

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

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

v. )

Case No. 4:19-cv-214-KGB

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

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**ATTACHMENT**

**PLAINTIFFS' EXHIBIT "6"**

**AFFIDAVIT OF MICHAEL PAKKO**

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AFFIDAVIT OF MICHAEL PAKKO

STATE OF ARKANSAS        )  
  )  
COUNTY OF PULASKI       ) ss.

I, Michael Pakko, Ph.D., of legal age and being first duly sworn upon oath, state as follows:

1. I am a Plaintiff in the case of Libertarian Party of Arkansas v. Thurston, the current Chair of the Libertarian Party of Arkansas, and make this Affidavit based on my personal knowledge of Arkansas elections and ballot access law, petition drives which I have supervised and managed in the past and present, knowledge of past petition drives of other political parties in Arkansas, and on my experience as Chair of the Libertarian Party of Arkansas. I previously signed an Affidavit in support of Plaintiffs’ Motion for Preliminary Injunction and testified at the hearing on the Motion for Preliminary Injunction on June 4, 2019. (Dkt. No. 32, Tr. of hearing held on 06/04/2019, p. 13, line 1—p. 69, line 6). I make this Affidavit in support of Plaintiffs’ Motion for Summary Judgment and Plaintiffs’ Statement of the Material Facts Which They Contend There is No Genuine Dispute to be Tried in the above referenced case.

2. This is an action on behalf of the Libertarian Party of Arkansas and other individuals seeking declaratory and injunctive relief against certain election laws of the State of Arkansas set forth and complained of in the Complaint filed herein on March 28, 2019, which, because of the current legal requirements for petitioning for ballot status in Arkansas for new political parties, will work to deny us and other interested Arkansas voters equal protection of the laws, the right to political association, the right to petition for the formation of a new political party in Arkansas with a reasonable and necessary petition signature requirement, petitioning period, and petition signature deadline, and the right of having the opportunity to cast our votes effectively for

nominees of the Libertarian Party of Arkansas for the 2022 and future General Elections in Arkansas.

3. The Plaintiffs will suffer irreparable injury if the laws in question in this case are not declared unconstitutional and enjoined as to future petition drives for party status, for the reason and upon the grounds that the Libertarian Party of Arkansas will be required to obtain an unnecessarily high number of valid petition signatures, i.e., 26,746 for the current election cycle, Ark. Code Ann., § 7-7-205(a)(2), within a ninety day period, Ark. Code Ann., § 7-7-205(a)(4)(B), coupled with an unnecessarily early petition signature deadline, Ark. Code Ann., §§ 7-7-203(c)(1)(A) and (B); and 7-7-205(a)(6)—which for the election cycle for the 2020 General Election in Arkansas was September 5, 2019, will be for the election cycle for the 2022 General Election in Arkansas on December 24, 2021, and will be for the election cycle for the 2024 General Election in Arkansas on September 7, 2023, contrary to what is necessary to achieve compelling state interests and in opposition to previous orders of this Court holding past petition signature requirements and petition signature deadlines unconstitutional as unnecessary to serve compelling state interests of the State of Arkansas.

4. The Libertarian Party of Arkansas is a formerly recognized political party under the laws of Arkansas, pursuant to Ark. Code Ann. §§ 7-3-101 and 7-7-205, and has previously conducted successful petition drives for political party recognition in Arkansas, pursuant to Ark. Code Ann., § 7-7-205(a), in 2012, 2014, 2016, and 2018, , when the number of valid petition signatures requirement was 10,000 valid petition signatures by law for 2012 through 2018, and also 2020 because of the granting of a preliminary injunction by the U.S. District Court for the Eastern District of Arkansas in 2019 for the 2019-2020 election cycle in Arkansas. The Libertarian Party of Arkansas, its supporters, and the individual Plaintiffs herein, are currently

conducting a petition drive for political party recognition in Arkansas in 2021, for the general election to be held in Arkansas on November 8, 2022.

5. Plaintiffs asked in this case to be allowed to submit 10,000 valid petition signatures for the purpose of achieving political party recognition in Arkansas for the current election cycle for the next General Election and future Arkansas General Elections—as was required previously before February of 2019 under the amended law at issue herein—rather than the now exclusive figure of 3% of the last vote for governor of Arkansas (which is 26,746 valid petition signatures for the election cycles of 2019-2020 and 2021-2022). The 3% requirement has been previously declared unconstitutional twice in published decisions by this Court in the cases of *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996) and *Green Party of Arkansas v. Daniels*, 445 F. Supp. 2d 1056 (E.D. Ark., W. D. 2006).

6. The Libertarian Party of Arkansas was the only minor political party to obtain recognition for ballot status in Arkansas by petitioning for the election cycles for 2016, 2018, and 2020. Further, prior to the 3% requirement being held unconstitutional on two occasions by this Court, no new political parties successfully petitioned and were recognized in Arkansas from 1977 (when a petitioning requirement was first put in place) through 2007 (when the 10,000 petition signature requirement was put into the law). In other words, no new political party had ever successfully petitioned in Arkansas for political party status prior to the establishment of a 10,000 petition signature requirement.

7. The Reform Party unsuccessfully petitioned for political party recognition in Arkansas in 1996 because it failed to get the needed petition signatures by the then petition signature deadline of January 2, 1996, but was ordered to be recognized as a political party and placed on the Arkansas ballot by this Court when the law was declared unconstitutional in the case of

*Citizens to Establish a Reform Party in Arkansas v. Priest, Id.* While the American Party was recognized as a political party in Arkansas in 1968 and 1970, that was because at that time Arkansas did not require any petition signatures to be submitted for political party recognition. It should be noted that the current petition deadlines for the last and current election cycles are earlier than the petition deadline of January 2 of the 1996 General Election year because the deadline for the 2020 General Election year was September 5 of 2019, while the deadline for the 2022 General Election year is December 24, 2021, and the deadline for the 2024 General Election year is September 7, 2023.

8. Since the requirement for new political party formation in Arkansas became 10,000 valid petition signatures or 3% of the last gubernatorial vote in 2007, whichever is less, only two minor political parties have ever at any time been on the Arkansas ballot by achieving new party recognition in Arkansas using the 10,000 valid petition signatures requirement (the Green Party in 2008, 2010, 2012, and 2014; and the Libertarian Party in 2012, 2014, 2016, 2018, and (because of the preliminary injunction granted by this Court on July 3, 2019) 2020. There has been no showing that the general election ballot in Arkansas has been cluttered in recent elections by new party and independent candidates. In fact, in the 2020 General Election in Arkansas, only 43 of the 100 seats up for election on November 3, 2020, in the State House races were contested on the General Election ballot. The Arkansas elections in 2012 and 2014, were the only election years in which two minor political parties (Libertarian Party and Green Party) achieved political party recognition by petitioning and were placed on the Arkansas ballot.

9. Because the Libertarian Party of Arkansas would be a new political party in Arkansas if it were successful in its petition drive this year, it would not nominate its candidates for the general election at a preferential primary election (with a runoff election being conducted about a

month later, if necessary, and designated a general primary election as do the Republican and Democratic Parties, but would nominate its candidates by convention. Ark. Code Ann., § 7-7-205(c) (2). The party filing period (i.e., for the Republican and Democratic parties) is set for the 2021-2022 election cycle for a one-week period beginning at 12:00 Noon, February 22, 2022, and ending at 12:00 Noon on the seventh day thereafter (viz.: March 1, 2022). Therefore, the current petition signature deadline for political party recognition in Arkansas of December 24, 2021—which is 60 days before the party filing period pursuant to Ark. Code Ann. § 7-7-205(a)(6), is 319 days before the date of the general election in Arkansas on November 8, 2022, and approximately five to six months before the Republicans and Democrats would hold their preferential primary elections to select their candidates on May 24, 2022, and their general primary election on June 21, 2022, for the same November 8, 2022 general election.

10. The individual Plaintiffs in this case are all registered Arkansas voters. Plaintiff Ricky Harrington, Jr., who received nearly 400,000 votes as the Libertarian candidate for United States Senator from Arkansas in 2020, plans to be the Libertarian candidate for Governor of Arkansas in the 2022 General Election.

11. On June 28, 2019, the Libertarian Party of Arkansas turned in 18,702 petition signatures for political party recognition to the Arkansas Secretary of State, of which the Secretary of State originally claimed 12,749 petition signatures were found to be valid. Several months thereafter in a letter dated December 10, 2019, and shortly before oral argument in the appeal case before the U.S. Court of Appeals for the Eighth Circuit, the Secretary of State informed us that the correct number of valid signatures was 14,779 petition signatures (a copy of the letter from John Thurston, Arkansas Secretary of State, to Dr. Michael Pakko, dated December 10, 2019, is marked Plaintiff's Exhibit 7, attached hereto, and made a part of this

Affidavit as though fully set forth herein). There was no explanation as to why the mistake had occurred—although I noticed that the previous incorrect figure of 12,749 matched a previous valid petition signature figure from a previous petition drive we had conducted in Arkansas. This mistake by the Arkansas Secretary of State's office causes concern to our party about possible future carelessness and inattention to detail by the Secretary of State's office.

12. The movement of the petition signature deadline for new party petitions in Arkansas requires the ninety day petitioning time to be conducted at least 14 to 17 months before the Arkansas general election for Presidential election years and at least 10 ½ to 13 ½ months before the Arkansas General Election for gubernatorial election years, at a time far removed from Arkansas elections and at a time when voter interest is less, election issues are not yet as well defined as they will be later, and before many voters have become disillusioned with the choices available to them for candidates from the Republican and Democratic parties.

13. Because we usually expect a validity rate of around 74-75% of signatures gathered, we try in our petition drives to be cautious and anticipate it will be necessary to submit approximately 14,000 petition signatures in order to have at least 10,000 valid petition signatures. Currently, the Libertarian Party of Arkansas has started a new petition drive to regain political party recognition for the 2021-2022 election cycle. As of May 25, 2021, we have collected 6,362 petition signatures of which 517 were collected by volunteers. While we expect to collect a sufficient number of valid signatures to comply with the 10,000 petition signature requirement allowed by this Court's preliminary injunction order filed on July 3, 2019 (Dkt. No. 31) and the joint stipulation as to the continuing effect of the District Court's preliminary injunction order filed in this case on February 4, 2021 (Dkt. No. 60), we do anticipate in the future that our party may not always be successful in receiving 3% of the vote for Governor or

3% of the vote for President in Arkansas so as to meet Arkansas's retention requirement, and, thus, we expect we will probably have to petition in the future to regain political party recognition in Arkansas.

14. In any gubernatorial or presidential election in which our candidate for Governor or President does not obtain at least 3% of the vote cast will require us to petition again for party recognition. The party filing period (i.e., for the Republican and Democratic parties) is set for the 2023-2024 election cycle for a one-week period beginning at 12:00 Noon, November 6, 2023, and ending at 12:00 Noon on the seventh day thereafter (viz.: November 13, 2023). Therefore, the petition signature deadline for political party recognition in Arkansas for the 2023-2024 election cycle will be September 7, 2023—which is 60 days before the party filing period pursuant to Ark. Code Ann. § 7-7-205(a)(6), is 425 days before the date of the general election in Arkansas on November 5, 2024, and approximately six to seven months before the Republicans and Democrats would hold their preferential primary elections to select their candidates on March 5, 2024, and their general primary election on April 2, 2024, for the same November 5, 2024 general election.

15. Further, the 90-day petitioning period is a severe burden on us in petitioning because severe weather and pandemic outbreaks have a negative effect on approaching people to sign petitions. It is rare in any 90-day period from my experience to not lose a certain number of days because of bad weather or outbreaks of something like COVID-19. Compared to the past petition drive in 2019, COVID-19 has made our efforts more difficult this year in a number of ways: (1) our petitioners have noticed that many government offices have made online payment/registration more easily done online. Fewer people are visiting those offices in person; (2) college and university campuses have been deserted. Online classes mean no students there in



person; (3) festivals and events all over the state have been cancelled (including the Conway Toad-Suck Festival that came up in my testimony in this case in the 2019 preliminary injunction hearing).

16. As I testified to on June 4, 2019, “I track a running average of the number of signatures we are receiving per day. And it clearly goes up and down with the weather. There are other special factors, but that’s one consideration.” Then, when asked when we only have 90 days as opposed to a year to petition and whether that is a bigger factor, I said, “Well, yes. With a longer period of time, one day missed is one-ninetieth of a petition period in the 90-day limit. It’s a smaller fraction in a longer period of time.” (Dkt. No. 32, Tr. of hearing on 6/04/2019, p. 25, lines 15-18 and 21-23). If not for the 90-day limitation, such drawbacks would have a lesser percentage negative effect on the petitioning period—particularly if we had a year or more to petition as in initiative petitions—along with the fact that if initiative petitions do not have sufficient valid petition signatures, they can have additional time to petition of around 30 days to make up the deficit along with having a deadline which falls around July of the general election year. I simply can think of no reason why the petitioning period should be limited to only 90 days—particularly considering that there is no 90-day limit on the collection of petition signatures to place the names of candidates for President and Vice President of unrecognized political parties or as independents on the Arkansas ballot. Because of the fact that, whether in a Presidential election cycle or a gubernatorial election cycle in Arkansas, the petition deadline will fall somewhere in September or December of the year before the election, there is no particular time when interest of the voting public is high at a time when the election is far in the future. Since there is no particular good time to petition in the year before an election, the Libertarian Party of Arkansas has chosen to petition in a time before it gets too hot in the

summer or people are on vacation and their children are out of school. Further, there would be problems this year with the 90-day petitioning period if we decided to turn in the petition signatures on the deadline of December 24, 2021, because having a deadline of Christmas Eve would result in much of the petitioning toward the end being done in competition with the Thanksgiving and Christmas holidays when most people's thoughts are on something else besides politics.

17. As Chair of the Libertarian Party of Arkansas, I have kept track of recent developments in the Arkansas General Assembly as to ballot access and election bills. I have contacted a number of Arkansas legislators in regard to this case before the Court and the decision of the U.S. Court of Appeals for the Eighth Circuit affirming this Court's decision granting us a preliminary injunction. I have made specific suggestions to correct the laws at issue in this case, but none of the legislators I contacted responded to our legislative proposal, although they are clearly aware of the situation. Therefore, it is apparent the Arkansas General Assembly at this time is not willing to address the issues raised in the instant case.

18. Because a political party in Arkansas which is successful in petitioning for ballot status does not nominate its candidates at the preferential primary or general primary elections for the current election cycle for 2022, I see no reason that the petition signature deadline for the new political party and the submission date for the candidates of the new political party for political practices pledges, candidate information forms, and party certificate of candidacy should be submitted during the party filing period from February 22, 2022, to March 1, 2022, well before the preferential primary election on May 24, 2022, and the general primary election on June 21, 2022, since the new political party does not have its candidates chosen at the elections in May and June of the General Election year, but rather at the new political party's

nominating convention which must be held no later than the date of the preferential primary election. Also, we can only select our candidates at the nominating convention if they have filed the political practices pledge, party certificate of candidacy, and candidate information form during the party filing period at Noon on February 22 through Noon on March 1, 2022. Prior to 2013, the dates for a new political party to submit petitions, nominate candidates, and have those candidates file a political practices pledge were tied to the preferential primary election. Act 1356 of 2013 changed those dates to connect them with the party filing period (a copy of Act 1356 of 2013 is marked Plaintiff's Exhibit "8", attached hereto, and made a part of this Affidavit as though fully set forth herein). In my proposed legislative fix this year, I specified the general primary election (as opposed to the preferential primary election) as a more appropriate date of reference because the general primary election is a runoff election, if necessary, for the major political party candidates for each elective office if no one receives a majority of the vote in the preferential primary election the month before.


19. I have personal knowledge of the facts alleged in the aforesaid Motion for Summary Judgment and Statement of Material Facts Not in Dispute which will be filed herein, as well as the Complaint filed in this action, and I understand that any false statements made herein will subject me to the penalties of perjury.

Further Affiant sayeth not.

  
MICHAEL PAKKO

SUBSCRIBED and sworn to before me this 25 day of May, 2021.

Commission (and Expiration): 12712074

  
Notary Public

(SEAL)

