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
FOR THE MIDDLE DISTRICT OF ALABAMA

REPLY BRIEF OF APPELLANT

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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,

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INTRODUCTION

The Libertarian Party of Alabama ("LPA") relies on its initial brief ("LPA Brief") for its arguments in this case. The initial brief addresses each of the arguments made by the Appellee. However, the LPA will address certain specific assertions in the Secretary's brief ("Merrill Brief") as identified below.

As asserted in the LPA's initial brief, every single decision from every single court in the country, without exception, that ever has considered whether it is constitutional to provide voter registration lists for free to major political parties, while charging a fee to minor political parties - the exact issue presented here - has struck down such a system as unlawfully discriminatory and unconstitutional. [LPA Brief at 17-38]

The Secretary attempts to distinguish each such case [Merrill Brief at 20-24]; but the minor distinctions identified are either not accurately presented in the Secretary's brief or create no meaningful difference. In approaching the matter this way, the Secretary ignores the overriding legal principle emphasized in each of the decisions that is a fundamental principle of the jurisprudence on this exact question - if the State decides to give major political parties a voter registration list for free, it cannot discriminate against minor parties by charging them a fee (an unaffordable, exorbitant fee, in this case) for the list.

This fundamental principle has been established for over 50 years by every case that ever has considered the question, and under every fact pattern that raises the issue.

It has been firmly established as a fundamental principle under the First and Fourteenth Amendment to the United States Constitution. *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984, 995 (S.D.N.Y.) (Three-judge court), *summarily affirmed*, 400 U.S. 806 (1970) (providing the voter list free of charge to major parties, while requiring minor parties to pay denies minor parties "an equal opportunity to win the votes of the electorate" and rejecting claim of heavy administrative burden); *Schultz v. Williams*, 44 F.3d 48, 60 (2d Cir. 1994) (reiterating the principle and language used in *Socialist Workers Party* 24 years earlier and finding the question needs no further consideration, as it is well settled on this precise issue); *Fusaro v. Cogan*, 930 F.3d 241, 256, n.8 (4th Cir. 2019) quoting from and reaffirming this fundamental principle from *Socialist Workers Party); Libertarian Party of Indiana v. Marion County Bd. of Voter Registration*, 778 F. Supp. 1458 (S.D. Ind. 1991) (giving the voter registration list free of charge to major parties while charging minor parties a fee unconstitutionally discriminates against minor parties, giving a significant and unwarranted advantage to major political parties and "... impinges not only upon the members freedom to associate as a party but also upon an individual voter's ability to assert her preferences" and

creates other severe burdens; discrimination of this nature with the voter lists, like ballot access discrimination violates the minor party 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; rejecting claim of financial or administrative burden for the State);[1] [See LPA Brief at 17-38 for further discussion on this point].

The Secretary's argument is circular. The Secretary urges this Court to stand alone among courts around the country in upholding a law that patently discriminates against minor parties and subsidizes major parties. In doing so, the Secretary asks the Court to approve the requirements of the law that only parties that achieve major party status by achieving statewide ballot access should get the voter registration list for free, while all other political parties must pay an exorbitant fee.

The legal principle emphasized in every case on the subject, as noted above, is that it is unconstitutional to impose a fee for the voter registration list on minor parties, while giving it for free to major parties. It is no answer to that principle to argue that all the LPA needs to do to get it for free is achieve major party status; but that is exactly the Secretary's position.

[1] This Court express relied on the decision in *Libertarian Party of Indiana* in its decision in *Fulani v. Krivanek*, 973 F.2d 1539, 1545 (11th Cir. 1992).

And actually, the Secretary's position is much more offensive to the operative constitutional principle. The record is undisputed that Alabama's ballot access laws are the most stringent in the country, making it most difficult for any new or smaller party to obtain ballot access.[2] That is not enough. This law denies a minor party the most important tool is needs to surmount those obstacles.

The specific intent, focus and impact of the discriminatory law at issue in this case is to deny minor parties the most valuable tool of all to enable it them to obtain major party status and access to the ballot. The record below is undisputed as to the importance of the voter registration list in enabling a minor party to grow, to educate the electorate on its positions, to reach voters, and all of the other things necessary to allow a minor party to achieve ballot access. The factual terms, the record here as to the critical importance of the voter registration to minor parties seeking ballot access is uncontroverted.

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[2] On this point (and several others), the uncontroverted expert report by universally recognized ballot access expert Richard Winger is instructive. Mr. Winger wrote in this case that Alabama, along with one other state, has the most difficult requirements for getting and maintaining statewide ballot access of any state in the nation [ECF# 18-2 at ¶¶2-3]. Mr. Winger then explains the importance of obtaining statewide ballot access, [*Id*. at ¶5], as the Secretary's position in this case, of course, demonstrates. Mr. Winger then advises that "[H]aving full access to a statewide voter registration list is crucial for a party that has to petition for ballot access" [*Id*. at ¶6] and he goes on to explain in detail why having the full statewide voter registration list is so critically important to a minor party in other for it to meet "the most important tasks a minor party has in trying to get out its political message - obtaining ballot access signatures, campaigning effectively, and winning elections." [*Id*.]. [See also LPA Brief at 7-11].

In legal terms, as court after court has found, when a State charges minor parties for a voter registration list while providing it for free to major parties, "it is clear that the effect ... is to deny ... minority parties ... an equal opportunity to win the votes of the electorate." *Green Party v. N.Y. State Bd. of Elections*, 389 F.3d 411, 420 (2d Cir. 2004).

ARGUMENT AND CITATIONS OF AUTHORITY

The Secretary Ignores the Fundamental Principle Established in Over 50 Years of Unbroken Jurisprudence that it is Unconstitutional to Discriminate Against Minor Parties by Charging them a Fee for a Voter Registration List While Giving it Free of Charge to Major Parties.

> **For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties. The right derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences.**

Norman v. Reed, 502 U.S. 279, 288 (1992).

In this case the Secretary attempts to justify the unjustifiable and the clearly unconstitutional practice of effectively denying minor parties the most vitally important tool it needs to grow, attract voters, educate the public as to its political platform, and gain ballot access by charging them an exorbitant fee to obtain a taxpayer-funded voter registration form, while providing multiple copies of it free of charge to the major parties. It attempts are completely unavailing.

The Secretary attempts to distinguish each of the whole body of cases squarely holding such a law unconstitutional; but its attempts are either factually wrong or they are based on meaningless minor factual distinctions wholly without a difference or they are based on the clearly erroneous notion that a constitutionally sound answer to discrimination against a minor party is to require it to become a major party (gain statewide ballot access, without the registration list) if it wants the list free. There is no basis in the law for such a position.

There appears to be an error in a premise underlying the Secretary's attempt to limit the effect of the summary affirmance in the *Socialist Workers Party* case. [Merrill Brief at 20].

The decision 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, of course, the leading decision on the question at issue in the case at bar. It is the case on which all cases from around the country have relied in rejecting the exact position the Appellee is taking before this Court and, indeed, as argued in the LPA's initial brief, the summary affirmance in that case by the United States Supreme Court on the exact issue now presented by this case, ought to be deemed dispositive of this appeal [LPA Brief at 18-19 & n.7].

In the lower court the Secretary asserted that the plaintiff Party in *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984 (S.D.N.Y. 1970), *summarily*

affirmed, 400 U.S. 806 (1970), had achieved ballot access in the election at issue for which it was seeking the voter registration list and therefore the case is consistent with the requirement under Alabama law that a minor party needs only to achieve statewide ballot access (read: become a major party) in order to get the voter registration list free of charge [ECF# 6 at 9-10; ECF# 8 at 1-2]. It argued therefore that the case is perfectly consistent with the Alabama law at issue here because the party had achieved ballot access and would therefore get the list under Alabama law [*Id*.]. The Secretary misread the case, and the LPA brought that to the lower court's attention [ECF# 7 at 9-10, n.5].

Nevertheless, it appears that the Secretary makes the same erroneous factual assertion before this Court [Appellee Brief at 20-21] and uses this argument to urge the Court to find that the *Socialist Workers Party* case does not involved the same issue as this case presents. Its factual premise is mistaken and its legal assertion is mistaken. The Party did not achieve ballot access in the election at issue and, in any event, the case stands for and turned on the exact legal issue presented here - that it is unconstitutional to charge a minor political party a fee for a copy of the voter registration list, when the list is given for free to major parties.

Proof that the Party had not and could not have obtained ballot access is readily established through a number of sources. First, the decision itself notes that the Party was, at the time it brought the case, seeking to obtain signatures sufficient

to gain ballot access. *Socialist Workers Party*, 314 F. Supp. at 987. Secondly, the case was decided on June 18, 1970 (the year of the election). Under New York law in effect at the time, a minor party seeking ballot access was not even permitted to begin circulating ballot access petitions for signatures until August in an election year.[3]

Additionally, consistent with the statute, the Party's own newsletter regarding the 1970 election at issue shows that the Party only filed its ballot access petition at the end of August, 1970, thereby making it clear that it was not and could not have been on the ballot at the time of the lawsuit. See https://themilitant.com/1970/3432/MIL3432.pdf at Page 5, bottom. (September 4, 1970, Vol. 34, No. 32) The newsletter further reports that the Party only got on the ballot through its petition in October 1970, again well after the case had been decided in June. https://themilitant.com/1970/3438/MIL3438.pdf at Page 7 (October 16, 1970, Vol. 34, No. 38). The opinion clearly was referring to parties that historically have obtained ballot access and of course the LPA has.

The bottom line is that in *Socialist Workers Party*, New York law required that minor parties that have to petition for ballot access had to secure 50,000

[3] See New York Election Law, §§ 138(7) & 143(8) (1965); §§ 138(11) & 143(8) (1974). Copies of the relevant New York law could not be retrieved electronically; so a hard copy is provided in an Addendum hereto. *See also Moskowitz v. Board of Elections*, 274 N.Y.S. 2d 93 (Sup. Ct. NY County 1966); *Donoghue v. Power*, 304 N.Y.S. 2d 706 (Sup. Ct. Monroe County 1969).

signatures (out of a statewide electorate of 7,438,008 voters, *Socialist Workers Party*, 314 F. Supp. at 991) in order to get a free copy of the voter registration list, while major parties that did not need to petition for ballot access got the list for free. This is the same issue before the Court in this case.

And concerning this issue and rejecting a claim of administrative burden, like the Secretary has made without supporting facts in the instant case, the court wrote, "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.*, 314 F. Supp. at 996. The court struck down the law as "constitutionally invalid." *Id.* 314 F. Supp. at 997. This principle must be applied here and the discriminatory law at issue in the instant case also must be struck down as constitutionally invalid.

The Secretary asserts that it only provides the list for free to certain "statutorily defined entities." [Merrill Brief at 1-5]. The Secretary is being too modest. It is accurate that, in addition to providing the full statewide voter registration list free of charge to the Democratic and Republican parties in Alabama, the Secretary also provides the full list free of charge to all of the parties permitted by statute to get it free, including the Administrative office of the Court [§ 17-4-38(f), Code of Alabama), and the chief elections officers of other states

around the country [§ 17-4-38(g), Code of Alabama].[4] Merrill also provides the list free of charge to any election official in the state and to a whole host of state agencies, not statutorily required by any means. [See ECF# 28-2 at 143].

Merrill, at his discretion, goes much further than just giving the list free of charge to statutorily defined or required persons or entities; indeed his list of groups and people to whom he gives the list for free in perhaps notable for who he excludes - minor parties. For example, he chooses to give a copy of the full list to each member of the legislature purportedly "to facilitat[e] communication between (incumbent) Members of the Alabama Legislature and the constituents whom they have been elected to represent." [ECF# 28-2 at 144]. He provides it to parties in litigation (except to the LPA in this litigation - See LPA Brief at 6, n.2], [ECF# 28-2 at 144, 148].

And notwithstanding his claims of the hardship it would cause to have to send an email once a year to the LPA or any other of the handful of minor parties active in Alabama with a copy of the list [See ECF# 5-1 at ¶¶33-34], Merrill voluntarily joined the Electronic Registration Information Center, Inc. ("ERIC) in October of 2015 and as a function of that membership voluntarily provides a full copy of the statewide voter registration to all who have access to ERIC at least

[4] This is permitted but not mandated under Alabama law. Alabama law allows Merrill to provide the list free of charge to any and every chief elections officer of all 50 states if he wants. [ECF# 12 at ¶18].

once a month every month. [ECF# 28-2 at 149]. Finally, Merrill joined yet another group to which he regularly provides a free copy of the list for other states' Secretaries of State. [ECF# 28-2 at 149].

At Pages 20-24 of his Brief, Merrill attempts to summarily dismiss some of the cases in the unbroken 50 year history of cases that stand unequivocally for the principle that a State cannot discriminate against minor political parties and subsidize major parties by providing the voter registration list free of charge to the latter while charging the former, by identifying purported distinctions between the facts in those cases and the instant case.

In each instance, the purported distinction makes no difference whatsoever in the analysis or the conclusion and certainly nothing the Secretary has written in any way undermines the fundamental overriding constitutional principle that such discriminatory treatment violates the First and Fourteenth Amendments to the United States Constitution.

It must be noted here, however, that in at least one instance Merrill simply misstates a major aspect of the purported factual distinction he relies on trying to distinguish the case from the instant case. Merrill writes that the decision in *Libertarian Party of Indiana v. Marion County Board of Voter Registration*, 778 F. Supp. 1458 (S.D. Ind. 1991) is factually distinguishable because in that case "the State law at issue explicitly restricted access to the voter registration list to *two*

political parties" and therefore is materially different from the major party vs. minor party discrimination present here. [Merrill Brief at 22] (Emphasis in original). Merrill is simply mistaken. The case makes it expressly clear that the law at issue in Indiana provided only for the chairmen of State's "major political parties" to get the voter registration list for free and the term "major political parties under Indiana law was defined by the level of support attained at the most recent election - exactly the same scenario presented in the instant case. *See Libertarian Party of Indiana*, 778 F. Supp. at 1459, *citing, Burns Ind. Code*, § 3-5-2-30.

It just happened to be that at the time the case was decided, the Democratic and Republican parties in Indiana were the only two parties to qualify for major party status based on their level of support - again, the exact same scenario presented in the instant case.[5]

Merrill cites *Libertarian Party of Indiana* as proof that the Court should use the *Anderson/Burdick* framework for analysis. [Merrill Brief at 20]. The LPA would welcome having the Court use the same analysis as that used in *Libertarian Party of Indiana* and, of course, having the Court come to the same inescapable conclusion.

[5] The decision at 778 F. Supp. 1459 expressly sets out the applicable statute that refers to "major political parties" and then notes that the parties agree that at the current time only the Democratic and Republican parties qualified for that status; but the law itself does not limit the free distribution of the voter registration list to "two parties"; rather it draws the exact same major vs. minor party discriminatory line presented in the case at bar.

Merrill appears to argue, against the teaching from each and every case that has considered this issue, that there is no real discriminatory treatment at work by providing the voter registration list for free to major political parties, based solely on their status as such, while charging an exorbitant fee to minor political parties, because they are not "similarly situated." [Merrill Brief at 26-28] First the idea that their difference in size or status exempts this scenario from the concept of unconstitutional discrimination finds no support in the law and certainly is explicitly or implicitly rejected in every case cited by the LPA; but beyond that this position was expressly rejected in *Green Party v. Land*, 541 F. Supp. 2d 912, 917 (E.D. Mich. 2008) which for these kinds of issues, "all political parties are similarly situated...."[6]

The LPA relies on Pages 17-38 of its initial Brief in reply to this argument.

Merrill's argument that any burden to the LPA is "minimal" is fully contradicted by the record factually and is misplaced in its focus. The burden here is two-fold. First, the record indisputably demonstrates the vitally important nature of the voter registration list to minor parties trying to obtain ballot access, educate voters about their platform, reach out and identify voters and ballot access signers,

[6] This is an important point for a number of reasons; but specifically in the context of *Anderson/Burdick* analysis it is important because a prerequisite for the lower level of scrutiny Merrill urges the Court to adopt and even for intermediate level scrutiny is that the law at issue be "nondiscriminatory" as a threshold matter. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). The law at issue in the instant case is the epitome of a discriminatory law that impermissibly discriminates on the basis of party status and affiliation.

and to win elections. [LPA Brief at 7-14; ECF# 18-1 (Redpath); 18-2 (Winger)] So charging them an exorbitant fee that is well beyond their means to afford denies the minor party the most important tool it has to try to obtain ballot access.

Secondly, the burden also must be measured by the uniquely high bar Alabama sets for obtaining and maintaining statewide access, as reflected in its ballot access history and in the expert report by Richard Winger. [ECF# 18-2, ¶¶2-3]

In combination the burden is overwhelmingly severe because the law at issue denies the minor party the primary tool it needs and should have in order to try to meet the high ballot access bar. [ECF# 18-2]. The effect, as intended, is to perpetuate a system in which new parties cannot grow and the two major parties - the parties of the members of the legislature - maintain their status through the subsidy provided by the free list.

CONCLUSION

The LPA relies on its initial brief in reply to all other arguments made by the Appellee. This case is as straightforward and clear as any that might come before this Court and the LPA's position is unquestionably supported by an unbroken line of authority going back at least fifty years, from courts in a variety of jurisdictions.

It violates the First and Fourteenth Amendments to the United States Constitution to provide a State's voter registration list, paid for by its taxpayers, for

free exclusively to major political parties, while charging an exorbitant fee for minor political parties.

Such a law stifles the ability of minor parties to grow and develop, to put forward their political ideas, to participate in the electoral process and it denies voters the ability to learn about them and, after learning about them, to support them. Alabama has stringent ballot access obstacles, more than sufficient to meet any and all legitimate ballot-related interests.

There is no legitimate state interest in the discrimination at issue here and there is no state interest, articulated by Merrill or otherwise, that justifies this discrimination. There certainly is no institutional or administrative hardship sufficient to justify this discrimination that would be caused by sending an email of the list, already compiled for abundant other entities and officials to which it is provided for free, and kept up to date monthly (e.g. for "ERIC"), to the LPA or other similarly situated minor political parties in Alabama.

That is literally all the LPA seeks in this case - the provision by email (literally with push of a button) - once a year, of the taxpayer funded voter registration list that is provided free of charge to the major political parties and to many other in-state and out-of state destinations throughout the year. The First and Fourteenth Amendments to the United States Constitution demands nothing less.

For the reasons set forth in the LPA's initial brief and herein, it is respectfully submitted that the lower court's decision in this case must be reversed.

> **When the variety and number of political parties increases, the chance of oppression, factionalism, and non-critical acceptance of ideas decreases.**

James Madison

> **There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms. New parties struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties have had in the past.**

Williams v. Rhodes, 393 U.S. 23, 32 (1968)

> **In our political life, third parties are often important channels through which political dissent is aired: "All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, which innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. . . . The absence of such voices would be a symptom of grave illness in our society."**

Willams v. Rhodes, 393 U.S. 23, 39 (Douglas, J., Concurring), *quoting from,*

Sweezy v. New Hampshire, 354 U.S. 234, 250-251 (1957).

Dated: January 20, 2021

Respectfully submitted

/s/ David I. Schoen

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ADDENDUM

STATE OF NEW YORK

DEPARTMENT OF STATE

1965

ELECTION LAW

(CHAPTER 17 OF THE CONSOLIDATED LAWS)

SECTION 69 OF EXECUTIVE LAW
ARTICLE 74 OF PENAL LAW
(ALL AS AMENDED)

NOTES AND POLITICAL CALENDAR

JOHN P. LOMENZO
SECRETARY OF STATE
162 WASHINGTON AVENUE
ALBANY, N. Y. 12210

election in such unit, excluding blank and void votes, except that not more than three thousand signatures shall be required upon any such petition for any office to be filled in any political subdivision of the state wholly outside the city of New York, and not more than the following numbers of signatures shall be required upon any such petition for the following public offices respectively:

(1) for any office to be filled in any county or portion thereof outside the city of New York, one thousand five hundred;

(2) for any office to be filled by all the voters of the city of New York, seven thousand five hundred;

(3) for any office to be filled by all the voters of any county or borough in such city, five thousand;

(4) for any office to be filled by all the voters of any municipal court district, or of any congressional or senatorial district in such city, three thousand;

(5) for any office to be filled by all the voters of any assembly district in such city, one thousand five hundred;

(6) for any office to be filled by the voters of a political subdivision containing more than one county not to exceed the aggregate of the signatures required for the counties so contained.

[Subd. 5 amended by chap. 554, Laws of 1957.]

6. The name of a person signing such a petition for an election for which voters are required to be registered shall not be counted if such person was not registered at the time of the last preceding general election as a qualified voter; or, if such person voted at a primary election where a candidate was nominated for an office for which such petition purports to nominate a candidate; or, if the name of a person who has signed such a petition appears upon another petition nominating the same or a different person for the same office.

7. A signature made earlier than six weeks prior to the last day to file independent petitions, shall not be counted. A signature on an independent petition for a special election made earlier than the date of the proclamation of the governor calling the special election, shall not be counted.

[Amended throughout by chaps. 433, 745, Laws of 1954.]

§ 138-a. **Validity of names on designating and independent nominating petitions.** The use of titles, initials or customary abbreviations of given names by the signers of designating or independent nominating petitions shall not invalidate such signatures provided that the identity of the signer as a registered voter can readily be established by reference to the signature on the petition and that of a person whose name appears in the register of voters for the last preceding general election.

[§ 138-a added by chap. 745, Laws of 1954.]

§ 139. **Acceptance or declination of designation or nomination.** 1. A person designated as a candidate for nomination or for party position, or nominated for an office otherwise than at a primary election, may, in a certificate signed and acknowledged by him, and filed as provided in this article, decline the designation or nomination; provided, however, that, if designated or nominated

[redacted] be filed not later than the fourth Tuesday preceding such election, and for an office to be filed at an election at a time other than [redacted] of a general election shall be filed not later than fourteen days preceding such election.

9. A petition for an independent nomination for an office to be filled at the time of a general election shall be filed not earlier than the fifth Tuesday and not later than the fourth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than fourteen days preceding such election; provided, however, that in a village of the first class wherein party nominations for elective village officers are required to be made at a village primary election, a petition for an independent nomination for an elective village office shall be filed not later than twenty-one days preceding the election at which the office is to be filled.

9. A certificate of acceptance or declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the third day after the fourth Tuesday preceding such election, and for an office to be filled at a time other than that of a general election shall be filed not later than eleven days preceding such election.

10. A certificate to fill a vacancy caused by declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the sixth day after the fourth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than eight days preceding such election.

11. If a vacancy described in subdivision seven of section one hundred thirty-one occur too late to comply with the provisions of this section, the certificates of nomination, acceptance or declination and to fill a vacancy in such nomination shall be filed as soon as practicable.

12. All papers required to be filed pursuant to the provisions of this chapter shall be filed between the hours of nine a.m. and five p.m. If the last day for filing shall fall on a legal holiday, such papers shall be accepted for filing on the next business day. All papers sent by mail in an envelope postmarked prior to midnight of the last day of filing shall be accepted for filing when received.

13. A vacancy occurring before September twentieth of any year in any office authorized to be filled at a general election, except in the offices of governor, lieutenant-governor, or United States senator shall be filled at the general election held next thereafter, unless otherwise provided by the constitution, or unless previously filled at a special election.

14. Notwithstanding any other provisions of law, where a vacancy occurs less than fourteen days before the last day for the filing of an independent petition for an office to be filled at the time of a general election, or after the last day to file an independent petition, such petition may be filed for the said office within fourteen days after the vacancy occurs. A certificate of acceptance or declination

[redacted]

STATE OF NEW YORK

DEPARTMENT OF STATE

1974

ELECTION LAW

(CHAPTER 17 OF THE CONSOLIDATED LAWS)

SECTION 69 OF EXECUTIVE LAW
(ALL AS AMENDED)

NOTES AND POLITICAL CALENDAR

7th Thurs.

12 weeks

JOHN J. GHEZZI
ACTING SECRETARY OF STATE
162 WASHINGTON AVENUE
ALBANY, N.Y. 12225

required upon any such petition for any office to be filled in any political subdivision of the state wholly outside the city of New York, and not more than the following numbers of signatures shall be required upon any such petition for the following public offices respectively:

[Old ¶ (b) repealed; ¶ (c) relettered (b) by chap. 531, Laws of 1974.]

(1) for any office to be filled in any county or portion thereof outside the city of New York, one thousand five hundred;

(2) for any office to be filled by all the voters of the city of New York, seven thousand five hundred;

(3) for any office to be filled by all the voters of any county or borough in such city, five thousand;

(4) for any office to be filled by all the voters of any municipal court district, or of any councilmanic district from which councilmen, other than the president of the council and councilmen at large, are elected pursuant to subdivision f of section twenty-two of the New York city charter, three thousand;

(5) for any office to be filled by all the voters of any congressional district, three thousand five hundred;

(6) for any office to be filled by all the voters of any state senatorial district, three thousand;

(7) for any office to be filled by all the voters of an assembly district, one thousand five hundred;

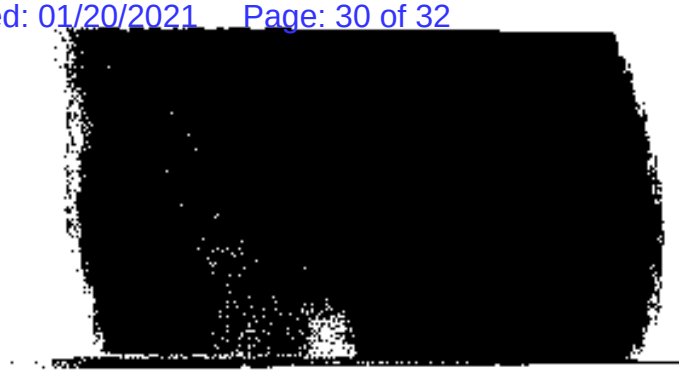
(8) for any office to be filled by the voters of any political subdivision contained within another political subdivision except as herein otherwise provided, not to exceed the number of signatures required for the larger subdivision.

10. The name of a person signing such a petition for an election for which voters are required to be registered shall not be counted, if such person was not registered on or before the first day for signing such a petition, or if such person voted at a primary election where a candidate was nominated for an office for which such petition purports to nominate a candidate, or, if the name of a person who has signed such a petition appears upon another valid and effective petition designating or nominating the same or a different person for the same office.

11. A signature made earlier than six weeks prior to the last day to file independent petitions, shall not be counted. A signature on an independent petition for a special election made earlier than the date of the proclamation of the governor calling the special election, shall not be counted.

[Old § 138 repealed, new § 138 added by chap. 1093, Laws of 1971.]

§ 138-a. **Validity of names on designating and independent nominating petitions.** The use of titles, initials or customary abbreviations of given names by the signers of designating or independent nominating petitions shall not invalidate such signa-



held not earlier than the day following the sixth Tuesday preceding the general election.

[Amended by chap. 716, Laws of 1967.]

5. A certificate of party nomination for an office to be filled at the time of a general election shall be filed not later than the fifth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than twenty-one days preceding such election.

6. A certificate of acceptance or declination of a party nomination for an office to be filled at the time of a general election shall be filed not later than the third day after the fifth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than eighteen days preceding such election.

7. A certificate to fill a vacancy caused by declination of a party nomination for an office to be filled at the time of a general election shall be filed not later than the fourth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than fourteen days preceding such election.

[Amended by chap. 895, Laws of 1972.]

8. A petition for an independent nomination for an office to be filled at the time of a general election shall be filed not earlier than the fifth Tuesday and not later than the fourth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than fourteen days preceding such election.

[Amended by chap. 895, Laws of 1972.]

9. A certificate of acceptance or declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the third day after the fourth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than eleven days preceding such election.

[Amended by chap. 895, Laws of 1972.]

10. A certificate to fill a vacancy caused by declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the sixth day after the fourth Tuesday preceding such election, and for an office to be filled at an election at a time other than that of a general election shall be filed not later than eight days preceding such election.

[Amended by chap. 895, Laws of 1972.]

11. If a vacancy described in subdivision seven of section one hundred thirty-one occur too late to comply with the provisions of this section, the certificates of nomination, acceptance or declination and to fill a vacancy in such nomination shall be filed as soon as practicable.

12. All papers required to be filed pursuant to the provisions of this chapter shall be filed between the hours of nine a.m. and five p.m. If the last day for filing shall fall on a legal holiday, such

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because:

   this brief contains 4,194 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

   this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman, 14-point.

Dated: January 20, 2021

Respectfully submitted

/s/ David I. Schoen
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CERTIFICATE OF FILING AND SERVICE

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 January 20, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished using the appellate CM/ECF system.

Dated: January 20, 2021

Respectfully submitted

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