.3d at 1281-1284.

The court noted the unconstitutional effect such discrimination with voter registration lists has on a Party's ability to seek equal access to voters, giving a significant and unwarranted advantage to major political parties in this regard. *Id*. at 1463. This, in turn "... impinges not only upon the members' freedom to associate as a party but also upon an individual voter's ability to assert her

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F.2d 1511 (11th Cir. 1985) (striking down the same kind of fee-waiver provision as applied to organizations proposing ballot initiatives).
This Court's discussion in *Fulani* of the particular harm such discrimination causes for minor parties and their vulnerability to discrimination because they are not "well represented" in state legislatures deserves this Court's attention in considering the issue before it in the instant case. *See Fulani* at 1544-1547. Tellingly, this Court considered and rejected the notion that discriminating in the application of fees between major and minor parties was permissible in furthering the state's interest in requiring a modicum of support. *Id*. at 1546-47 ("Economic status is not a measure of a prospective candidate's qualifications to hold elective office, and a filing fee alone is an inadequate measure of whether a candidacy is serious or spurious.") (citation omitted). *See also*, *Libertarian Party v. Lamont*, 977 F.3d 173, 2020 U.S. App. LEXIS 31315, *18 (2d Cir., October 2, 2020) (signature requirements are the appropriate means of demonstrating support for ballot access). This Court in *Fulani* expressly relied on *Libertarian Party of Indiana v. Marion County Bd. of Voter Registration*, in granting the requested relief. *See Fulani*, 973 F.2d at 1545.

preferences." *Id*. The court went on to consider other severe burdens such discrimination places on those situated like this Plaintiff.

The court suggested that perhaps a "stricter standard of review" than that used in *Anderson* should be used to deal with voter registration list discrimination of this kind specifically because it is by definition discriminatory by favoring the larger parties, but ultimately, it found it unnecessary to answer that question because the discrimination was clearly unconstitutional even under the *Anderson* ("important" state interests level of scrutiny). *Id*.

In considering the same kind of discriminatory scheme at issue in Alabama in the instant case, the court in *Libertarian Party of Indiana* wrote the following:

> The plaintiffs in this case seek equal access to voters, meaning that significant advantages may not be accorded to two major political parties and arbitrarily denied to others. Restricting a political party's ability to reach voters impinges upon not only the members' freedom to associate as a party but also upon an individual voter's ability to assert her preferences. In the context of a case involving restrictions on access to the ballot, the Supreme Court ruled:
> The freedom to associate as a political party, a right we have recognized as fundamental, has diminished practical value if the party can be kept off the ballot. Access restrictions also implicate the right to vote because absent recourse to referendums, "voters can assert their preferences only through candidates or parties or both." *Lubin v. Panish*, 415 U.S. 709, 716, 94 S.Ct. 1315, 1320, 39 L.Ed.2d 702 (1974). By limiting the choices available to voters, the State. impairs the voters' ability to express their political preferences." *Illinois State Bd. of Elections*, 440 U.S. at 184, 99 S.Ct. at 990. Like a restriction on access to the ballot, restrictions on the ability of some political parties to use Registration Lists impinges upon both the members' freedom to associate to express their views to the voters and the voters' ability to express preferences in light of the political views being advanced.

> Although the plaintiffs have access to the Registration List, their undisputed contention is that they would have to expend significant amounts of labor and money to have the list in a usable form, a burden not imposed on the major political parties.
>
> In support of their position, the plaintiffs cite *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984 (S.D.N.Y. 1970), *judgment aff'd*, 400 U.S. 806, 91 S.Ct. 65, 27 L. Ed. 2d 38 (1970). In *Socialist Workers Party*, the court examined provisions of a state statute that "provide[d] that lists of registered voters be delivered free of charge to the county chairmen of each political party polling at least 50,000 votes for governor in the last gubernatorial election." *Id*., 314 F. Supp. at 995. The court ruled: "The State has shown no compelling state interest nor even a justifiable purpose for granting what, in effect, is a significant subsidy only to those parties which have the least need therefor." *Id*. (citation omitted)....[13]

The court ordered the voter registration lists to be provided to the New Alliance Party and the Libertarian Party under the same terms as they were provided to the major parties, based on the Equal Protection violation it found to arise from the discrimination at issue. *Id*. at 1464-1465. *Libertarian Party of Indiana v. Marion County Bd. of Voter Registration*, 778 F. Supp. 1458, 1463-1464 (S.D. Ind. 1991)[14]; *See also Spencer v. Hardesty*, 571 F. Supp. 444 (S.D.

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[13] The court then considered and rejected the idea that the administrative burden of financial cost of distributing the voter registration lists to minor parties could outweigh the clear violation of the plaintiff's constitutional rights arising from providing the list for free to only the major political parties. *Id*.

[14] The district court in the instant case cited *Libertarian Party of Indiana* as a case which it did not find "persuasive" because it is "significantly distinguishable." While it is not at all clear why the court thinks there is a distinction between that case and the instant case, let alone a "significant" one, it appears simply to have misread or misunderstood the decision. The district court writes that in *Libertarian Party of Indiana*, the voter registration lists to the chairmen of the two major

Ohio 1983)(First Amendment rights violated by preferential treatment in postage rates for large political parties over local political action committee); *Greenberg v. Bolger*, 497 F. Supp. 756 (E.D.N.Y. 1980)(First Amendment and Equal Protection violation of minor political party's rights by giving preferential bulk mailing rates to major parties and not minor parties).

The decision in *Green Party v. Land*, 541 F. Supp. 2d 912 (E.D. Mich. 2008) is important for several reasons, including, but not limited to, its emphasis that for these purposes "all political parties are similarly situated ...", *Id*. at 917, thereby squarely raising the Equal Protection concern, (2) its use of ballot access analysis, and (3) its comprehensive consideration of purported state interests far greater in number and significance than the single purported interest earlier proffered here and still listed as one of his fabricated interests.

Finally, the decision rests not only on traditional ballot access burden vs. interests analysis under *Anderson* and its progeny; it draws directly on the decisions in *Socialist Workers Party* and *Libertarian Party of Indiana* and their

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parties, and that the two major parties are "defined as the Democratic and Republican parties." [ECF# 53 at 9]. What the decision actually provides is that only the chairmen of the "major political parties" get the list for free, with the term "major political parties" defined by level of support at the most recent election. *See* 778 F. Supp. at 1459, *citing*, *Burns Ind. Code*, §3-5-2-30. The two parties who reached the level of support to qualify as a "major political party" were the Democratic and Republican parties. That is the **exact** situation presented in the instant case. There is no distinction.

analysis specific to voter registration lists as well. *Id.* at 918-920. *See also, Fusaro v. Cogan*, 980 F.3d 241, 258 & 264 (4th Cir. 2019) (relying on *Libertarian Party of Indiana*).

The court found a clear Equal Protection violation, struck down the law at issue and found it therefore unnecessary to address the First Amendment arguments. *Id*. at 924.[15]

The LPA also provided the lower court with the bare bones decisions in two other cases in which the courts involved ordered that non-major party requesters be provided with voter registration lists after bringing challenges to similarly discriminatory laws. The only documents from those cases obtained so far do not provide much in the way of analysis; but their holdings are clearly consistent with the principles in these other cases. *See Bloom v. EU*, No. 368805 (Cal. Superior Ct., unsigned order of December 4, 1991); *Goetzke v. Boyd*, Case No. 280289 (Ariz. Superior Ct., Pima Co., Order of July 22, 1991)[ECF# 7-3 & 7-4].

The decision in *Green Party v. N.Y. State Bd. of Elections*, 389 F.3d 411, 419-422 (2d Cir. 2004) is also instructive on the fundamental constitutional prohibition on discriminating against minor parties in favor of major parties with respect to voter registration lists. The court considered a New York statute that

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[15] The district court's attempt to distinguish the decision in *Green Party of Mich. v. Land* is, with all due respect, similarly misguided [ECF# 53 at 9-10].

provided for the removal of the political party affiliation identifier on voter registration lists for any political party that did not receive a certain level of support in the previous New York gubernatorial election. The court wrote the following in pertinent part:

> Plaintiffs also contend that the statutory classification scheme violates the Equal Protection Clause of the Fourteenth Amendment because the state's enrollment list policy gives established Parties an advantage over minor or developing parties. The Supreme Court has said that if state law grants "established parties a decided advantage over any new parties struggling for existence and thus place[s] substantially unequal burdens on both the right to vote and the right to associate" the Constitution has been violated, absent a showing of a compelling state interest. *Williams v. Rhodes*, 393 U.S. 23, 31, 21 L. Ed. 2d 24, 89 S. Ct. 5 (1968). Hence, a court has a duty to "examine the character of the classification in question, the importance of the individual interests at stake, and the state interests asserted in support of the classification." *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 183, 59 L. Ed. 2d 230, 99 S. Ct. 983 (1979). Where the state's classification "limit[s] the access of new parties" and inhibits this development, the state must prove that its classification is necessary to serve a compelling government interest. *See Norman v. Reed*, 502 U.S. 279, 288-89, 116 L. Ed. 2d 711, 112 S. Ct. 698 (1992); *Schulz*, 44 F.3d at 60. Even if a state is pursuing a compelling interest, it must show that the means it adopted to achieve that goal are the least restrictive means available. *Ill. State Bd. of Elections*, 440 U.S. at 185.
>
> The laws at issue in this case, according to plaintiffs, place discriminatory burdens on minor political parties. The alleged unequal burdens are those that affect claimants' ability to exercise their First Amendment rights. *See Anderson*, 460 U.S. at 793-94 ("A burden that falls unequally on new or small political parties . . . impinges, by its very nature, on associational choices protected by the First Amendment."). As the alleged violations of the plaintiffs' First Amendment rights form the basis of both the First Amendment and Fourteenth Amendment claims, we are faced with a situation where the plaintiffs' First Amendment claims substantially overlap with their

equal protection claims. Accordingly, the analyses of plaintiffs' claims under the two amendments also substantially overlap.

We think the burdens imposed on plaintiffs' associational rights are severe. In *Schulz* we struck down a New York state law that required local boards of election automatically to supply two copies of enrollment lists, free of charge, to the county chairmen of Parties, but allowed the boards to charge independent bodies for access to such lists stating, "'it is clear that the effect of these provisions . . . is to deny independent or minority parties . . . an equal opportunity to win the votes of the electorate.'" 44 F.3d at 60 (*quoting Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984, 995 (S.D.N.Y. 1970)). Similarly, while the enrollment lists at issue here may have originally been intended solely for use in facilitating closed primary elections, we are required to look at the totality of the voter enrollment scheme in its present form. Currently, Parties use these lists for a number of different activities essential to their exercise of First Amendment rights.

Based on the proof produced at the hearing on the preliminary injunction, the district court determined that "the Green Party's ability to identify, appeal to, inform, organize, mobilize and raise money from its supporters will be severely damaged" as a result of the current enrollment scheme. *Green Party I*, 267 F. Supp. 2d at 353. It ruled in this fashion based on Supreme Court and Second Circuit precedent. *See, e.g., Anderson*, 460 U.S. at 794 ("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 the diversity and competition in the marketplace of ideas."); *Lerman*, 232 F.3d at 147-48 (noting that a "statute need not [ban association altogether] in order to substantially burden the right to political association" if it prevents a candidate from accessing voters or conveying a political message).
In a case similar to the one now before us, the Tenth Circuit ruled that in today's political landscape, "access to minimal information about political party affiliation is the key to successful political organization and campaigning." *Baer v. Meyer*, 728 F.2d 471, 475 (10th Cir. 1984). If an independent body does not have access to other information concerning who is affiliated with its party, it will be unable to determine from the word "unaffiliated" whether a particular unaffiliated voter is or is not a supporter of its organization. It burdens

> all the plaintiff parties if they cannot determine who would like to associate with them. That they are smaller, less developed -- and hence less financially established parties makes their situation even more difficult. As *Anderson* instructs, such limitation of opportunity for independent voters reduces diversity and competition in the marketplace of ideas. 460 U.S. at 794.

**2. *Anderson/Burdick* Analysis Also Demonstrates the Error Below:**

The First and Fourteenth Amendments afford all candidates vying for elected office, and their voting constituencies, the fundamental right to associate for political purposes and to participate in the electoral process and espouse their political views. *See, e.g., Clingman*, 544 U.S. at 586; *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *Anderson*, 460 U.S. at 787-88; *Williams*, 393 U.S. at 30; *Lee v. Keith*, 463 F.3d 763, 767-68 (7th Cir. 2006) (quoting *Clingman v. Beaver*, 544 U.S. 581, 586 (2005). Placing restrictions on candidates' and political parties' access to the ballot interferes with their right to associate for political purposes and the rights of qualified voters to cast their votes for the candidates of their choice. *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986) (*citing Williams*, 393 U.S. at 30); *see also Norman v. Reed*, 502 U.S. 279 (1992); *Anderson*, 460 U.S. at 786; *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S.173, 184 (1979).

Ballot-access requirements that place more burdensome restrictions on certain types of candidates than on others implicate rights under the Equal Protection Clause as well. *See Williams*, 393 U.S. at 30-31; *Green Party of Tennessee v. Hargett*, 791 F.3d 684, 695 (6th Cir. 2015) (finding that a ballot access

restriction that "imposes a greater burden on minor parties without a sufficient rationale put forth by the state . . . violates the Equal Protection Clause"); *see also Anderson v. Celebrezze*, 460 U.S. 780, 786 n.7 (1980); *Lubin v. Panish*, 415 U.S. 709, 713-714 (1974); *See also, Libertarian Party of Ill. v. Ill. State Bd. of Elections*, 164 F. Supp. 3d 1023, 1029 (N.D. Ill. 2016), *affirmed by*, *Libertarian Party of Illinois v. Scholz*, 872 F.3d 518, 523-24 (7th Cir. 2017)(discussing Equal Protection principles applied to restrictions which discriminate against minor parties in favor of major parties).

In striking down Ohio's ballot access in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), the Court set out the requisite analytical framework as follows:

> Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions. Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It 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. 460 U.S. at 789. (Internal citation omitted.)

The Court in *Anderson* rejected the use of any "'litmus-paper'" to "separate valid from invalid [ballot access] restrictions." 460 U.S. at 789. Instead, a court

determining whether a challenged ballot access restriction is unconstitutional must: 1) evaluate the character and magnitude of rights protected by the First and Fourteenth Amendments; 2) identify the State's interests advanced as justifications for the burdens imposed by the ballot access restrictions; and 3) evaluate the legitimacy and strength of each asserted state interest, and determine whether and to what extent those interests required burdening the plaintiffs' rights. *Id*. *Bergland v. Harris*, 767 F.2d 1551 1553-54 (11th Cir. 1985); *Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340, 1355-56, 1366-67 (N.D. Ga. 2016), *affirmed by and Opinion adopted in whole by Green Party of Georgia*, 2017 U.S. App. LEXIS 1769 (11th Cir., February 1, 2017), *rehearing and rehearing en banc denied* (11th Cir., March 31, 2017)(requiring the Secretary of State to prove the strength, legitimacy, and applicability of its claimed interests, consistent with long-standing precedent; reaffirming that a "litmus-test" approach is prohibited);*Green Party of Ga. v. Georgia*, 551 Fed. Appx. 982 (11th Cir. Ga. 2014)(Same).

In order to permit the required evaluation of competing interests, "[t]he State must introduce evidence to justify both the interests the State asserts and the burdens the State imposes on those seeking ballot access." *Id. Bergland*, 767 F.2d at 1554. *See also*, *Mandel v. Bradley*, 432 U.S. 173, 178 (1977)(Court must sift through conflicting evidence and make findings of fact as to the difficulty of obtaining signatures in time to meet the deadline); *Storer v. Brown*, 415 U.S. 724

(1974)(a court is required to examine the facts and circumstances of each case individually and may not apply a "litmus test").

In analyzing a particular burden to First and Fourteenth Amendment rights in the ballot access context, "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Regulations imposing severe burdens on associational rights must be narrowly tailored to advance a compelling government interest. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Regulations imposing lesser burdens are subject to less intensive scrutiny, and reasonable, **nondiscriminatory** restrictions ordinarily will be sustained if they serve important regulatory interests. *Id.; New Ga. Project v. Raffensperger*, 976 F.3d 1278, 2020 U.S. App. LEXIS 31405, *5 (11th Cir., October 2, 2020) (Emphasis added). The law at issue here is, by definition, discriminatory.

Where the State imposes only reasonable and genuinely neutral restrictions on associational rights, there is no threat to the integrity of the electoral process and no apparent reason for judicial intervention. As such restrictions become more severe, however, and particularly where they have discriminatory effects, there is increasing cause for concern that those in power may be using electoral rules to erect barriers to electoral competition. In such cases, applying heightened scrutiny

helps to ensure that such limitations are truly justified and that the State's asserted interests are not merely a pretext for exclusionary or anticompetitive restrictions." *Clingman*, 544 U.S. at 603 (O'Connor, concurring); *See also*, *Clingman*, 544 U.S. at 596-87 ("Regulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest).

"[W]hat is demanded (by the State) may not be so excessive or impractical as to be in reality a mere device to always, or almost always, exclude parties with significant support from the ballot. The Constitution requires that access to the electorate be real, not 'merely theoretical.'" *Party of Texas v. White,* 415, U.S. 767, 783, 94 S. Ct. 1296 (1974).

In this analysis, "the burden is on the state to 'put forward' the 'precise interests ... [that are] justifications for the burden imposed by its rule,'" and to "explain the relationship between these interests" and the challenged provision. *Fulani*, 973 F.2d at 1544 (*quoting Anderson*, 460 U.S. at 789). "The State must introduce evidence to justify both the interests the State asserts and the burdens the State imposes on those seeking ballot access." *Bergland*, 767 F.2d at 1554.

Courts are to determine the appropriate level of scrutiny based on the seriousness of the burden imposed. "Regulations imposing severe burdens ... must be narrowly tailored and advance a compelling state interest," while "[l]esser burdens ... trigger less exacting review, and a State's important regulatory interests

will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358-59 (1997) (citations and internal quotation marks omitted)

As discussed earlier, courts have applied the *Anderson/Burdick* framework to voter registration list discrimination schemes.

**a. Denying the LPA This Valuable Tool Creates a Severe Burden.**

Plaintiff here contends that the discrimination at issue in this case constitutes a severe burden on its First and Fourteenth Amendment rights. That is, it severely burdens both the Plaintiff's associational and other First Amendment rights and the Plaintiff's rights under the Equal Protection Clause vis a vis the major parties.

First, the statute and the Appellee's practice clearly discriminate against minor parties like the Plaintiff, in favor of major parties by definition, therefore taking it outside the realm of "nondiscriminatory" regulations that might just justify less stringent scrutiny. *See e.g., Anderson, Timmons*, at 358, referring to "nondiscriminatory" regulations as deserving of lower level scrutiny.

Secondly, the discriminatory regulations impose a severe burden on the ability of the Plaintiff and other minor parties to obtain ballot access signatures, educate voters as to the Party's political views and platform, campaign effectively, and all of the factors discussed hereinabove as a result of not having the voter registration list for free - on the same terms as the major parties get it. The burden

is both in a vacuum and in relation to the ability of the major parties to engage in these and other politically related associational activities. [See Statement of Facts, *Infra*. at 7-11, explaining in undisputed terms the importance of the voter registration list to each of these fundamental ballot access and party growing activities and the prejudice arising from not having access to the list.].

Courts around the country have recognized the vital importance of voter registration lists to minor parties and others. In *Fusaro v. Cogan*, 980 F.3d 241, 251 (4th Cir. 2019), the Court recently reaffirmed that a voter registration list is a "valuable tool for political speech." With respect to a voter registration list, the Court expressly recognized "the common use of such voter data by political groups, advocacy organizations, and others seeking to spread messages or garner support for candidates or causes." *See also, e.g., Green Party of N.Y. v. N.Y. State Bd. of Elections,* 389 F.3d 411, 420 (2d Cir. 2004) (recognizing that political parties use voter registration lists for "activities essential to their exercise of First Amendment rights")[16]; *Baer v. Meyer*, 728 F.2d 471, 475 (10th Cir. 1984)(access to

[16] The Court in *Green Party* also reaffirmed the continued vitality of one of the landmark decisions on which this challenge to Alabama's discriminatory scheme is based. The Court wrote, "[I]n *Schulz* we struck down a New York state law that required local boards of election automatically to supply two copies of enrollment lists, free of charge, to the county chairmen of Parties, but allowed the boards to charge independent bodies for access to such lists stating, "'it is clear that the effect of these provisions . . . is to deny independent or minority parties . . . an equal opportunity to win the votes of the electorate.'" 44 F.3d at 60 (quoting *Socialist*

information about political party affiliation is the key to successful political organization and campaigning). *See also, Judicial Watch v. Lamone*, 399 F. Supp. 3d 425, 445 (D. Md. 2019)(noting the importance of the voter registration process and the right of every citizen to a voter registration list under the NVRA and rejecting as illegitimate the State's claimed interests in seeking to limit the provision of its voter registration list solely to its own residents). *See also Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012)(emphasizing the importance of access to voter registration information under a series of federal statutes); *See also Judicial Watch, Inc., v. Lamone*, 2020 U.S. Dist. LEXIS 68345 (D. Md., April 17, 2020)(emphasizing the importance of public access to voter registration lists and information under federal legislation).[17]

The Court does not need to find a severe burden in order to strike down the discriminatory regulations, for as other courts have correctly found, under any standard, there is no constitutionally cognizable rational basis for this discriminatory practice.

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*Workers Party v. Rockefeller*, 314 F. Supp. 984, 995 (S.D.N.Y. 1970). *See Green Party of N.Y. v. N.Y. State Bd. of Elections,* 389 F.3d 411, 420 (2d Cir. 2004).

[17] "Perhaps the most widespread use of the voter files is to help political practitioners more effectively and efficiently engage with potential voters. Political campaigns make use of the files to identify potential supporters and to communicate with them, either to influence their candidate choice, mobilize them to turn out to vote, or both. Groups organized around specific issues such as gun rights or access to abortion use the files in similar ways."
See: https://www.pewresearch.org/methods/2018/02/15/voter-files-in-action/

**b. The State's Claimed Interests are Completely Unavailing.**

At Pages 27-40 of his summary judgment memorandum, the Appellee set out what he claimed are the State's interests justifying the discrimination at issue [ECF# 30, 27-30]. The lower court analyzed the State's purported interests in its Memorandum Opinion and Order, crediting the baseless claims that state interests in a "modicum of support" and the state's claimed "administrative interests" justify the discriminatory fee scheme. [ECF# 53 at 17-23] The court erred as a matter of fact and law.

First of all, the Appellee never explains the source from which he has concluded the state interests he now claims justifies the discrimination arises. He offers nothing but his invention of them.

Any claim of hardship or undue burden, of course, is dramatically undercut by the admission that the Appellee already provides a free copy of the statewide voter registration list to multiple entities on a regular, recurring basis, including providing a free copy of the list each and every month to ERIC. [ECF# 28-2 at 149] and by Merrill's admission that the only extra time required to provide the same list free of charge to the LPA would be the amount of time required to send an email. [ECF# 28-2 at 124] Moreover, even in his dreamt up worst case scenario, that other minor parties will come out of the woodwork and want copies, he has provided no evidence whatsoever that there is a realistic prospect of more

than a handful of minor parties asking for their free copy, and none is as established as the LPA if any line is to be reasonably drawn among them. Moreover, there is no meaningful additional burden in pressing the button to send one more email with the computerized list electronically and certainly no cost. The record does not support Merrill at all.

The related notion that providing the list for free to minor parties could lead to ballot overcrowding of course just demonstrates how very effective for ballot access purposes and education purposes the Appellee (and major party legislators) believe the list is and why they have decided to employ this unjustifiable discrimination. The heart of the argument is that if minor parties had access to the voter list, they would be more successful in attracting voter and candidates and this would lead to greater ballot access for minor parties. There is no legitimate state interest against greater participation in the electoral process. The argument is especially offensive, given the Merrill claims the LPA should have to pay for the list unless they gain statewide ballot access - an argument the lower court adopted. It is completely circular and designed for just one purpose - creating as many barriers as possible to minor party ballot access.

Additionally, the claim by the Secretary of concern of any loss to Alabama's taxpayers, is belied by his provision of a free copy of the list on a monthly basis for use by other states, favoring other states' citizens over Alabama's own minor

political party candidates and voters who support them, notwithstanding the Alabama voters and candidates' status as taxpayers at whose expense the statewide voter registration list is compiled.[18]

The idea that there is a state interest in subsidizing the two major parties (under the guise of political stability) is so far beyond the pale and so blatantly contrary to the authority cited above from the Supreme Court and elsewhere, expressly against favoring the major parties at the expense of minor parties, it requires no further discussion.

The absurdity of the interests Merrill claims support the discriminatory law is perhaps best demonstrated by two in particular that he cites. Merrill claims that the state's interest in preventing fraud justifies discriminating against minor parties with respect to the provision of voter registration lists. [ECF# 30 at 39-40]. Merrill explains that this is particularly applicable here because a former Secretary of the LPA was convicted of fraud many years ago [*Id.*]. Merrill never explains how it is, even if this were a legitimate, cognizable interest, charging a minor party that supposedly poses a fraud risk a fee of $36,000 would somehow address the state interest. Is it that the interest in protecting against election fraud is addressed as long as the fraudster acquires the list by paying for it?

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[18] Each of the Appellee's purported state interests he attempts to use to justify the unlawful discrimination at issue in this case finds no legitimacy in reality.

This fabricated claim this is necessary or appropriate to charge minor parties $36,000 for the voter registration list while giving it for free to major parties in order to avoid subsidizing fraudsters is rather dramatically undercut by the facts on the ground regarding evidence of fraud. If this truly were a valid state interest, then Alabama law would be exactly the opposite, for the number of people in leadership positions in the Democratic and Republican parties in Alabama implicated in fraud is simply shocking, both by itself and in relation to the numbers in minor party leadership positions.[19]

Similarly, the idea that the State has an interest in guarding against satire that somehow justifies charging an exorbitant fee to minor parties for the voter registration list, while giving it to the major parties for free, [ECF# 30 at 36], is as dangerous a proposition as it is absurd and nonsensical.[20] Plaintiff will spare

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[19] For a list of Alabama Democratic and Republican party leaders implicated in fraud in recent years: https://en.m.wikipedia.org/wiki/List_of_American_state_and_local_politicians_convicted_of_crimes.

[20] Merrill uses the example of a person known as "Vermin Supreme" who is associated with the national Libertarian Party as an example of the kind of "satire" the State has an interest in not subsidizing [ECF# 30 at 36, n.12]. If this were a legitimate interest, then Alabama immediately would have to stop subsidizing the Democratic and Republican parties with respect to the voter registration list. Vermin Supreme ran for the Republican presidential nomination in the New Hampshire primary in 2008. https://www.smithsonianmag.com/history/immigrants-conspiracies-and-secret-society-launched-american-nativism-180961915/ And in 2012, he ran as a Democrat (his second time seeking the Democratic party nomination). https://www.cnbc.com/id/45931038.

the Court a presentation of major party candidates who have used satire through our history. A party known satirically as the the "Know Nothing" Party actually helped shape the face of American politics.[21]

The lower court's finding that the discriminatory fee scheme somehow is justified by an appropriate requirement that a party must show a "modicum of support" [ECF# 53 at 17-21] is simply wrong for two fundamental reasons.

First, it is a completely circular argument. It approves a discriminatory scheme that denies minor parties the most valuable tool to gain ballot access and attain a "modicum of support" and then justifies the scheme because the minor party has not attained the modicum of support (which, in this case, means achieving the definition of a major political party). It is the minor parties who most need the voter registration list to reach voters to obtain signatures to obtain ballot access, to grow, to educate voters about their platform, and, in short, to obtain a "modicum of support" to gain ballot access. [See e.g. ECF# 38-5 at 2-3; 38-6 at 2-3; Statement of Facts *Infra*. at 7-12]

The lower court's decision legitimizes a discriminatory scheme that makes it impossible for the parties who need the list most and can least afford it and then justifies it based on "line-drawing" at achieving statewide ballot access. Allowing

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21 https://www.smithsonianmag.com/history/immigrants-conspiracies-and-secret-society-launched-american-nativism-180961915/

the line to be drawn at ballot access as the "modicum of support" required to get the list for free is nothing more than saying only major political parties (defined as those who gain statewide ballot access) get the list and that is exactly what the over fifty years of jurisprudence expressly prohibits as violative of the First and Fourteenth Amendments.

Secondly, no court has approved the idea of tying a fee to the concept of a modicum of support and this Court has expressly condemned any such notion. *Indep. Party of Fla*, 967 F.3d at 1284; *Fulani*, 973 F.2d at 1544-1547. *See also, Clean-up '84 v. Heinrich*, 590 F. Supp. 928, 932-33 (M.D. Fla. 1984), *aff'd on other grounds*, 759 F.2d 1511 (11th Cir. 1985) (striking down the same kind of fee-waiver provision as applied to organizations proposing ballot initiatives).

Given the overwhelming number of entities that Merrill gives the voter registration list to for free on a regular basis throughout every year, the requirement that he keep it maintained and updated at all times, and that he provides it for free multiple times during the year not just to the major political parties, but to non-Alabama entities (a list generated at Alabama taxpayer expense), and that all that would be required to get the LPA a copy for free would be to press the "send" button for an email, the lower court's findings that the State's "administrative interests" justify the discriminatory burden imposed on the minor parties [ECF# 53 at 21-23] is absolutely wrong.

The lower court also erred by failing to consider all of Alabama's onerous ballot access burdens on minor parties, including the discriminatory fee scheme at issue here that effectively denies them the voter registration lists, in combination.

A Court must examine the *cumulative* burdens imposed by the *overall* scheme of electoral regulations upon the rights of voters and parties to associate .... "A panoply of regulations, each apparently defensible when considered alone, may nevertheless have the combined effect of severely restricting participation and competition. Even if each part of a regulatory regime might be upheld if challenged separately, one or another of these parts might have to fall if the overall scheme unreasonably curtails associational freedoms." *Clingman*, 544 U.S. at 607-08. In this regard, the Winger expert declaration is of key significance. He makes clear that Alabama's barriers to ballot access for minor parties are the most onerous in the country, even without consideration of this discriminatory voter list scheme; but this scheme is inextricably intertwined with the other stringent burdens to obtaining statewide ballot access [ECF# 38-6 at 1-3].

At least one other assertion by the lower court must be addressed here, for again it is absolutely at odds with well settled law. The lower court found it to be of "great significance" that the LPA qualified once for statewide ballot access, twenty years ago in 2020 (in a race for statewide office in which it ran against only one major party candidate) and that one other minor party got statewide ballot access once (but

fielded no candidates) [ECF# 53 at 13]. And this fact of "great significance" led the court to conclude that the burden from the discriminatory fee scheme must not be insurmountable [ECF# 53 at 13-14]. The lower court misunderstood the matter. Ballot access history is always directly relevant to evaluating the burden of a restriction. But in order to show that a burden is severe, a third party need not show that no third party **ever** qualified, rather simply that historically it has been an infrequent occurrence. *See e.g., Mandel v. Bradley*, 432 U.S. 173, 177 (1977)("Past experience will be a helpful, if not always unerring guide; it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not."), *quoting from*, *Storer v. Brown*, 415 U.S. 724, 742 (1974); *Williams v. Rhodes*, 393 U.S. 23, 47, n.10 (1968)(Harlan, J., concurring)(comparing "size" of "barriers" to third-party candidates for each State and comparing ballot history among the States for third-party candidates); *Lee v. Keith,* 463 F.3d 763, 769 (7th Cir. 2006), *citing Storer v. Brown,* 415 U.S. 724, 742, 94 S. Ct. 1274 (1974). The idea that a minor party qualified for statewide ballot access once (or twice) in twenty years in no way demonstrates the reasonableness of using "modicum of support" - defined as statewide ballot access - as the criteria for non-discriminatory treatment with the voter list.

The true conclusion of the lower court's decision cannot be reconciled with any decision from any court ever on this issue in this case. The decision simple

requires a minor political party to achieve major party status, without the voter list, or pay an exorbitant, unaffordable fee. That is exactly what the First Amendment and the Fourteenth Amendment's Equal Protection Clause prohibit.

In short there is no basis for the claimed interests nor any evidence to support them and even if they were they do not in any way address or justify the unlawful discrimination and violation of the Plaintiff's First and Fourteenth Amendment rights under any level of review, from strict scrutiny to any rational basis. The voter registration cases cited herein and any fair application of *Anderson/Burdick* analysis or other constitutional analysis must lead clearly to the conclusion that the lower court's decision must be reversed.

## CONCLUSION

Smaller or minor political parties have played a significant role in the American political system through our nation's history. As the United States Supreme Court wrote over 30 years ago, in striking down, on Equal Protection grounds, a provision of Illinois law that discriminated against minor parties and independents:

> The States' interest in screening out frivolous candidates must be considered in light of the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office.

*Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185 (1979); *Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340, 1352-53 (N.D. Ga.

2016), *affirmed by Green Party of Ga. v. Kemp,* 2017 U.S. App. LEXIS 1769 (11th Cir., February 1, 2017); *See also*, J. David Gillespie, *Challengers to Duopoly, Why Third Parties Matter in American Two-Party Politics* (University of South Carolina Press 2012 ed.). [Exhibit 4]; Adams, James, and Samuel Merrill. "Why Small, Centrist Third Parties Motivate Policy Divergence by Major Parties." The American Political Science Review, vol. 100, no. 3, 2006, pp. 403–417.[22]

Based on all of the foregoing and the decisions cited herein, representing fifty years of jurisprudence recognizing that a claim challenging the discriminatory practice of providing voter registration lists for free to major political parties while charging minor political parties a high fee for the same list violates the minor party's fundamental constitutional rights (and the rights of its supporters) under the First Amendment and the Equal Protection Clause of the United States Constitution, the decision below must be reversed.

Respectfully submitted

/s/ David I. Schoen

David I. Schoen (SCHO036)
DAVID I. SCHOEN, ATTORNEY AT LAW
2800 Zelda Road, Suite 100-6
Montgomery, AL 36106
(334) 395-6611 – Telephone
(917) 591-7586 – Facsimile
DSchoen593@aol.com
Schoenlawfirm@gmail.com

*Counsel for Appellant*

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# ADDENDUM

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## Addendum

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***Code of Ala. § 17-4-33***

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## § *17-4-33*. Computerized statewide voter registration list.

**(a)**The State of Alabama shall provide, through the Secretary of State, a nondiscriminatory, single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered by the Secretary of State, with advice from the Voter Registration Advisory Board and the President of the Alabama Probate Judges Association, which contains the name and registration information of every legally registered voter in the state. The computerized list shall comply with the following requirements:

**(1)**It shall serve as the single system for storing and managing the official list of registered voters throughout the state.

**(2)**It shall contain the name, address, and voting location, as well as other information deemed necessary by the Voter Registration Advisory Board or the Secretary of State, of every legally registered voter in the state.

**(3)**A unique identifier shall be assigned to each legally registered voter in the state.

**(4)**It shall contain the voting history of each registered voter.

**(5)**It shall be coordinated with the driver's license database of the Department of Public Safety and the appropriate state agency to assist in the removal of deceased voters.

**(6)**Any election official in the state, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

**(7)**All voter registration information obtained by any registrar in the state shall be electronically entered into the computerized list on an expedited basis at the time information is provided to the registrar.

**(8)**The Secretary of State shall provide such support as may be required so that registrars are able to enter voter registration information.

**(9)**It shall serve as the official voter registration list for the conduct of all elections.

**(10)**Following each state and county election, the Secretary of State shall provide one electronic copy of the computerized voter list free of charge to each political party that satisfied the ballot access requirements for that election. The electronic copy of the computerized voter list shall be provided within 30 days of the certification of the election or upon the completion of the election vote history update following the election, whichever comes first. In addition, upon written request from the chair of a political party, the Secretary of State shall furnish up to two additional electronic copies of the computerized voter file during each calendar year to each political party that satisfied the ballot access requirements during the last statewide election held prior to that calendar year. The electronic copies provided pursuant to this section shall contain the full, editable data as it exists in the computerized voter list maintained by the Secretary of State.

**(11)**The list shall be maintained so that it is technologically secure.

**(b)**The Secretary of State, or judge of probate, or absentee election manager, or municipal clerk, or registrar shall include the name and omit the residential and mailing address of a registered voter on any generally available list of registered voters, except for those lists provided to federal and state agencies, upon the written signed affidavit of the registered voter

to the board of registrars of the county in which the individual is registered or intends to register, affirming either of the following:

**(1)**That the registered voter, or a minor who is in the legal custody of the registered voter, is or has been the victim of domestic violence as provided in Article 7, commencing with *Section 13A-6-130*, of Chapter 6 of Title 13A.

**(2)**That a domestic violence order is or has been issued by a judge or magistrate pursuant to the Domestic Violence Protection Order Enforcement Act, to restrain access to the registered voter or a minor who is in the legal custody of the registered voter.

## History

*Acts 2006, No. 06-570*; *Acts 2010, No. 10-537*, § 1, July 1, 2010; *Acts 2014, No. 14-221*, § 1, July 1, 2014.

Annotations

## Notes

**2010 amendments.**

The 2010 amendment, effective July 1, 2010, rewrote (10), which formerly read: “The Secretary of State shall furnish one copy of the computerized list free of charge to each political party that has satisfied the ballot access requirements for a statewide election within two weeks of the date of a written request for the list by the chair of the political party.”

**2014 amendments.**

The 2014 amendment, effective July 1, 2014, added the (a) designation and added (b).

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***Code of Ala. § 17-4-38***

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## § 17-4-38. Dissemination of information on voter registration.

**(a)**The Secretary of State shall ensure that all applicants obtain requested voter lists in a timely manner. Methods shall be established for the transmission of tapes, discs, or lists to any applicant. Hindrances shall not be created or devised to delay transmission of tapes, discs, or lists to any applicant.

**(b)**Except as provided in this section, there shall be a uniform charge for the production of voter lists. The reproduction costs of the basic electronic copy of the statewide file shall be reasonable as determined by the Secretary of State and a fee schedule shall be conspicuously posted in the office of the Secretary of State. Costs of printed copies of lists are as otherwise provided by law.

**(c)**Access to the lists and voter history information contained on the central computer in the office of the Secretary of State is accessible to anyone making application, except Social Security numbers which are not to be released.

**(d)**Proceeds from the sale of tapes, discs, lists, labels, or other materials from the Secretary of State shall be retained by the Secretary of State for use in voter registration.

**(e)**The Secretary of State shall provide, without charge, each legislator one copy of the voter list in his or her district within 90 days of his or her assuming office.

**(f)**Upon application and without charge, the Administrative Office of Courts shall be provided with an electronic copy of the statewide voter list no more than once a year for its use in the production of a master jury list or for any other lawful purpose.

**(g)**Upon application and without charge, the chief elections officer of any other state shall be provided with an electronic copy of the statewide voter list no more than once a year for any lawful purpose, on the condition that the chief elections officer of the requesting state agrees to reciprocate and provide a copy of the statewide voter list of that state to the chief elections officer of this state upon request and without charge, to be used for any lawful purpose. The Secretary of State may enter into an agreement with any other state, at any time, regarding the exchange of statewide voter lists.

**(h)**Resale of any portion of the list by the Administrative Office of Courts, or the office of the chief elections officer of any other state, shall be strictly prohibited.

## History

*Acts 1994, 1st Ex. Sess., No. 94-826*; *Acts 2003, No. 03-313*; *Acts 2006, No. 06-570*; *Acts 2009, No. 09-726*, § 1, Aug. 1, 2009; *Acts 2015, No. 15-290*, § 1, June 2, 2015; *Acts 2015, No. 15-459*, § 1, Sep. 1, 2015.

Annotations

## Notes

**Editor's Notes**

This section was amended both by *Acts 2015, No. 15-290*, effective June 2, 2015, and by *Acts 2015, No. 15-459*, effective September 1, 2015. Generally, *Acts 2015, No. 15-290* changed the number of printed copies of voter lists provided a legislator from two to one copy, while *Acts 2015, No. 15-459* retained the preexisting language regarding copies of voter lists for legislators and generally provided for a voting list for a chief election officer of another state. The Code Commissioner declared that the amendatory provisions in the two acts were not in conflict, merged the amendments, and added the subsection designations.

**2009 amendments.**

The 2009 amendment, effective August 1, 2009, added the last two sentences.

**Amendments.**

The 2015 amendment by Acts 2015, No. 15-290, rewrote the ninth sentence, which formerly read: “Upon application and without charge, legislators shall be furnished up to two free printed copies of the voter lists for their districts during a legislative quadrennium and resale of the lists shall be strictly prohibited.”

The 2015 amendment by Acts 2015, No. 15-459, added the eleventh and twelfth sentences and added “or the office of the chief elections officer of any other state” in the last sentence.

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*Code of Ala. § 17-4-38.1*

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## § 17-4-38.1. Maintenance of the statewide voter registration database.

**(a)** State agencies shall provide to the Secretary of State, on a schedule to be determined by the Secretary of State, any information and data that the Secretary of State considers necessary in order to maintain the statewide voter registration database established pursuant to *Section 17-4-33*, except where prohibited by federal law or federal regulation. The Secretary of State shall ensure that any information or data provided to the Secretary of State that is confidential in the possession of the entity providing the data remains confidential while in the possession of the Secretary of State.

**(b)** The Secretary of State may enter into agreements to share information or data with other states or group of states, as the Secretary of State considers necessary, in order to maintain the statewide voter registration database. Information or data that the Secretary of State may share pursuant to this subsection includes, but is not limited to, an electronic copy of the statewide voter list and data obtained pursuant to subsection (a). Except as otherwise provided in this section, the Secretary of State shall ensure that any information or data provided to the Secretary of State that is confidential in the possession of the state providing the data remains confidential while in the possession of the Secretary of State. The Secretary of State may provide such otherwise confidential information or data to county boards of registrars for legitimate governmental purposes related to the maintenance of the statewide voter registration database.

**(c)** A county board of registrars shall contact a registered elector by mail to verify the accuracy of the information in the statewide voter registration database regarding that elector if information provided under subsection (a) or (b) identifies a residential address for the elector that lies outside of the county in which the elector is registered to vote, except when the information provided under subsection (a) or (b) indicates that the elector registered to vote in another jurisdiction, within or without the State of Alabama, at a date subsequent to the date the elector registered to vote in the jurisdiction of the county board of registrars.

**(d)** The costs associated with agreements entered into by the Secretary of State as provided for in subsection (b) may be rendered by the Secretary of State to the Department of Finance and paid from the voter registration fund.

The cost of production and mailing required in subsection (c) shall be rendered by the Secretary of State to the Department of Finance and paid from the voter registration fund.

**(e)** The Secretary of State may promulgate rules in accordance with the Administrative Procedure Act to implement this section.

## History

*Acts 2015, No. 15-459*, § 2, Sep. 1, 2015.

Annotations

## Notes

**Effective Dates**

*Acts 2015, No. 15-459*, effective September 1, 2015.

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## *Code of Ala. § 17-4-39*

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## § 17-4-39. Maintenance of state voter registration list.

It shall be the responsibility of the board of registrars to enter in a timely manner the names of the electors who vote in each election into the state voter registration list.

## History

*Acts 1994, 1st Ex. Sess., No. 94-826*; *Acts 2003, No. 03-313*; *Acts 2006, No. 06-570*.

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Dated: November 16, 2020 Respectfully submitted

/s/ David I. Schoen
David I. Schoen (SCHO036)
DAVID I. SCHOEN, ATTORNEY AT LAW
2800 Zelda Road, Suite 100-6
Montgomery, AL 36106
(334) 395-6611 – Telephone
(917) 591-7586 – Facsimile
DSchoen593@aol.com
Schoenlawfirm@gmail.com

*Counsel for Appellant*

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on November 16, 2020.

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Dated: November 16, 2020 Respectfully submitted

/s/ David I. Schoen

David I. Schoen (SCHO036)
DAVID I. SCHOEN, ATTORNEY AT LAW
2800 Zelda Road, Suite 100-6
Montgomery, AL 36106
(334) 395-6611 – Telephone
(917) 591-7586 – Facsimile
DSchoen593@aol.com
Schoenlawfirm@gmail.com

*Counsel for Appellant*