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

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

Case No. 4:19-cv-00214-KGB

JOHN THURSTON, in his official
capacity as Secretary of State for
the State of Arkansas, DEFENDANT

PLAINTIFFS' COMBINED REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND RESPONSE AND BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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STATEMENT OF THE CASE

The Libertarian Party of Arkansas (hereinafter referred to as "LPAR") and the individual Plaintiffs filed a Motion for Summary Judgment, Statement of the Material Facts Which They Contend there is no Genuine Dispute to be Tried, and Memorandum Brief in Support of Their Motion for Summary Judgment on May 27, 2021 (Dkt. Nos. 62, 63, and 64, respectively). Defendant Secretary of State John Thurston (hereinafter referred to as "Secretary Thurston") filed a Motion for Summary Judgment, Combined Brief in Opposition to Plaintiffs' Motion for Summary Judgment; and in Support of Defendant's Motion for Summary Judgment, and Combined Response to Plaintiffs' Statement of Undisputed Material Facts; and Statement of Undisputed Material Facts on August 12, 2021 (Dkt. Nos. 70, 71, and 72, respectively). There are no genuinely disputed issues as

to any material fact set forth by the Plaintiffs and it is appropriate for this Court to determine this matter upon the cross-motions for summary judgment filed herein.

The LPAR in both 2019 and now in 2021 was successful in completing petition drives for political party recognition pursuant to and under the provisions of a preliminary injunction order by this Court (Dkt. No. 31). The preliminary injunction order entered by the District Court (Dkt. No. 31), *Libertarian Party of Arkansas v. Thurston*, 394 F.Supp.3d 882 (E.D. Ark. 2019) and affirmed by the U.S. Court of Appeals for the Eighth Circuit in *Libertarian Party of Arkansas v. Thurston*, 962 F.3d 390 (8th Cir. 2020) (hereinafter referred to as "*LPAR v. Thurston*"), settled for the 2020 election year the Plaintiffs' ability to qualify the LPAR as a recognized political party in Arkansas, while the preliminary injunction order and subsequent Joint Stipulation as to the continuing effect of the District Court's preliminary injunction order of July 3, 2019, and Joint Stipulations of Fact on February 4, 2021 (Dkt. No. 60, ¶ 1) has allowed the preliminary injunction order to have continuing effect for the 2021-2022 election cycle, with the LPAR successfully petitioning and achieving political party recognition in Arkansas in 2021, although the 90-day petitioning period and petition signature deadlines continue to be problematic (Plaintiffs' Exhibit 9, Supplemental Affidavit of Dr. Pakko, pp. 1-2, ¶¶ 3 and 4, pp. 12-13, ¶ 30). For the 2022 general election in Arkansas the LPAR will conduct a political party convention, rather than primary elections, under Arkansas law to nominate candidates for elective office. Despite this fact, Secretary Thurston spends the greater part of his brief discussing the petitioning requirements and petition deadline for the 2021-2022 gubernatorial election cycle which will 319 days before the November 2022 general election in Arkansas.

Under the new laws challenged herein, the next petition signature deadline will be September 7, 2023, for political party formation and recognition for the 2023-2024 election cycle. (Plaintiffs' Exhibit 6, Affidavit of Dr. Pakko, p. 4, ¶ 7). The LPAR will be affected by this deadline if the LPAR's candidate for Governor fails to obtain three percent of the general election vote for Arkansas Governor in the 2022 general election. However, still of concern are presidential (2023-2024) and gubernatorial (2025-2026) election cycles as to petition deadlines which will fall sometime in September or December of the year before the general election, respectively; the number of petition signatures required, the limited 90-day petitioning period, the application of the party filing period to receive candidate papers for a newly recognized political party which nominates its candidates by convention rather than in primary elections, and the continued application of the retention requirement of 3% of the total vote in either the governor's race in gubernatorial election years or the president's race in presidential election years.

PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Local Rule 56.1(b), the material facts to which the Plaintiffs contend a genuine issue exists are set out in Plaintiffs' Concise Statement of the Material Facts as to Which the Plaintiffs Contend a Genuine Dispute Exists, which is a separate pleading filed contemporaneously with the instant Plaintiffs' Combined Reply Brief in Support of their Motion for Summary Judgment and Response and Brief in Opposition to Defendant's Motion for Summary Judgment. While Plaintiffs do not dispute some of the material facts set forth by Defendant Secretary Thurston in his Statement of Undisputed Material

Facts, Numbers 60-92 (Dkt. No. 72, pp. 24-35), the remaining Statement of Undisputed Facts by Secretary Thurston are disputed to one extent or another, either wholly or in part, because of not being correct statements of fact, being immaterial, being argumentative, being incomplete, being opinions rather than statements of fact, being statements of law rather than statements of fact, being speculative opinions without a proper foundation, being legal conclusions rather than a statement of fact, being statements of testimony taken out of material and relevant context, assuming facts not in evidence by stating what Plaintiff Dr. Pakko did not say, and are not supported by particular parts of material in the record pursuant to Fed. R. Civ. P. 56(c)(1)(A) and (c)(3). In addition to the transcript of the preliminary injunction hearing (Dkt. No. 32, Tr. PI hr., pp. 1-251) conducted on June 4, 2019, the eight Plaintiffs' exhibits attached to Plaintiffs' Motion for Summary Judgment filed on May 27, 2021 (Dkt. No. 62), the exhibits admitted at the preliminary injunction hearing on June 4, 2019, the Joint Stipulation as to the Continuing Effect of the District Court's Preliminary Injunction Order of July 3, 2019, and Joint Stipulations of Fact filed on February 4, 2021 (Dkt. No. 60), Plaintiffs also attach to this Brief Plaintiffs' Exhibit "9", the Supplemental Affidavit of Michael Pakko.

ARGUMENT AND AUTHORITIES

I. THE STANDARD OF REVIEW TO BE APPLIED IN THE INSTANT CASE IS A FORM OF STRICT SCRUTINY BECAUSE THE BURDEN OF THE LAWS IN QUESTION IMPOSED ON THE PLAINTIFFS IS OF SOME SUBSTANCE AS FOUND BY THE U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Plaintiffs have already set forth in their Memorandum Brief in Support of their Motion for Summary Judgment (Dkt. No. 64) the appropriate standard of review in deciding a motion for summary judgment as well as the appropriate standard of review required to be applied in a ballot access case. While Plaintiffs will not repeat here their arguments set forth in their aforesaid memorandum brief (Dkt. No. 64, pp. 5-9), they would emphasize that only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). However, because the Defendant Secretary Thurston incorrectly suggests what the standard of review should be in deciding in the instant case whether the laws in question are unconstitutional, Plaintiffs find it necessary to discuss herein in some detail the Eighth Circuit's decision as to pertinent points in its decision in *LPAR v. Thurston, Id.*, which has upheld and affirmed this Court's decision in *Libertarian Party of Arkansas v. Thurston*, 394 F.Supp.3d 882 (E.D. Ark. 2019). Such discussion has particular bearing as to the standard of review to be applied in the instant ballot access case because "[t]he law of the case doctrine prevents the relitigation of a settled issue in a case and requires courts to adhere to decisions made in earlier proceedings in order to ensure uniformity of decisions, protect the expectations of the parties, and promote judicial economy." *United States v. Bartsh*, 69 F.3d 864, 866 (8th Cir. 1995) (citing *Bethea v. Levi Strauss & Co.*, 916 F.2d 453, 456-457 (8th Cir. 1990). Further, Secretary Thurston has presented nothing new to change the standard of review for this case except repeating the phrase "severe burden" almost 20 times in his brief.

The Eighth Circuit, after discussing the challenged Arkansas ballot access scheme and laws at issue herein, made a number of pertinent comments which were to a large extent, either minimized or ignored entirely in Secretary Thurston's brief. The Eighth Circuit noted that:

> The "party filing period" is a window for established parties to file for access to state funding for their party primaries held in March and June of the election year. See id. § 7-7-201(a) (state funding). Importantly, parties seeking whole-ballot access via petition do not participate in primaries. Rather, if a new political party is recognized by successful petitioning, that new party nominates its candidates by convention and is required to submit its convention-selected nominees, id. § 7-7-205(c)(2)(A), to the Secretary of State on the day of the established parties' preferential primary elections, i.e., "on the first Tuesday after the First Monday in March," id. § 7-7-203(b)(2). In this way, the deadlines for minor parties to petition for access and select candidates are tethered to and defined by deadlines for major-party primaries, even though the petitioning minor parties are not involved in such primaries. *LPAR v. Thurston*, 962 F.3d at 395.

Thereafter, the Eighth Circuit discussed extensively the testimony given by various witnesses which had been heard by the District Court, the history and changes relating to Arkansas ballot access law, the extent of success or lack of success of past petitions for both independent candidates and new political parties and various expert opinions. *LPAR v. Thurston*, 962 F.3d at 396-398.

> Finally, deadlines far before election day are problematic because of the general disinterest of potential voters so far removed from elections. Id. at 1164 ("[M]ost voters in fact look to third party alternatives only when they have become dissatisfied with the platforms and candidates put forward by the established political parties. This dissatisfaction often will not crystalize until party nominees are known. ... [I]t is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary.") Early filing deadlines pose heavy burdens on minor parties and independent candidates, in part, because they are likely to impact the ability of parties or independent candidates to procure signatures. See Anderson, 460 U.S. at 791-92, 103 S.Ct. 1564 ("An early filing deadline may have a substantial impact on

> independent-minded voters. ... [I]ssues simply do not remain static over time. ... It also burdens the signature-gathering efforts of independents who decide to run in time to meet the deadline. When the primary campaigns are far in the future and the election itself is even more remote, the obstacles facing an independent candidate's organizing efforts are compounded. Volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign.").
> In general, petition deadlines earlier than spring of election year are problematic even when coupled with a generally permissible 10,000 signature requirement. By comparison, Arkansas's present requirement for 27,000 signatures, 425 days prior to the election and with a rolling 90-day window to obtain the signatures sets a much higher bar. *LPAR v. Thurston*, 962 F.3d at 400.

Arkansas's ballot access laws challenged herein impose a severe burden on the LPAR and the individual Plaintiffs and other potential new political parties in Arkansas seeking ballot access because of the history of ballot access laws in Arkansas and the success and lack of success of both statewide independent candidates and new political party petition drives in achieving ballot access. *LPAR v. Thurston*, 962 F.3d at 396-397. If "a burden of some substance" on the Plaintiffs is shown, "a form of strict scrutiny applies and requires that the statute be 'narrowly drawn to serve a compelling state interest.'" *Moore v. Martin*, 854 F.3d 1021, 1026 (8th Cir. 2017) (quoting *Libertarian Party of N.D. v. Jaeger*, 659 F.3d 687, 693 (8th Cir. 2011)). *LPAR v. Thurston*, 962 F.3d at 397. The Eighth Circuit then commented with approval on the District Court's consideration of Eighth Circuit and Supreme Court cases, compared them to the currently challenged statutory requirements, and found the current requirements imposed a severe burden such that strict scrutiny applied. *Id.* As the Eighth Circuit went on to state:

> If a statute restricting ballot access imposes "a burden of some substance on a plaintiff's rights" we apply a form of strict scrutiny and uphold the statute "only if it is 'narrowly drawn to serve a compelling interest.' " [Moore v. Martin, 854 F.3d at 1026] (quoting Jaeger, 659 F.3d at 693) [citation omitted] ("Regulations imposing

> severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest."). Because states enjoy broad regulatory power over the election process, however, "[l]esser burdens ... trigger less exacting review, and a State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" [citations omitted] *LPAR v. Thurston*, 962 F.3d at 398.

While the independent ballot access laws found unconstitutional in *Moore v. Martin* had a petition deadline of March 1 of the general election year, a 10,000 petition signature requirement, and a 90-day petitioning period which ran from December of the year before the general election until March 1 of the general election, the ballot access laws challenged therein were similar to the situation in the instant case because neither independent candidates or new political party candidates participate in the preferential primary election or general primary election required of established political parties in Arkansas. Therefore, the Eighth Circuit stated that: "As in *Moore*, we conclude strict scrutiny applies." *LPAR v. Thurston*, 962 F.3d at 402. The Eighth Circuit then went on to say, "Further, the requirements at issue in *Moore* were less demanding; a smaller signature requirement and a deadline 250 days prior to the election (rather than 425 [or 319 days prior to the election in gubernatorial election cycles in Arkansas]). *Moore*, 854 F.3d at 1025. We easily conclude the current statutory requirements impose "a burden of some substance on plaintiffs' rights." *Id.* at 1026 (quoting *Jaeger*, 659 F.3d at 693). *LPAR v. Thurston*, 962 F.3d at 402.[1]

[1] The Eighth Circuit seems to use "a burden of some substance" and "severe burden" interchangeably.

II. THE DEFENDANT SECRETARY OF STATE HAS NOT DEMONSTRATED AN IMPORTANT REGULATORY INTEREST TO JUSTIFY AS NECESSARY THE BALLOT ACCESS LAWS CHALLENGED HEREIN.

No legal case exists where a political party petition deadline more than a year before the general election, and with a petition signature requirement that has been increased to a previous higher requirement which has never been complied with, has ever been held not to constitute a severe burden, let-alone being held constitutional. No State has ever even tried this. Besides the problem with the deadlines, the previously mentioned cases of *Citizens to Establish a Reform Party in Arkansas v. Priest,* 970 F.Supp. 690 (E.D. Ark., 1996), appeal dismissed with conditions, 8th Cir. Case No. 96-3238, June 19, 1997; and *Green Party of Arkansas v. Daniels,* 445 F.Supp.2d 1056 (E.D. Ark., W.D. 2006), favor Plaintiffs' position because the new deadlines in December or September of the year before the general elections are much earlier in the relevant election cycles than the January 2, 1996 deadline declared unconstitutional in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F. Supp. at 692-693, 698, ¶ 17, or the deadline in late June of 2006 (and with the petitions actually turned in 30 days early on the last of May in 2006) in *Green Party of Arkansas v. Daniels*, 445 F. Supp. at 1060, ¶ 25, and the 26,746 signatures required by the new law challenged herein is also higher than the 21,505 signatures in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F. Supp. at 691, ¶ 2, 698-699, or the 24,171 signatures in *Green Party of Arkansas v. Daniels*, 445 F.Supp. 2d, at 1059-1060, 1061-1063, when 150 days was allowed for petitioning and the petition deadline was in late June of the general election year.

The Eighth Circuit ". . . harbor[ed] serious doubt that the generalized desire to

maintain the integrity of elections and prevent ballot overcrowding can be viewed as a compelling state interest when the prior version of the statute undisputedly succeeded at preventing ballot overcrowding." *LPAR v. Thurston*, 962 F.3d at 403. "The evidence at the hearing showed that no party previously achieved access during the years in which Arkansas had a 3% requirement, and even during the many years in which Arkansas had a 10,000 signature requirement coupled with a more forgiving deadline, there was no crowding of the ballot." *Id.* The Eighth Circuit noted the effects of the ballot access laws in question on the LPAR and its supporters.

> At the end of the day, Party officials clearly testified that they would not be able to meet the requirements, and their statements were fully consistent with past experience. Past experience showed that the 10,000 signature threshold and more forgiving deadlines were not an insurmountable bar but that no party in Arkansas could meet the more stringent requirements. Nothing the State presented compelled rejection of the Party's evidence, and the district court carefully explained its factual conclusions." *LPAR v. Thurston*, 962 F.3d at 404.

III. THE CASES AND BALLOT ACCESS LAWS CITED BY THE DEFENDANT SECRETARY OF STATE IN HIS BRIEF ARE DISTINGUISHABLE FROM THE CIRCUMSTANCES AND BALLOT ACCESS LAWS AT ISSUE HEREIN.

Defendant Secretary Thurston does not discuss in his brief the history of Arkansas ballot access laws, cases, and past election experience in Arkansas, which is unfavorable to the laws at issue. While a number of cases have upheld or commented on petition signature requirements of 3% or more, in each of those cases the number or percentage of petition signatures required had not been increased back to a former requirement that had never been complied with, the petitioning time in many of the cases allowed seven months, one year, or an unlimited amount of time, the petition signature deadline was well into the year of the general election rather than in the year before the general election, and the ballot

access requirements for new political parties in these other states had actually been complied with. When Arkansas had a 3% petition requirement for new political party recognition, even though there was sometimes a longer period of time to collect signatures (up to 150 days in 2006), and the petition signature deadline was not in the late summer or early winter of the year before the general election, no political party was successful in complying with Arkansas's 3% petition signature requirement.

The cases and laws cited by Secretary Thurston previously (many of which are again commented on in Secretary Thurston's brief before this Court), as the Eighth Circuit noted in its decision, ". . . are readily distinguishable as involving much more forgiving deadlines **or other mitigating factors**." [emphasis added]. *LPAR v. Thurston*, 962 F.3d at 403, n.6. What was said by the Eighth Circuit in the appellate decision of this case should be repeated here: "As accurately noted by Plaintiffs in their reply brief:"

> [I]n each of those cases[,] the number or percentage of petition signatures required had not been increased back to a former requirement that had never been complied with, the petitioning time in many of the cases allowed seven months, one year, or an unlimited amount of time [rather than 90 days], the petition signature deadline was well into the year of the general election rather than 424 days before the general election and the ballot access requirements for new political parties ... had actually been complied with.

Reply Br. at 26-27. *LPAR v. Thurston*, 962 F.3d at 403, n.6.

Secretary Thurston has to a large extent repeated arguments as to the applicability of cases and ballot access laws from other states. Plaintiffs would comment on those cases and laws herein as follows: The cases and ballot access laws relied upon by Secretary Thurston can be distinguished as follows: *Jenness v. Fortson*, 403 U.S. 401, 433-434 (1971) (180 day petitioning period with a petition signature deadline of the second Wednesday in June of

the general election year—the same deadline as that a candidate filing in a party primary must meet); *Populist Party v. Herschler*, 746 F.2d 656, 657-661 (10th Cir. 1984) (concerning a late challenge to a 5% petition signature requirement which normally allowed one year for petitioning with a June 1 deadline in the general election year—but which had been reduced for the 1984 election by a court approved compromise from 8,000 to 1,333 petition signatures for new political party formation with a June 1 deadline, or a requirement of 7,964 signatures for an independent candidate with a deadline of 45 to 90 days before the general election, see *Blomquist v. Thomson*, 739 F.2d, 525, 528 (10th Cir. 1984), with the compromise being because of a new law passed that had substantially reduced the petition period time, and which involved missing the June 1 filing deadline by over three months, turning in—at best--only 1,233 petition signatures so as to be 100 less than the compromise number of 1,333, and the plaintiffs being guilty of laches)[2]; *Beller v. Kirk*, 328 F.Supp. 485, 486 (S.D. Fla. 1970) (three judge district court, *per curiam*) (no petitioning attempted and two page decision dismissing complaint with prejudice because complaint failed to state a claim upon which relief may be granted), *aff'd.* without opinion sub nom. *Beller v. Askew*, 403 U.S. 925 (1971); *Tripp v. Scholz*, 872 F.3d 857, 860, 864-866 (7th Cir. 2017) (involved petitioning to obtain ballot access in two state House districts, a petition deadline of June 23 of the general election year, and with Illinois third party political candidates having successfully petitioned previously in "multiple districts across

[2] The Tenth Circuit in *Populist Party v. Herschler*, 746 F.2d at 661, commented *in dicta* that the June 1 petition deadlin in the general election year was subject to challenge and runs counter to the views in *Anderson v. Celebrezze, Id.* and *Blomquist v. Thomson, Id.* and then cites to the Eighth Circuit decision in *McLain v. Meier*, 637 F.2d 1159, 1164 (8th Cir. 1980).

multiple elections"); *Swanson v. Worley, 490 F.3d 894 (11th Cir. 2007)* as an illustration of what Secretary Thurston misses in his argument in his brief suggesting that the fact that the Eleventh Circuit upheld a 3% petition requirement for ballot access for Alabama new political parties suggests that the District Court herein was wrong in its findings. In the *Swanson* case, the signature petition deadline was the first primary election date, which at that time was on the first Tuesday in June of the election year. *Swanson v. Worley*, 490 F.3d at 896. Of equal significance is the distinction in Alabama of an ". . . unlimited time to conduct the petitioning effort" and the recent success of the Libertarian Party in getting on the Alabama ballot. "The ability of minor party candidates in Alabama to qualify for the ballot in the past also bolsters the reasonableness of Alabama's three-percent signature requirement." *Swanson v. Worley*, 490 F.3d at 904-905; *Libertarian Party of New Hampshire v. State*, 910 A.2d 1276, 1279, 1281-1282 (N.H. 2006) (petition deadline in second Tuesday in August of general election year and up to approximately twenty-one months of petitioning time); *Green Party of Alaska v. State*, 147 P.3d 728, 730, n.1, 733-735 (Alaska 2006) (three different options to achieve or continue political party recognition using 3% of last vote cast for retention, 3% of last vote cast for voter registration to stay on ballot, or petitioning—which was not at issue in the case as to a 1% of last vote cast requirement to obtain ballot access); *Libertarian Party of Maine v. Diamond*, 992 F.2d 365, 367 (1st Cir. 1993) (options of organizing around prior candidate for Governor or President with his or her permission if not affiliated with another party and received 5% of total vote or petition signature deadline of April 1 of general election year); *Rainbow Coalition of Oklahoma v. Oklahoma State Election Board*, 844 F.2d 740, 741-747 (10th Cir. 1988)

(where one year was allowed for petitioning, the requirement had been complied with in the past, and the petition deadline was May 31 of the general election year—which the Tenth Circuit still noted was "**troublesomely early**")[3]; *Libertarian Party of Oregon v. Roberts*, 750 P.2d 1147, 1149, 1154-1155 (Ore. 1988) (law had recently been complied with by plaintiffs in 1980 and 1982, there was no petition deadline in the year before the general election, there was no 90 day limitation on petitioning, and candidates could alternatively be nominated by a plurality of an assembly of electors numbering between 250 and 1,000 at a convention); *Libertarian Party of Florida v. Florida*, 710 F.2d 790, 792-794 (11th Cir. 1983) (188 day petitioning period with a petition signature deadline of September 7, 1982, in the general election year, and with a petition signature requirement that had been complied with previously in 1974 and 1976); *Libertarian Party of New Hampshire v. Gardner*, 843 F.3d 20, 22-26 (1st Cir. 2016) (a "facial challenge" with petitioning put on hold and not attempted after the petitioning time was reduced from approximately twenty-one months to a bit more than seven months so as to start on January 1 and end on the petition deadline of the second Tuesday in August of the general election

[3] Previously in 1984, Oklahoma's ballot access law for political party recognition only allowed 90 days to petition rather than the one year allowed at the time of *Rainbow Coalition of Oklahoma*. The 90-day petitioning period in 1984 with a deadline of no later than May 29 of the general election year and with the requirement that a new political party had to participate and nominate its candidates at primary elections and, if necessary, a runoff primary election, was one of the reasons the old ballot access law was declared unconstitutional in the case of *Libertarian Party of Oklahoma v. Oklahoma State Election Board*, 593 F.Supp. 118 (W.D. Okla. 1984), a case which was cited with approval by the U.S. District Court for the Eastern District of Arkansas in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. 690, 698, ¶ 16 (E.D. Ark., 1996). Currently, Oklahoma has a 3% petition requirement for political party formation based on 3% of the last vote for governor. However, here is where the similarities end between the two states. Oklahoma has a petition deadline of March 1 of the general election year, requires all political parties to participate in a primary election, and a runoff primary election if no one gets a majority in the primary election, allows one year for collecting the 3% petition requirement, and has a retention requirement of only 2½% for any statewide office in at least one of the last two general elections. If the party has a statewide candidate for any office who gets 2½% of the total vote, the retention requirement is good for the next two general elections without the need to do a new petition. Also, these requirements have actually been complied with, unlike the 3% petition requirement in Arkansas. See Okla. Stat., tit. 26, §§ 1-102, 1-103, 1-108, and 1-109.

year, and was not a challenge to a 3% petition signature requirement and in a state where there was a second alternative for new political parties to have their candidates on the ballot by an individual nominating process); and *Libertarian Party of N.D. v. Jaeger, 659 F.3d at 691-692* (which was not a challenge to the number of petition signatures required, but concerned a challenge to the requirement that a political party candidate who wins the party's primary for a legislative office must also obtain a vote in the primary equal to at least 1% of the population of the legislative district or at least 300 votes, whichever is less, in order to be on the general election ballot).

Further, the extensive citation to various states as to deadlines lump together deadlines for filing petitions, deadlines for giving notices of candidacy, deadlines to achieve party formation by having a certain number of registered voters in the party, deadlines for certificates of candidacy, and other deadline requirements which are not exclusive for the turning in of petition signatures. Additionally, Secretary Thurston rarely notes that in many of these states there is a difference between the requirements for a major political party and a minor political party as well as the fact that many of the states with earlier deadlines require all political parties to participate in a primary election to nominate their candidates for the general election ballot. Also, not really mentioned by Secretary Thurston is the fact that in many of these states there is either no limit on petitioning time, a two-year limit on petitioning time, a little over one year in petitioning time, and seven months in petitioning time. Interestingly, five of the states mentioned by Secretary Thurston for which he gives very little in specific details have a set petition signature number for new party formation of 10,000 petition signatures. These five states

are Colorado, Maryland, Massachusetts, Missouri, and South Carolina. All of these states have somewhere between a significant to a substantial greater population than Arkansas. Missouri's 10,000 petition signature requirement has no limitation as to the time in which you can collect petition signatures. Mo. Ann. Stat. § 115.315(5). Maryland's 10,000 petition signature requirement has the unique limitation of allowing two years to collect petition signatures. Md. Code Ann. Elec. Law, §§ 4-102(b)(2)(i), 4-102(b)(2)(ii), and 5-303. Colorado also has provisions for 10,000 petition signatures. Colo. Rev. Stat. Ann. §§ 1-4-801 and 115-315(5).

Defendant Secretary Thurston's Statement of Undisputed Material Facts, numbered paragraph 75 (Dkt. No. 72, pp. 28-29) and his brief make reference to states which have deadlines earlier than the primary election in those states by between 84 to 126 days. However, these states are in many cases states where there is no runoff primary election as in Arkansas and where a newly recognized political party must participate in a primary election to nominate the new party's political candidates, unlike in Arkansas where, pursuant to Ark. Code Ann., § 7-7-205(c)(2), a new political party nominates by convention and does not participate in the preferential primary election or general primary election in Arkansas. Further, 84 to 126 days is a much shorter time than the difference between the petition deadline in Arkansas for the 2023-2024 election cycle because the difference between the petition deadline of September 7, 2023, and the preferential primary election of March 5, 2024, is 180 days, while the difference of the petition signature deadline of September 7, 2023, and the general primary election of April 2, 2024, is 206 days. However, unlike states where new political parties must

participate in primary elections, not only does Arkansas have a petition deadline further off from the preferential primary election and the general primary election, but a new political party in Arkansas doesn't even participate in the preferential primary election and any runoff conducted in the general primary election.

Also, a number of these states have newly enacted laws for which we do not have statistics as to how often they have been complied with by a new political party. Therefore, there is a distinction for petition signature deadlines between a state that requires nomination for new political party candidates at primary elections as opposed to nominating conventions, with some states allowing political parties a choice between primary elections and nominating conventions. Further, the states listed by Secretary Thurston all have different signature requirements than Arkansas (with some states like Alaska, California, Colorado (which also allows petitioning for political party recognition), Delaware, Louisiana, Maine, and Massachusetts having political party recognition by the achievement of a certain number of registered voters), better petitioning periods, better histories of success in complying with the law in those states where the law has been in existence for a significant period of time, and differing ways for candidates to be nominated. What is not mentioned by Secretary Thurston is that in a number of the states cited by Secretary Thurston the petition signature requirement is the same as found applicable by this Court in its preliminary injunction order of 10,000 petition signatures. States cited by the Secretary Thurston with a 10,000 petition signature requirement are Colorado, Colo. Rev. Stat. Ann. §§ 1-4-801 and 115-315(5), Maryland, Md. Code Ann. Elec. Law, §§ 4-102(b)(2)(i), 4-102(b)(2)(ii), and 5-303, Massachusetts,

Mass. Gen. Laws Ann. Ch. 53, § 10, Missouri, Mo. Ann. Stat. § 115.315(5), and South Carolina, S.C. Code Ann., § 7-9-10—all of which are states significantly higher in population than Arkansas[4] and allow a year or more to collect petition signatures, with Missouri having no time limit at all and Maryland allowing two years. Other states listed by the Secretary Thurston have petition signature requirements of 2,000 petition signatures for Utah with a petitioning time period of a little over one year (a state with a larger population than Arkansas), Utah Code Ann., §§ 20A-1-201.5(1) and (3), 20A-8-103(2)(a), and (2)(b), one and one-third percent of the last vote for governor in Arizona, Ariz. Rev. Stat. Ann. § 16-311 (which if applied in Arkansas would be a little bit more than 11,000 petition signatures), one percent of the last vote in Nevada, one percent of the last vote for governor in Ohio, Ohio Rev. Code Ann., §3517.01(A)(1)(b)(i)[5] and one percent of the last vote in West Virginia, which applies to recognized parties and if party uses primary election, with an August 1 deadline, and if the political party has less than ten percent of the total vote for governor the party may use a party convention (which has a lesser population than Arkansas but a petition signature deadline for a new political party of August 1 of the election year). W. Va. Code, §§ 3-5-1, 3-5-7, 3-5-22, 3-5-23(c), and 3-5-24(a). All of these one percent petition requirement states have a petition drive requirement that if it were applied to Arkansas would result in a petition signature

[4] According to the state entries in Wikipedia, the 2020 population of Arkansas is 3,011,524, while the population in 2020 of Colorado is 5,773,714, the population of Maryland is 6,177,224, the population of Massachusetts is 7,029,917, the population of Missouri is 6,154,913, and the population of South Carolina is 5118,425.

[5] In Ohio, each person desiring to become a candidate for a political party nomination at a primary election shall not later than 4:00 p.m. of the nineteenth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required. Ohio Rev. Code Ann., § 3513.05.

requirement based on the last governor's election of 8,915 petition signatures (i.e., the 891,545 total vote for governor multiplied by 1% requirement).

Defendant Secretary Thurston's Statement of Undisputed Material Facts, numbered paragraph 76 (Dkt. No. 72, pp. 29-30) and his brief discuss the states of Arizona and Maine which have newly recognized political parties nominate their candidates in primary elections and not at a party nominating convention. Maine has a specific law for forming a political party which is to participate in a primary election. Me. Rev. Stat. Ann., tit. 21-A, § 303. In fact, on page 18 of Secretary Thurston's brief (Dkt. No. 71, p. 18), it is stated as to Arizona that "Most notably, Arizona has a new party petition filing deadline of November 25, 2021, if the new party seeks to be recognized for Arizona's August 2, 2022, primary election." This statement alone by Secretary Thurston distinguishes Arizona from Arkansas without even considering the lower petition signature percentage in Arizona. South Carolina permits all political parties, whether large or small, to decide for themselves whether to nominate by primary or convention, with the small political parties in South Carolina always choosing to nominate by convention.

Defendant Secretary Thurston's Statement of Undisputed Material Facts, numbered paragraph 77 (Dkt. No. 72, p. 30), concerns a number of states which can be distinguished from Arkansas. Colorado and Nebraska have newly recognized political parties nominate their candidates in primary elections and not at a party nominating convention. Delaware, where new political parties nominate by convention, allows a political party to be recognized if it achieves a voter registration number of at least

10/100's of one percent of the registered voters in Delaware—which at present would be around 729 registered voters for a new political party, Del. Code Ann., tit. 15, § 3001. Also, Delaware makes a distinction between a major political party which has received at least 5% of the total number of voters registered in the state as compared to a minor political party which is any political party which is not a major party. Del. Code Ann., tit. 15, § 101(15)(a) and (b); California, Cal. Code, § 5000, *et seq*. (where political parties don't have nominees except for President) allows a party to be recognized if it achieves a voter registration number of at least 0.33 percent of the total numbers of voters registered on the 154th day before the primary election; Colorado requires 10,000 petition signatures unless the political party had any candidate for any office voted on statewide in either of the last two preceding general elections receive at least five percent of the total votes cast for such office, or at least 1,000 registered voters are in the party prior to April 1 of the election year, or the minor political party can continue to be qualified as a minor political party if a candidate of the party for statewide office has received at least one percent of the total votes cast for any statewide office in either of the last two preceding general elections, Colo. Rev. Stat. Ann., § 1-4-1303; and Nebraska requires 7,000 petition signatures. Of course, some states not mentioned by the Secretary Thurston (Mississippi, Vermont, and Washington) allow a political party to be recognized simply by being organized.

IV. ARKANSAS'S BALLOT ACCESS COMPLIANCE DEADLINES IMPOSE A SEVERE BURDEN UNDER THE APPROPRIATE STANDARD OF REVIEW BECAUSE THEY ARE NOT NECESSARY TO SATISFY AN IMPORTANT REGULATORY INTEREST PARTICULARLY BECAUSE NEW POLITICAL PARTIES IN ARKANSAS DO NOT NOMINATE THEIR CANDIDATES AT PRIMARY ELECTIONS BUT RATHER AT NOMINATING CONVENTIONS.

Besides not really discussing the reasoning of the *Eighth Circuit in LPAR v. Thurston* to any great or detailed extent, Secretary Thurston has shown no necessity for the increased petition signature requirement, or the petition deadlines of 319 days or 425 days before the general elections in 2022 and 2024, respectively, or the ninety-day petitioning period, and no credible compelling state interest that could not be served by less drastic means (e.g., the 10,000 petition signature requirement in existence for new political parties from the 2008 election cycle to February 2019, and commented on by the District Court (Dkt. No. 31, PI order, p.32), the Eighth Circuit in *Green Party of Arkansas v. Martin,* 649 F.3d 675, at 678, 683-685, (8th Cir. 2011), and the Eighth Circuit in *LPAR v. Thurston*, 962 F.3d at 399-404.

> In such cases, the State bears the burden of showing that the challenged statute is narrowly drawn to serve the State's compelling interest. See *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 222, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989); *Moore v. Martin*, 854 F.3d 1021, at 1025-1026 (8th Cir. 2017); and *LPAR v. Thurston,* 962, F.3d at 397, 402.

In his brief, Secretary Thurston simply makes conclusionary statements as to the state's compelling interests without showing why the ballot access laws at issue are necessary--for example, the argument that the 90 day petitioning period is necessary for election integrity and to prevent election fraud. However, no examples are mentioned as to specific election fraud and if this were so why is there no 90 day limit as to the

presidential candidate petitioning or the initiative petitioning. Further, a longer petitioning period would give a greater time to catch petitioning fraud.

Additionally, Secretary Thurston in his brief uses the one example of a frivolous candidate in a previous election by the Libertarians who was named Elvis Presley. As mentioned by Dr. Pakko in his supplemental affidavit, this candidate of several elections back actually was named Elvis Presley. However, this seems to be the only example of a frivolous candidate Secretary Thurston has put forward as to the LPAR. Certainly, the Republicans and Democrats in Arkansas and throughout the country have occasionally had frivolous candidates and even candidates and office holders who engaged in criminal activity, domestic abuse, sexual perversion, fraud, and other crimes and personality and character failings. It would not be fair to judge an entire political party by one or several incidents. Also, there is no evidence that the Elvis Presley in Arkansas who is a Libertarian is anything other than an honorable man. The Eighth Circuit did address Secretary Thurston's allegations as to failures to obtain the 3% retention requirement and the Elvis Presley candidacy in Arkansas. However, the Eighth Circuit was not impressed by Secretary Thurston's argument. *LPAR v. Thurston*, 962 F.3d at 403, n.5. It should be remembered that winning elections is not the only standard which is important in judging candidates and political parties.

> The states' interest in screening out frivolous candidates must be considered in light of the significant role that third parties have played in the development of the nation. [emphasis added]. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, at 185 (1979).

We would hardly be justified as to Secretary Thurston's argument to consider that the Democratic Party has lost a string of presidential elections in Arkansas, holds no statewide elective offices, has none of the four U.S. Representatives, and holds only about one-fourth of the general assembly. Despite this, the Arkansas Democratic Party is hardly frivolous.

V. ARKANSAS'S BALLOT ACCESS LAWS CHALLENGED HEREIN ARE NOT NARROWLY TAILORED TO FURTHER COMPELLING STATE INTERESTS.

Arkansas's ballot access regime is not narrowly tailored to serve a compelling state interest. The Eighth Circuit held in a recent Arkansas case that ". . . the State bears the burden of showing that the challenged statute is narrowly drawn to serve the State's compelling interest. *Moore v. Martin*, 854 F.3d at 1026. Secretary Thurston has failed to do so. The major problem Secretary Thurston has is that when the Eighth Circuit upheld the 3% retention requirement as to a new political party obtaining at least 3% of the vote for governor or president, they did so based mainly on the fact that a new political party could then petition again for ballot access by turning in 10,000 petition signatures of Arkansas registered voters by a deadline that was at least at that time set during the general election year. *Green Party of Arkansas v. Martin, Id.* The 10,000-petition signature requirement for new political party ballot access and recognition was a constitutional least drastic means to serve Arkansas's compelling state interests and worked quite well until changed in early 2019. Specifically, when the Eighth Circuit held the 3% of the vote political party retention requirement for either governor or president in Arkansas constitutional, the Eighth Circuit said the requirement was found to be permissible because "[a]lternate party not certified as a political party may secure ballot access for their entire

slate of candidates by filing a petition comprised of the signatures of 10,000 registered voters, or roughly six-tenths of one percent of all registered Arkansas voters." *LPAR v. Thurston*, 962 F.3d at 402 (quoting *Green Party of Arkansas v. Martin*, 649 F.3d at 679).

> This "failsafe" alternative path, however, is precisely the statutory path that Arkansas now has made more demanding and that the Libertarian Party challenges. Therefore, Arkansas's recently heightened requirements for petitioning parties not only call into question the constitutionality of the petitioning requirements themselves, they call into question the continuing validity of our decision in Martin. *LPAR v. Thurston, Id.*

The District Court's use of the 10,000-petition signature requirement in its preliminary injunction order was not based on speculation as to what would be necessary and a least drastic means to achieve a compelling state interest, but rather as the Eighth Circuit said in affirming the District Court, was an equitable remedy that was ". . . a special blend of what is necessary, what is fair, and what is workable." *LPAR v. Thurston*, 962 F.3d at 405 (quoting *Lemon v. Kurtzman*, 415 U.S. 192, 200, 93 S.Ct. 1463, 36 L.Ed.2d 151 (1973) (plurality opinion) (footnote omitted)). The election laws challenged herein are not narrowly tailored to serve a compelling governmental interest. There was no necessity for the petition signature requirement being amended back to what had never been complied with. Three questions that might also be asked of the State are: (1) Why is it necessary to only allow 90 days to petition when there is no such limitation for presidential petitions due on August 1 of the general election year or initiative petitions? (2) Why is it necessary to have new political party petition deadlines so far in advance of the Arkansas preferential primary election and general primary election when new political parties do not participate in the primary elections in Arkansas, but nominate their candidates at party

conventions and do not have their nominees appear on the ballot in Arkansas until the general election? and (3) Why would the State amend ballot access laws for petitioning to a percentage (3%) that had never been complied with even with deadlines in the general election year and at one time with 150 days to petition? Even assuming the State has a compelling interest, as the Eighth Circuit stated:

> a regime containing (1) a substantial signature requirement, (2) a limited rolling window for obtaining signatures, and (3) a deadline 425 days removed from the general election is not narrowly tailored to a generalized interest in regulating the integrity of elections. This outcome is clear when the unprecedented time between the deadline and the election is not based on anything particular to petitioning parties, but instead is a date adopted by reference to other deadlines as applicable only to established parties. *LPAR v. Thurston*, 962 F.3d at 403.

Therefore, the election laws challenged herein are not narrowly tailored to serve a compelling governmental interest.

VI. CONVERTING THE PRELIMINARY INJUNCTION TO A PERMANENT INJUNCTION IS JUST ONE REMEDY TO APPROPRIATELY ADDRESS THE HARMS SUFFERED BY PLAINTIFFS.

Secretary Thurston in his brief objects to converting the preliminary injunction to a permanent injunction. However, in doing so Secretary Thurston engages in a "strawman argument" involving a false dilemma that the only thing the District Court can do is to convert its preliminary injunction into a permanent injunction. This is not the only option the District Court has. The District Court can enter a declaratory judgment declaring the laws at issue unconstitutional and enter an injunction against the enforcement of the current ballot access scheme for party formation by recognizing the Eighth Circuit's decision and reasoning in *Green Party of Arkansas v. Martin, Id.*, where the 3% vote retention

requirement was upheld based on the 10,000 petition requirement with a petition deadline during the general election year, as well as the Eighth Circuit's decision in *LPAR v. Thurston*. This is particularly called for considering the 90-day limitation for petitioning which is much less than the previous 150-day limitation period--and even more significantly less than the unlimited period of time to collect the now 5,000 petition signatures which are required to get independent or nonrecognized party candidates on the presidential ballot in Arkansas with a petition deadline of Noon on the first Monday in August of the general election year, the 3% petition signature requirement which has never been complied with, and the fact that new political party candidates do not participate in preferential primary and general primary elections so that there is not a reason to link them with the requirements for the established political parties when the new party candidates will only first appear on the Arkansas election ballot at the general election in November.

The declaratory and injunctive relief would simply find the law unconstitutional with its 3% petition requirement of 26,746 petition signatures, deadline in September of the year before the general election for presidential election cycles, and a deadline in December of the year before the general election for gubernatorial election cycles, coupled with the 90-day petitioning period. Since the LPAR has already met the 10,000 petition signature requirement for the 2021-2022 Arkansas election cycle, it is not necessary for the Court to instruct the Arkansas general assembly as to what specifically the new law should be, but rather to simply instruct the State of Arkansas as to what the ballot access law for political party formation in its present form cannot be constitutionally. The Arkansas general assembly has in several prior cases in recent years amended laws which have been found

to be unconstitutional. *Green Party of Arkansas v. Daniels, Id.*; *Libertarian Party of Arkansas v. Martin*, 876 F.3d 948 (8th Cir. 2017); and *Moore v. Thurston*, 928 F.3d 753 (8th Cir. 2019). Further, in past cases the Court has either granted declaratory relief by declaring the ballot access laws in question unconstitutional, but not granting an injunction against its enforcement pending remedial legislation by the State of Arkansas or declare the ballot access laws in question unconstitutional and enjoining their enforcement without specifically stating what the corrected ballot access laws should be or declare the ballot access laws in question unconstitutional and enjoin their enforcement and granted other remedial injunctive relief as to placing candidates or parties on the ballot in Arkansas. *Lendall v. Bryant*, 387 F.Supp. 397, 400-403 (E.D. Ark. 1975) (*per curiam*); *Lendall v. Jernigan*, No. LR-76-C-184 (E.D. Ark. Aug. 20, 1976), *aff'd mem.*, 433 U.S. 901 (1977); *Lendall v. Jernigan*, 424 F.Supp. 943, 949 (E.D. Ark., W.D. 1977); *Lendall v. McCuen*, No. LR-C-88-311 (E.D. Ark. Aug. 16, 1988); *Citizens to Establish a Reform Party v. Priest, Id.; Green Party of Arkansas v. Daniels, Id.*; *Moore v. Martin*, No. 4:15-cv-00635—JM (E.D. Ark. July 15, 2016); *Moore v. Martin*, 854 F.3d 1021, 1026 (8th Cir. 2017); and *Libertarian Party of Arkansas v. Martin*, 876 F.3d at 949-950.

VII. THE FACTORS FOR THE GRANTING OF A PERMANENT INJUNCTION AS TO THE ARKANSAS BALLOT ACCESS LAWS CHALLENGED HEREIN WEIGH IN FAVOR OF THE PLAINTIFFS.

The three percent petition signature requirement for either new political party recognition in Arkansas or statewide independent candidates in Arkansas was never successfully complied with without court intervention. If the District Court found in 1996 that a 3% petition signature requirement along with a January 2 petition deadline in the

general election year was unconstitutional and unnecessarily difficult to comply with, it is not hard to imagine how any Court would have felt about a deadline in the year before the general election, let alone more than six or nine months earlier than the petition deadline of late June of the general election year in *Green Party of Arkansas v. Daniels, Id.*

In fact, the new deadlines for petition signatures in the current and next election cycles of December 24, 2021, and September 7, 2023, are worse than the January 2, 1996 deadline declared unconstitutional in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F. Supp. at 692-693, 698, ¶ 17, and the 26,746 signatures required by the new law challenged herein is also worse than the 21,505 signatures condemned in *Citizens to Establish a Reform Party in Arkansas v. Priest*, 970 F.Supp. at 691, ¶ 2, 698-699, or the 24,171 condemned in *Green Party of Arkansas v. Daniels*, 445 F. Supp. 2d, at 1059-1060, 1061-1063, when 150 days was allowed for the petitioning period and the petition deadline was in June of the general election year. In each of the aforesaid cases, the District Court granted the declaratory relief as to the unconstitutionality of the laws in question but did not tell the State of Arkansas exactly how to correct the laws so as to make them constitutional. The State of Arkansas certainly has a long history of having ballot access and election laws declared unconstitutional, then subsequently amending them to comply with a court's decision finding the laws unconstitutional, and then in some cases amending the laws sometime later to make them unconstitutional, and then having these further amended laws declared unconstitutional. *Lendall v. Bryant*, 387 F.Supp. at 400-403 (*per curiam*); *Lendall v. Jernigan*, No. LR-76-C-184 (E.D. Ark. Aug. 20, 1976), *aff'd mem.*, 433 U.S. 901 (1977); *Lendall v. Jernigan*, 424 F.Supp. at 949; *Lendall v. McCuen, Id.*;

Citizens to Establish a Reform Party v. Priest, Id.; Green Party of Arkansas v. Daniels, Id.; *Moore v. Martin*, No. 4:15-cv-00635—JM (E.D. Ark. July 15, 2016); *Moore v. Martin, Id.*; *Libertarian Party of Arkansas v. Martin, Id.*; and *Moore v. Thurston*, 928 F.3d at 758-759.

CONCLUSION

The parties to the case at bar agreed to a joint stipulation as to the continuing effect of the District Court's preliminary injunction which is applicable to the current election cycle for 2021-2022 and all subsequent election cycles unless modified by the District Court (Dkt. No. 60, ¶ 1). The LPAR has now successfully achieved ballot status for the 2021-2022 election cycle in Arkansas. Secretary Thurston's complaints about them not waiting later to turn in their petition signatures and not turning in more than would be sufficient to meet this Court's preliminary injunction ruling, are hard to follow from a practical and common sense point of view. While the majority of Secretary Thurston's brief is devoted to the December 24, 2021, deadline for political party formation for gubernatorial election years, that requirement has already been complied with this year—though it was still in the future at the time the Plaintiffs filed their Motion for Summary Judgment on May 27, 2021. However, after the LPAR was recognized for ballot access in Arkansas in 2021, it is unusual that Secretary Thurston devoted so much of his brief filed on August 12, 2021, to the gubernatorial election cycle petitioning deadline. On page 9 of Secretary Thurston's brief (Dkt. No. 71, p. 9) Secretary Thurston states that "And in any event, the Eighth Circuit acknowledged the weakness of Plaintiffs' evidence of burden. That evidence looks weaker still in light of the election deadlines, which fall closer to the general election." No cites or quotes from the Eighth

Circuit's decision as to the aforesaid assertion and, as to the deadlines in 2021 falling closer to the general election, that period of time from December 24, 2021, to the general election in Arkansas in November is 319 days. As to future election cycles, the District Court should grant Plaintiffs' motion for summary judgment, declare the laws in question unconstitutional because of the combined effect of the early petition deadline, limited 90-day petitioning period, the never complied with 3% petition requirement, the requirement that new party candidates declare before the major party candidates are selected, and the fact new parties select their candidates at a party convention and not at a primary or runoff election, enjoin their enforcement, and leave to the Arkansas General Assembly the opportunity to amend the laws in question in conformity and in response to this Court's decision. This remedy is necessary because of the unnecessarily early petition signature deadline, limitation of petitioning time to ninety days, and 3% petition signature requirement based on the total vote in the last gubernatorial election—which has never been successfully complied with, even with a much later petitioning deadline and up to 150 days for petitioning.

WHEREFORE, premises considered, Plaintiffs request that the District Court grant Plaintiffs' Motion for Summary Judgment, deny Defendant's Motion for Summary Judgment, declare the laws in question unconstitutional in their present form, enjoin their enforcement pursuant to this Court's opinion, and refer this matter to the Arkansas's legislative and executive branches to see if they can amend the laws in question in a timely and constitutional manner prior to the 2023-2024 election cycle in Arkansas.

Respectfully submitted this 23rd day of September, 2021.

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