No. 21-13199 and 21-13367

In the

# United States Court of Appeals

## for the Eleventh Circuit

Georgia Secretary of State,
*Defendant-Appellant*,

v.

Martin Cowen, et al.,
*Plaintiffs-Appellees*.

On Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.
No. 1:17-cv-04660-LMM — Leigh Martin May, *Judge*

## REPLY AND RESPONSE BRIEF OF APPELLANT/CROSS-APPELLEE

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# CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

I hereby certify that the following persons and entities may have an interest in the outcome of this case:

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The undersigned counsel certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/ *Charlene S. McGowan*
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## INTRODUCTION

"Georgia's ballot-access requirements have been repeatedly challenged, … and have been upheld each time." *Cowen v. Ga. Sec'y of State*, 960 F.3d 1339, 1343 (11th Cir. 2020); *see Coffield v. Handel,* 599 F.3d 1276, 1277 (11th Cir. 2010); *Cartwright v. Barnes*, 304 F.3d 1138, 1141-42 (11th Cir. 2002); *McCrary v. Poythress*, 638 F.2d 1308, 1312-13 (11th Cir. 1981). The Supreme Court itself has found Georgia's 5% petition-signature requirement constitutional. *Jenness v. Fortson*, 403 U.S. 431, 432 (1971). Given this wealth of support for Georgia's ballot access requirements, this Court properly cautioned that the Libertarian Party would have to show "changes in the relevant Georgia legal framework," "the evolution of relevant federal law," or "different facts in the instant record," in order to show why Georgia's long-standing 5% petition-signature requirement suddenly fails to satisfy the *Anderson-Burdick* test. *Cowen*, 960 F.3d at 1346.

The Libertarian Party failed to do so. As numerous courts have held, Georgia's 5% petition-signature requirement is a reasonable restriction that supports Georgia's "important state interest in requiring some preliminary showing of … support before printing the name of a … candidate on the ballot." *Jenness*, 403 U.S. at 442. Neither that interest nor Georgia law has

changed in the years since the Supreme Court's decision in *Jenness* and subsequent decisions of this Court repeatedly upholding the same requirement. Likewise, the factual record does not demonstrate that Georgia has imposed any new burdens on candidates. Instead, it shows that the Libertarian Party in Georgia has barely made any effort to nominate someone for congressional elections. Only one Libertarian candidate has arguably made a serious push to qualify as a candidate for U.S. Representative, and he nearly succeeded. The other Libertarian Party candidates have given up after minimal effort or never even tried. That is a far cry from proof that it is "virtually impossible" to obtain access to the ballot. *Id.* at 435. And the rest of the party's complaints merely identify reasonable, even-handed burdens that all candidates for public office face. Accordingly, the district court erred in concluding that Georgia's ballot-access requirements are severely burdensome and do not withstand a heightened level of scrutiny, and that decision should be reversed.

With respect to the Libertarian Party's cross-appeal, the equal protection claim fails as a matter of law because it is based upon a mischaracterization of Georgia's ballot-access laws. Georgia does not deny equal treatment to similarly-situated candidates, as the district court correctly concluded when it

granted the Secretary's summary judgment motion on this claim. This part of the district court's order should be affirmed.

Because no constitutional violation has been established, there is no basis for injunctive relief. There is even less basis for what the district court actually did—reduce Georgia's petition-signature requirement for *all* non-statewide offices by an arbitrary 80%. And in all events, this Court should reject the Libertarian Party's request that it entirely eliminate Georgia's petition requirements for the general election ballot. Such an extreme remedy is legally unsupportable, and is certain to undermine the State's important interest in preventing frivolous candidates from overcrowding the ballot.

## ARGUMENT

### I. Georgia's 5% petition-signature requirement is consistent with the First and Fourteenth Amendment.

The district court's conclusion that Georgia's 5% petition-signature requirement is unconstitutionally burdensome is a radical departure from the cases upholding the exact same statutory provision. Under the *Anderson-Burdick* framework, the court must first "consider the character and magnitude of the asserted injury" to the protected rights, then "identify and evaluate the precise interests put forward by the State as

justifications," and finally "consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *see also Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

Georgia's 5% petition-signature requirement for congressional races clearly satisfies that test, which is why courts have repeatedly upheld it. From *Jenness*, to numerous decisions of this Court, *see McCrary*, 638 F.2d at 1312-13; *Cartwright*, 304 F.3d at1141-42; *Coffield*, 599 F.3d at 1276-77, Georgia's requirements have been repeatedly challenged and always upheld. "The pertinent laws of Georgia have not changed materially since." *Coffield*, 599 F.3d at 1277. The Libertarian Party tries but fails to show any meaningful changes in either "the relevant Georgia legal framework," "relevant federal law," or "facts" in the record that would support a different result here. *Cowen*, 960 F.3d at 1346. The Court should do what it has done on numerous occasions before and affirm the legality of Georgia's 5% petition-signature requirement.

### A. The Libertarian Party bears the burden of proving its First and Fourteenth Amendment challenge.

The Libertarian Party errs at the start, when it argues that the Secretary "bears the burden [of proof] on the second and third step" of the *Anderson-Burdick* framework. Appellees' Brief at 40.

This Court has never required "any evidentiary showing or burden of proof to be satisfied by the state" under the *Anderson-Burdick* framework. *Common Cause of Ga. v. Billups*, 554 F.3d 1340, 1353 (11th Cir. 2009) (citing *Anderson*, 460 U.S. at 796). Instead, the State need only *identify* the interests that it seeks to further by its regulation. *Id.*; *see also Fulani v. Krivanek*, 973 F.2d 1539, 1544 (11th Cir. 1992); *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986) ("We have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access."). Here, the Secretary identified the State's well-established interest "in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot," which Georgia's petition-signature requirement plainly advances. *Jenness*, 403 U.S. at 442; *see also Indep. Party of Fla. v. Sec'y, State of Fla.*, 967 F.3d 1277, 1282 (11th Cir. 2020).

Once the State identifies the interests that are advanced by the regulation, it is then for the court to consider the extent to which the State's interests "make it necessary to burden a plaintiff's rights." *Fulani*, 973 F.2d at1546-47 (citing *Anderson*, 460 U.S. at 789). Where, as here, a state ballot-access law imposes only reasonable, non-discriminatory restrictions, the State's regulatory interests are "generally sufficient to justify the restrictions." *Burdick*, 504 U.S. at 434. The district court was thus wrong to hold that the State did not adequately "articulate its interests," even under a deferential standard of review. App'x Vol. V, p. 138. Courts have repeatedly held that petition requirements like Georgia's advance significant state interests. That is why this Court made clear it is up to the Libertarian Party to prove otherwise, *Cowen*, 960 F.3d at 1346, which it has failed to do.

### B. The Libertarian Party has not proven that Georgia's 5% petition-signature requirement violates the relevant test under *Anderson-Burdick*.

As every court to examine it has held, Georgia's 5% petition-signature requirement for U.S. Representative satisfies *Anderson-Burdick*. That makes sense, because the requirement is perfectly reasonable; it supports the State's interest in limiting ballot access to candidates that have shown a meaningful degree of voter

support. The Libertarian Party tries to identify something that has "evolved" or changed since the numerous cases upholding Georgia's petition requirement, *Cowen*, 960 F.3d at 1346, but the Party can identify nothing material. Instead, the Libertarian Party points to trivial factual points that do not show either an increased burden on candidates or a diminished interest on the part of the State. The Libertarian Party has not satisfied its burden.

**1. No legal developments have undermined Georgia's 5% petition-signature requirement, which has been repeatedly upheld.**

Georgia's 5% petition-signature requirement remains the same as it has for a half century, as this Court held in *Coffield*. 599 F.3d at 1277. If it was reasonable in 1970, 1981, 2002, and 2010, it is unclear why it would not be reasonable now. The Libertarian Party points to changes to the ballot-access requirements for *other* offices—statewide office and for president.[1]

[1] The Libertarian Party relies on *Green Party of Georgia v. Kemp*, 171 F. Supp.3d 1340 (N.D. Ga. 2016), in which a district court reduced Georgia's petition requirements for *president*. That decision is inapposite here because of the unique national interests involved in a presidential race, and the district court in that case concluded that Georgia's interest in regulating ballot access for president was outweighed by important national interests. *Id.* at 1368-69. Although this Court affirmed the

But the 5% petition-signature requirement *for U.S. Representative*, which is what the Libertarian Party challenges in this case, remains unchanged, and it is unclear why either the State's interest or the burden on candidates would change because some *other* office now has a different requirement.

The Libertarian Party also argues that *federal* law has "evolved" with the formulation of the *Anderson-Burdick* framework, and that this somehow undermines Georgia's rules. Appellees' Brief at 45. But this begs the question, because as this Court has already explained, the relevant inquiry is whether Georgia's ballot access requirement satisfies *Anderson-Burdick*. It does. *Jenness* itself indicates that Georgia's statute satisfies *Anderson-Burdick,* because it considered the same factors. The Court "balanced" burdens imposed by Georgia's statutory scheme against the "important state interest in requiring some preliminary showing" of support and "avoiding confusion, deception, and even frustration of the democratic process." 403 U.S. at 442. And other federal courts have looked to this Supreme Court decision upholding Georgia's 5% petition-signature

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district court's order without opinion, 674 Fed. App'x 974 (11th Cir. 2017), it has never extended that case's reasoning to Georgia's petition-signature requirements for *non-presidential* offices.

requirement as the constitutional measuring stick when considering similar state ballot-access laws under *Anderson-Burdick*. *See, e.g.*, *Libertarian Party of N.H. v. Gardner,* 843 F.3d 20, 26 (1st Cir. 2016); *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016); *Ariz. Libertarian Party v. Hobbs*, 925 F.3d 1085, 1093 (9th Cir. 2019); *Rainbow Coalition of Okla. v. Okla. State Election Bd.*, 844 F.2d 740, 743 (10th Cir. 1988).

**2. No new factual circumstances have undermined the consistent holdings that Georgia's 5% petition-signature requirement is valid.**

Likewise, the Libertarian Party cannot show that the factual record contains meaningfully "different" burdens compared to those considered in past cases upholding Georgia's petition requirement. *See Cowen*, 960 F.3d at 1346. The Libertarian Party primarily relies on the point that no third-party or independent candidates have succeeded in obtaining ballot access for U.S. Representative in Georgia as evidence that the petition requirements are severely burdensome. Appellees' Brief at 51. To start, the plaintiff in *Coffield* already made this argument in her challenge to the 5% petition-signature requirement, and this Court rejected it as insufficient. 599 F.3d at 1277. Regardless, candidates' past lack of success in meeting state ballot-access

requirements is not the test for whether the requirements are severely burdensome. The relevant inquiry is whether a state's ballot-access laws as a whole make it "virtually impossible" for a "reasonably diligent" candidate to access the ballot. *See Jenness*, 403 U.S. at 435; *Libertarian Party of Fla. v. Fla.*, 710 F.2d 790, 793 (11th Cir. 1983).

The evidence submitted by the Libertarian Party falls far short of proving that it is virtually impossible for a reasonably diligent candidate to meet the 5% petition-signature requirement for U.S. Representative in Georgia. Nearly all of the candidates that the Libertarian Party represents as having made a "genuine effort" to meet the petition requirements actually put forth very little effort. Most admit that they worked only a short time during the six-month signature-gathering period, and invested no financial resources towards their petition drive. For example, Mr. Cowen collected only 620 signatures over 40 days, which is an insignificant fraction of the nearly 400,000 active voters who resided in his district at the time. App'x Vol. II, p. 31. Other aspiring candidates gathered only a few hundred signatures, or did not even try. App'x Vol. I, pp. 232-33; 67. One candidate stated that he "abandoned [his] effort to qualify for the ballot and did not submit the signatures that [his] team had gathered." App'x Vol. I,

p. 61. Another inquired with the Secretary of State's office about the number of required signatures, but immediately decided not to run, because in her mind the requirement was too difficult to meet. Supp. App'x, pp. 31-33. But merely asserting that the requirements are too difficult is not enough. Rather, parties "must present factual evidence that they were precluded from obtaining ballot access by the challenged regulations" after making a reasonably diligent effort. *Libertarian Party of Fla.*, 710 F.2d at 794 ("[c]onclusory allegations cannot prevail"); *see also Green v. Mortham*, 155 F.3d 1332, 1338 (11th Cir. 1998).

The factual record does not demonstrate in substance that Georgia's petition requirement operates to virtually exclude *reasonably diligent* candidates from the ballot. The record shows that the Libertarian Party has invested time and financial resources for only *one* candidate's petition drive, and that candidate actually came very close to satisfying the requirement. App'x Vol. II, pp. 112-14. This evidence demonstrates that it is possible for a serious candidate to access the ballot, so long as the candidate exercises the type of reasonable diligence that would be expected for a congressional campaign.

The Libertarian Party further argues that the practical difficulties of obtaining petition signatures demonstrate a severe

burden, including the time and financial resources required to conduct a petition drive. Appellees' Brief at 48-49. But these practical difficulties are the ordinary burdens candidates face when running for office—especially for U.S. Representative. Every reasonably diligent candidate must invest substantial time and financial resources, raise campaign funds, organize volunteers, hire staff, and garner voter support. *See Libertarian Party of Fla.*, 710 F.2d at 794-795 ("candidates must incur some expenses in accumulating the necessary signatures to qualify for the ballot"); *Am. Party of Tex. v. White*, 415 U.S. 767, 794 (1974) (recognizing that minor parties "must undergo expense, to be sure, in holding their conventions and accumulating the necessary signatures to qualify for the ballot").

The Libertarian Party also argues that new federal campaign finance laws make Georgia's signature requirements unconstitutional. Appellees' Brief at 45. But the Libertarian Party fails to cite to any authority holding that federal campaign finance laws have any relevance to the *Anderson-Burdick* analysis, which considers the State's "justifications for the burden imposed by *its* rule," not a federal restriction.[2] 460 U.S. at 789 (emphasis added).

[2] In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court addressed the constitutionality of certain provisions of the

Federal campaign finance laws are not a state-imposed burden on ballot access, and they apply equally to all party and non-party candidates. Regardless, the Libertarian Party has not established that federal campaign-finance laws are somehow preventing anyone from satisfying Georgia's petition requirements.

Next, the Libertarian Party argues that Georgia's 5% petition-signature requirement is higher than other states.[3] But because state ballot-access schemes are varied, the number of signatures required is not the only relevant fact that courts consider. Other factors such as the petition deadline, length of the petitioning period, and pool of eligible signatories are relevant to a court's assessment of whether a state ballot-access scheme is reasonable as a whole. *See, e.g., Indep. Party of Fla.*, 967 F.3d at 1282; *Swanson v. Worley*, 490 F.3d 894, 904 (11th Cir. 2007). And those factors all show the reasonability of Georgia's scheme.

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Federal Election Campaign Act of 1971 and upheld the individual contribution limits established by the act.

[3] This Court has rejected state-by-state comparison as a means of determining whether a ballot-access restriction is severely burdensome. *See Swanson v. Worley*, 490 F.3d 894, 910 (11th Cir. 2007) ("the legislative choices of other states are irrelevant"). The district court was "no more free to impose the legislative judgments of other states on a sister state than it is free to substitute its own judgment for that of the state legislature." *Libertarian Party of Fla.*, 710 F.2d at 794.

Indeed, one of the district court's fundamental errors was to focus only on the burdens associated with petitioning, while failing to consider the numerous ways in which Georgia law alleviates the burden of gathering signatures. *See Indep. Party of Fla.*, 967 F.3d at 1282. For example, voters can sign a petition regardless of party affiliation, voting history, or whether they had previously signed another petition. *Id.* Candidates have six months to collect the required signatures. *Id.* Petitions are not due until July, which is several months after the general primary. Finally, Georgia freely allows write-in votes for candidates who are not able to gather the required number of signatures. All of these features of Georgia's ballot-access scheme were important to the Supreme Court in *Jenness*, 403 U.S. at 438-39, but the district court ignored them.

Although the Libertarian Party notes that candidates must gather more signatures than required because some will be rejected, this Court has previously held that this is not an unreasonable burden, especially where, as here, candidates have a large pool of voters who may sign a petition without restriction and the state imposes no limit on the number of signatures a candidate may submit. *Libertarian Party of Fla*, 710 F.2d at 794.

Georgia also provides a process for judicial review of the sufficiency of the petition. *See* O.C.G.A. § 21-2-171(c). And there is no evidence in this case that any candidate has been wrongfully denied a place on the ballot due to improperly-rejected signatures.

Finally, the Libertarian Party has also shown no evidence that Georgia's candidate qualifying fee has prevented any of their party candidates from obtaining ballot access. Appellees' Brief at 19 & n.2. All candidates regardless of party affiliation must pay a qualifying fee in Georgia based upon a percentage of the annual salary of the office the candidate is seeking. O.C.G.A. § 21-2-131. A candidate who lacks the means to pay the qualifying fee may alternatively submit a pauper's affidavit. O.C.G.A. § 21-2-132(g). Although the pauper's affidavit must also be accompanied by a conforming petition, *see id.*, as this Court has held, "filing fees have long been considered a reasonable, non-discriminatory means of regulating ballot access so long as there is an alternative means of ballot access," such as a signature petition alternative. *Green*, 155 F.3d at 1337 (citing *Lubin v. Panish*, 415 U.S. 709, 718-19 (1973)). For these reasons, the district court was not persuaded that the qualifying fee imposed an unreasonable burden on candidates and declined to enjoin this requirement. App'x Vol. V, p. 156.

In sum, the evidence is not remotely sufficient to establish that Georgia's 5% petition-signature requirement fails the *Anderson-Burdick* test, especially given the overwhelming, unanimous legal authority upholding Georgia's 5% petition-signature requirement. The district court erred in subjecting Georgia's petition requirements to heightened scrutiny under *Anderson-Burdick*,[4] it erred in holding that Georgia's interests are insufficient, and its summary judgment order should be reversed.

[4] The district court's reasoning that Georgia's 5% petition-signature requirement would also not withstand a lower level of scrutiny is contrary to *Jenness* and this Court's decisions upholding the requirement. And the district court's reliance on the *Green Party* decision in support of that conclusion is misplaced because that case involved Georgia's petition requirement for *president*. *See Green Party*, 171 F.Supp.3d at 1368-69. Its reliance on *New Alliance Party of Ala. v. Hand*, 933 F.2d 1568 (11th Cir. 1991) is also misplaced because that case involved a challenge to Alabama's requirement that minor party candidates submit petitions 60 days before the primary date and at the same deadline for party candidates to declare their candidacy. *Id.* at 1575. This Court held that the requirement was unreasonably discriminatory and placed independent and minor party candidates at a relative disadvantage to major party candidates. *Id.* There are no similar discriminatory requirements in Georgia's petition requirements.

## II. Georgia's ballot-access laws do not deny equal protection.

The district court properly granted the Secretary's motion for summary judgment on the Libertarian Party's equal protection claim because it "fails as a matter of law." App'x Vol. V, p. 145-46.

Although the Libertarian Party argues that the district court erred in failing to apply the "*Socialist Workers* test" to its equal protection claim, Appellees' Brief at 53-54, this is not the proper test. This Court applies the *Anderson-Burdick* framework to equal-protection challenges to state ballot-access requirements. *Indep. Party of Fla.,* 967 F.3d at 1284 (citing *Fulani,* 973 F.2d at 1542-43).[5] The Court "first consider[s] 'the character and magnitude of the asserted denial of equal treatment," and then "identif[ies] 'the precise interests put forward by the State' to justify its rule and determine 'the legitimacy and strength' of each interest." *Id.* (quoting *Fulani*, 973 F.2d at 1544, 1546).

The Libertarian Party's equal protection claim fails at the outset under the *Anderson-Burdick* framework because it cannot

[5] The Libertarian Party contends that, in the prior appeal, this Court instructed the district court to apply the "*Socialist Workers* test" to their equal protection claim on remand. Appellees' Brief at 53-54. This is a misreading of that decision. The Court only instructed that the district court separately consider the Libertarian Party's equal protection claim. *Cowen*, 960 F.3d at 1347.

show a denial of equal treatment. Their argument is that Georgia law unfairly discriminates against Libertarian Party candidates for U.S. Representative because those candidates "must petition," while Libertarian Party candidates for statewide office are given "automatic ballot access." Appellees' Brief at 54. But this "misconstrue[s] Georgia's ballot-access scheme," as the district court correctly stated. App'x Vol. V, p. 145.

Libertarian Party candidates for statewide office do not have "automatic ballot access." Rather, the Libertarian Party has qualified under a different provision of Georgia law to nominate statewide candidates by convention. This provision allows political bodies to nominate statewide candidates by convention if they (1) submit a petition meeting the 1% signature requirement; and (2) continue thereafter to have a candidate receive 1% of the vote in a statewide race every election cycle. O.C.G.A. § 21-2-180.

The nomination-by-convention route under O.C.G.A. § 21-2-180 is available to all political body organizations who register with the Secretary of State, but to date only the Libertarian Party has qualified in this manner. The Libertarian Party characterize this alternative method as the state granting them "automatic ballot access," which is simply false because it ignores that the Libertarian Party must still demonstrate significant support

among the electorate by obtaining *votes* rather than *petition signatures*. If the Libertarian Party does not meet the requirements of O.C.G.A. § 21-2-180 by receiving at least 1% of the vote for a statewide office in the last election cycle, it would be required to meet the 1% petition-signature requirement like all other third-party and independent candidates for statewide office in order to appear on the general election ballot. And the petition-signature requirement for statewide office (1% of all registered voters in the state) is much greater than the 5% petition-signature requirement for Georgia's individual congressional districts. As the district court noted, "if a statewide candidate in 2020 sought ballot access by petition, that candidate would have needed 51,686 signatures, which is a sum far above that required for any individual congressional district." App'x Vol. V, p. 146. Thus, there is no merit to the Libertarian Party's argument that Georgia requires more petition signatures for U.S. Representative than for statewide office.

The Libertarian Party's equal-protection argument is also unavailing because Libertarian Party candidates for statewide office are not similarly situated to Libertarian Party candidates for U.S. Representative. *See Indep. Party of Fla.*, 967 F.3d at 1284. And it is well established that a state does not violate equal

protection by providing alternative paths to the ballot for differently-situated candidates. *Id.*; *see also Jenness*, 403 U.S. at 441-42 (holding that Georgia has not violated equal protection by "providing different routes to the printed ballot"); *Am. Party of Tex.*, 415 U.S. at 781 ("[s]tatutes create many classifications which do not deny equal protection"); *Anderson v. Mills*, 664 F.2d 600, 607 (6th Cir. 1981) ("The Supreme Court taught, in *Jenness*, that more than one avenue exists for obtaining a position on the general ballot.").

The district court did not err in granting the Secretary's motion for summary judgment on the Libertarian Party's equal protection claim, and this Court should affirm that decision.

## III. There is no basis for injunctive relief, and the Libertarian Party's proposed remedy would undermine Georgia's interest in regulating ballot access.

There is no basis for injunctive relief in this case because the Libertarian Party cannot establish a constitutional violation. But even so, the permanent injunction entered by the district court is not narrowly tailored and is beyond the scope of relief requested in this action. *See Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984) ("[I]njunctive relief must be tailored to fit the nature and extent of the established violation."). The district court enjoined

the Secretary from enforcing Georgia's petition-signature requirement for *all* non-statewide offices in Georgia, even though the Libertarian Party challenged only the petition requirement for U.S. Representative, and then compounded this error by imposing a drastic 80% reduction of the petition-signature requirement without explaining why that reduction was necessary to alleviate the alleged constitutional violation.

Georgia has an "undoubted right" to require candidates demonstrate "a preliminary showing of substantial support" before placing them on the ballot. *Anderson*, 460 U.S. at 788 n. 9. The Georgia General Assembly reasonably determined that a 5% petition-signature requirement for non-statewide office was necessary to keep frivolous candidates off of the ballot and avoid ballot overcrowding, and the district court provided no rationale for substituting its own judgment for that of the General Assembly.

Even though the district court's injunction is already overly broad, the Libertarian Party asks this Court to go even further and either eliminate the petition requirements altogether or reduce them even further so that every aspiring candidate can obtain access to the general election ballot for any non-statewide office in Georgia. Appellees' Brief at 61-62. But the Constitution

does not require Georgia to reduce its ballot-access requirements to a level every aspiring candidate can meet. *Munro*, 479 U.S. at 198. This standard would be certain to undermine the state's interest in keeping frivolous candidates off of the ballot. For this reason, the proper inquiry is whether a state's ballot-access requirements are objectively burdensome, not whether any candidate can be expected to meet them.

While the Secretary agrees with the Libertarian Party that the district court erred in its permanent injunction order, the error was in granting injunctive relief in the first instance, doubly so because the granted relief is entirely unmoored from what the Libertarian Party requested and the constitutional limits at play. Because there is no established constitutional violation, the injunction should be vacated.

## CONCLUSION

For the foregoing reasons and those discussed in Appellant's Brief, the Secretary respectfully requests that the Court reverse the district court's summary judgment order in favor of the Libertarian Party on its First and Fourteenth Amendment claim and enter judgment in favor of the Secretary, vacate the district court's permanent injunction, and affirm the district court's grant

of summary judgment in favor of the Secretary on the Libertarian Party's equal protection claim.

Respectfully submitted, this 10th day of December, 2021.

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## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 27(d)(2) of the Federal Rules of Appellate Procedure because it contains 4506 words as counted by the word-processing system used to prepare the document. This motion also complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook font.

/s/ *Charlene S. McGowan*
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## CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2021, I served this reply brief by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

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