No. 22-12451

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

THE PEOPLE'S PARTY OF FLORIDA; ELISE MYSELS; CAROLYN WOLFE; & VICTOR NIETO,

Plaintiffs-Appellants

v.

THE FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS; CORD BYRD, SECRETARY OF STATE; & BRIAN CORLEY, PASCO COUNTY SUPERVISOR OF ELECTIONS,

Defendants-Appellees

On Appeal from the United States District Court
for the Middle District of Florida, Tampa Division
No. 8:22-cv-1274 TPB-MRM (Hon. Thomas Barber)

PLAINTIFFS-APPELLANTS' MOTION TO EXPEDITE APPEAL OF ELECTION CASE

Challenge to the Constitutionality of Fla. Stat. § 99.021

/s/ Christopher Kruger

Christopher Kruger (Bar No. 6281923)
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Counsel for Plaintiffs-Appellants

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Plaintiffs–Appellants certify that the following is a complete list of interested persons as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1:

1. Honorable Thomas Barber, *District Court Judge*
2. Andy Bardos, *Attorney for Defendants/Appellees*
3. Cord Bryd, *Defendant*
4. Brian Corely, *Defendant*
5. Ashley E. Davis, *Attorney for Defendants/Appellees*
6. Christopher Kruger, *Attorney for Plaintiffs/Appellants*
7. Honorable Mac R. McCoy, *Magistrate Judge*
8. Bradley Robert McVay, *Attorney for Defendants/Appellees*
9. Elise Mysels, *Plaintiff*
10. Victor Nieto, *Plaintiff*
11. Honorable Anthony Porcelli, *Magistrate Judge*
12. Vanessa Reichel, *Attorney for Defendants/Appellees*
13. Carolyn Wolfe, *Plaintiff*

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Dated: July 28, 2022

s/Christopher Kruger
Christopher Kruger
Counsel for Plaintiffs-

Appellants

MOTION TO EXPEDITE APPEAL

Pursuant to 28 U.S.C. § 1657(a), Federal Rule of Appellate Procedure 27, and this Court's Internal Operating Procedure 27.3, Plaintiffs-Appellants respectfully move for expedited consideration of this appeal from the orders issued on June 22, 2022 & July 25, 2022 by the U.S. District Court for the Middle District of Florida, denying Plaintiffs' Emergency Motion for Preliminary Injunction and Rule 59(e) Motion to Reconsider. See District Court Orders, *People's Party of Florida, et al, v. Florida Department of State, Division of Elections, et al.* No. 22-1274, Docs. 5, 14, 24, 25 & 32 (Exhibit A); see Complaint, Doc. 1 and Emergency Motion for Preliminary Injunction, Doc. 3 (both filed June 3, 2022) (Exhibit B).

The "Good Cause" Standard

Under 28 U.S.C. § 1657: "the court shall expedite the consideration of any action brought . . . for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, 'good cause' is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit."

Plaintiffs, a newly-formed political party, its officers and voters, as well as a Candidate for elected office, seek review of the denial of their motion for preliminary injunction. Good cause exists because this matter pertains to the November 8, 2022 election and ballot access rights under the First Amendment. Plaintiffs seek relief for the denial of their Candidate's, the new political party's and its voters' First Amendment rights.

Florida Statute 99.021 – *Form of Candidate Oath*

Plaintiffs' complaint is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the First and Fourteenth Amendments of the United States Constitution. Plaintiffs seek a determination that Florida Statute (Fla. Stat. 99.021 (2021) violates the Constitution. The Statute requires citizens who wish to run for any state or federal office to have been registered members, of the party they wish to run in, for a full year ("365 days") prior to the first day of the Qualifying Period for filing candidate papers. *See* Fla. Stat. 99.061 *et seq*. stating in relevant part:

***

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for **365 days before the beginning of qualifying** preceding the general election for which the person seeks to qualify.

***

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for **365 days before the beginning of qualifying** preceding the general election for which the person seeks to qualify.

Fla. Stat. 99.021 (2)(b) & (c). (**Emphasis supplied).**

Plaintiffs in the District Court have referred to Section 99.021 as the "365-day rule," whereas Defendants refer to it as the "Affiliation Provision." Notably, the Statute contains no exception for newly-formed parties.

The Current Election Cycle

In the current election cycle, the first day of the Qualifying Period for the November 8, 2022 General Election was June 13, 2022. Plaintiffs had formed their new party the prior year, by submitting registration papers, including by-laws, to the election authority on July 15, 2021. The Department of State, Division of Elections' ("DOE") review required

the party to revise and resubmit the papers, and the party was recognized by the DOE by Acknowledgement Letter dated September 1, 2021.

However, according to the Statute, Plaintiffs were already too late; they were forbidden to run candidates; and the newly-formed party would neither fundraise nor collect petition signatures, because of the futility of the non-ballot-viable candidacies. Thus, under the Statute, newly-formed parties are forced to wait 513 days, in addition to whatever time the State takes to acknowledge the party; in Plaintiffs' case, another 48 days. All during this time, since filing their papers, the Plaintiffs were bereft of counsel.

Therefore, good cause exists to expedite the submission of the parties' briefs because without an expedited schedule, this Court would not have sufficient time to issue its decision in time to place Candidate Elise Mysels' name on the ballot for the November 8, 2022 election. If a decision is not issued on the merits significantly before the election, and Plaintiffs prevail, ballots may need to be re-printed and mailed out a second time, or there may be a need to hold a special election for Pasco County Commissioner.

Proceedings in the District Court

Plaintiffs found the undersigned attorney, by happenstance, in late April 2022. After doing due diligence concerning ballot access law, Florida law, the facts of this case, and gaining admission to the Middle District of Florida, Plaintiffs filed their Complaint and Emergency Motion on June 3, 2022. Exhibit B.

Owing to Middle District of Florida admission procedures, the undersigned had to mail the complaint, proposed summonses, motion for preliminary injunction, motion for special admission, and required fees to the Clerk overnight on June 1. Ex. B, Doc. 1-3. The undersigned had in fact contacted the Defendants on May 31 and sent unstamped copies on June 3. <u>The undersigned was not granted e-filing privileges until June 8.</u> See Ex. B, Docs. 1 & 3, Complaint and Emergency Motion, hand-stamped on June 3 with hand-written case number.

By that time, the District Court had already entered an Order on June 6, 2022 denying the Emergency Motion in part, "to the extent that Plaintiffs seek a temporary restraining order. Plaintiffs are directed to immediately serve on Defendants a copy of the complaint, a copy of

Plaintiffs' 'Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order,' and a copy of this Order" and directing Defendants to file one consolidated response on or before June 16, 2022. Exhibit A, Doc. 5.

The District Court denied a Motion for Reconsideration and for a Revised, Expedited Briefing on June 9, stating in part: "The Court maintains the ability to rule on that [emergency] motion and grant a preliminary injunction, if appropriate, prior to the June 17, 2022, [candidate] filing deadline" referring to the end of the Qualifying Period. Exhibit A, Doc. 14.

As the June 17 filing deadline came and went, the District Court denied Plaintiffs' Motion for Leave to Reply with an Order issued June 21, 2022. Exhibit A, Doc. 24. The Motion for Leave was filed in inadvertent violation of local rules to a) confer and b) to not attach a Proposed Reply. Id. The next day, June 22, the District Court denied the Emergency Motion for Preliminary Injunction in a six-page Order. Id. at Doc. 25. On July 25, 2022 the District Court denied a briefed Rule 59(e) motion without comment. Id. at Doc. 32. Plaintiffs filed Notice of Appeal the next day. Plaintiffs have thus already presented

virtually all case law and argument they deem to be relevant in this matter.

Argument: Expedited Briefing is Appropriate in this Case

Plaintiffs are seeking a determination that Fla. Stat. 99-021 violates the federal constitution, as well as injunctive relief, including enjoining enforcement of the Statute and placing Plaintiff Elise Mysels on the ballot as People's Party candidate for Pasco County Commissioner. It need not be added that Mysels will not be able to campaign or fundraise with a cloud over her head concerning her access to the ballot.

Defendants have been aware of this matter since May 31st, and have made the standard arguments of all ballot access defendants. See, e.g., *McCarthy v. Briscoe*[1], a ballot access case specifically exempted from *Purcell*[2] analysis by Justice Kavanaugh in his recent concurrence in *Merrill v. Milligan* 595 U. S. ____ (2022) (February 7, 2022). In cases such as *Briscoe* and *Anderson*[3] ballot access excuses about "disruption" and "stability" masquerade as argument; but state ballot access laws

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[1] *McCarthy v. Briscoe* 429 U. S. 1317 (1976) (Powell, J., in chambers)
[2] *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curium)
[3] *Anderson v. Celebrezze*, 460 U.S. 780 1983)

must be "tied to a particularized legitimate purpose, and [be] in no sense invidious or arbitrary." *Anderson*, supra, 460 U.S. at 817, quoting *Rosario v. Rockefeller*, 410 U.S. 752, 762. All that seems particularized about Fla. Stat. 99.021 is the Defendants' desire to see newly-formed parties and candidacies wait a long, long time before running for office.

Plaintiffs have supported their arguments in this matter with a plethora of case law which will demonstrate, conclusively, that Fla. Stat. 99.021 is an outlier; that it violates settled law in *Tashjian* at page 215 of the decision, that forbids states from constricting a political party's pool of candidates to its own members[4]; that it discriminates against newly-formed parties and candidacies and is thus repugnant to the holdings of *Williams*[5], *Anderson*[6], and *Reed*[7]; that it constitutes a severe burden on the Plaintiffs' protected interests; that it is not the

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[4] *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 215 (1986) (State cannot constrain party from allowing independents to vote in its primaries);
[5] *Williams v. Rhodes*, 393 U.S. 23 (1968) (state laws unconstitutional which "give the two old, established parties a decided advantage over any new parties struggling for existence");
[6] *Anderson v. Celebrezze*, 460 U.S. 780 (1983) (candidacy declared after qualifying deadline: "it is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status");
[7] *Norman v. Reed*, 502 U.S. 279 (1992) (new party's "right derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences.")

least restrictive way to address the State's legitimate interests, assuming that the State can articulate any.

If this appeal is not decided with urgency, the Defendants will have essentially have prevailed on this case, and Fla. Stat. 99.021 will have accomplished its purpose. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires that states allow military members, their eligible family, and overseas citizens to vote absentee in federal elections. By September, pursuant to UOCAVA, the first ballots for overseas voters will be being printed and mailed.

After September, ballots will be printed for mailing to voters in the U.S., and for the start of early voting. Investigation continues as to early voting. Somewhat ironically, the DOE's Early Voting Page (last visited today, July 29, 2022) states "website last updated May 25, 2021," and, concerning early voting in the State's August 23rd primary, "information available after July 24, 2020," yet fails to provide that promised information to Floridians, as of this date. https://www.dos.myflorida.com/elections/for-voters/voting/early-voting-and-secure-ballot-intake-stations/

An expedited appeal is necessary in this case to avoid irreparable

harm to the Plaintiffs, to all voters who registered with the PPF, to those voters who are on PPFs email list and desire to see Mysels on the November 8, 2022 election ballot, and to all voters of Pasco County.

The legislative history for 28 U.S.C. § 1657 was reviewed by the Court of International Trade, and summarized as follows:

> As noted above, Congress has provided that "good cause" is found where (1) a claim of right arises "under the Constitution of the United States or a Federal Statute . . . [and 2] in a factual context that a request for expedited consideration has merit." 28 U.S.C. § 1657(a). The text, most "notably the reference to a `factual context', suggests that Congress contemplated case-by-case decision making" applying the standard. *Freedom Commc'ns Inc.*, 157 F.R.D. at 486.
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> In elucidating the "good cause standard," the legislative history of section 1657(a) provides that "good cause" should be found: "[1] in a case in which failure to expedite would result in mootness or deprive the relief requested of much of its value, [2] in a case in which failure to expedite would result in extraordinary hardship to a litigant,[10] or [3] actions where the public interest in enforcement of the statute is particularly strong." H. Rep. No. 98-985, at 6 (1984), as reprinted in 1984 U.S.C.C.A.N. 5779, 5784 (footnotes omitted).

Ontario Forest Industries Assoc. v. US, 444 F. Supp.2d 1309, 1319 (Court of Intl. Trade 2006). See also, *American Bioscience, Inc. v. Thompson,* 269 F. 3d 1077 (D.C. Court of Appeals, 2001), fn.8 (Under 28 U.S.C. § 1657(a) the granting or denying of a preliminary injunction is a basis for an expedited appeal).

For example, in addressing an appeal of a preliminary injunction, the 9th Circuit expedited an appeal pursuant to 28 U.S.C. § 1657 to decide if the district court relied upon an erroneous legal premise or abused its discretion in granting a preliminary injunction. *Gregorio T. By and Through Jose T. v. Wilson*, 54 F. 3d 599 (9th Cir. 1995). As such, the Ninth Circuit held that extensive briefing was not warranted. Id.

Similarly, the matter before this Court of Appeals contains a limited record, and the standard of review is similarly whether the district court relied on an erroneous legal standard or abused its discretion. Extensive briefing is not needed, as the parties have presented their facts and argument before the district court.

Without a decision from this Court of Appeals by or shortly after the start of September, the placing of Candidate Mysels' name to the ballot becomes more and more difficult every day, and by November 8, 2022, the appeal will be moot, unless the extraordinary remedy of a special election is ordered.

Because of the upcoming election, which is a date fixed in time that cannot be changed, and the necessity to print ballots for military, overseas and early voting, Plaintiffs request that this appeal and the

court's decision be expedited pursuant to Rules 2 and 34 of the Federal Rule of Appellate Procedure, Fed. R.App. P. 2 & 34, Circuit Rule 27, 11th Cir. R. 27-1 (d)(9), and 28 U.S.C. § 1657.

Based on the need for expedited treatment discussed above, Appellants respectfully propose the following schedule:

Initial brief deadline:	August 3, 2022
Answer brief deadline:	August 10, 2022
Reply brief deadline:	August 15, 2022
Argument (if ordered):	Week of August 22, subject to the Court's availability.

Conclusion

For the foregoing reasons, Appellants respectfully request that the Court grant the motion to expedite and adopt the proposed schedule or, in the alternative, adopt a comparable, expedited schedule permitting prompt resolution of this appeal.

Dated: July 29, 2022 Respectfully submitted,

/s/ Christopher Kruger

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Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitations of FED. R. APP. P. 27(d)(2)(A) because this motion contains 2,481 words, excluding the parts of the motion exempted by FED. R. APP. P. 32(f).

This motion complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word for Office 365 in 14-point Century Schoolbook font.

Dated: July 29, 2022

s/ Christopher Kruger
Christopher Kruger
Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on July 29, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 29, 2022

s/ Christopher Kruger
Christopher Kruger
Counsel for Plaintiffs-Appellants

EXHIBIT A

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:22-cv-01274-TPB-MRM

People's Party of Florida et al v. Florida Department of State, Division of Elections et al
Assigned to: Judge Thomas P. Barber
Referred to: Magistrate Judge Mac R. McCoy
Cause: 42:1983 Civil Rights Act

Date Filed: 06/03/2022
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

People's Party of Florida represented by **Christopher Kruger**
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ATTORNEY TO BE NOTICED

Plaintiff

Elise Mysels represented by **Christopher Kruger**
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Plaintiff

Carolyn Wolfe represented by **Christopher Kruger**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Victor Nieto represented by **Christopher Kruger**
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ATTORNEY TO BE NOTICED

V.

Defendant

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LEAD ATTORNEY
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Defendant

Florida Secretary of State
in his official capacity

represented by **Ashley E. Davis**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bradley Robert McVay
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Pasco County Supervisor of Elections
in is official capacity

represented by **Andy Bardos**
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Date Filed	#	Docket Text
06/03/2022	1	COMPLAINT against Florida Department of State, Division of Elections, Florida Secretary of State, Pasco County Supervisor of Elections Filing fee $402.00, receipt number TPA-66611 filed by People's Party of Florida, Elise Mysels, Victor Nieto, Carolyn Wolfe. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit, # 3 Mailing Envelope)(LSS) (Entered: 06/03/2022)
06/03/2022	2	SUMMONS issued as to Florida Department of State, Division of Elections, Florida Secretary of State, Pasco County Supervisor of Elections. (LSS) (Entered: 06/03/2022)
06/03/2022	3	EMERGENCY MOTION for Preliminary Injunction; EMERGENCY MOTION for Temporary Restraining Order by Elise Mysels, Victor Nieto, People's Party of Florida, Carolyn Wolfe. (Attachments: # 1 Appendix 1, # 2 Appendix 2, # 3 Appendix 3)(LSS). (Entered: 06/03/2022)
06/03/2022	4	MOTION for Christopher Davis Kruger to appear pro hac vice by Elise Mysels, Victor Nieto, People's Party of Florida, Carolyn Wolfe. (LSS) Motions referred to Magistrate Judge Anthony E. Porcelli. (Entered: 06/03/2022)
06/03/2022		PRO HAC VICE FEES paid by attorney Christopher Kruger (Filing fee $150 receipt number TPA066612.) Related document: 4 MOTION for Christopher Davis Kruger to appear pro hac vice. (ARC) (Entered: 06/03/2022)
06/06/2022	5	**ORDER: Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order" (Doc. 3) is hereby**

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		denied to the extent that Plaintiffs seek a temporary restraining order. Plaintiffs are directed to immediately serve on Defendants a copy of the complaint, a copy of Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order," and a copy of this Order. Plaintiffs are further directed to file proof of service on or before June 9, 2022. On or before June 16, 2022, Defendants may file one consolidated response in opposition to the motion seeking a preliminary injunction. The Court may set a hearing to address the motion, if warranted. See Order for details. Signed by Judge Thomas P. Barber on 6/6/2022. (ANL) (Entered: 06/06/2022)
06/06/2022	6	**ENDORSED ORDER granting 4 Motion to Appear Pro Hac Vice. Attorney Christopher Davis Kruger may appear pro hac vice on behalf of Plaintiffs. Within twenty-one (21) days of the date of this order, counsel shall comply with the fee and electronic filing requirements and file a notice of compliance with said requirements. Signed by Magistrate Judge Anthony E. Porcelli on 6/6/2022. (BMM)** (Entered: 06/06/2022)
06/07/2022	7	NOTICE of Appearance by Ashley E. Davis on behalf of Florida Department of State, Division of Elections, Florida Secretary of State (Davis, Ashley) (Entered: 06/07/2022)
06/07/2022	8	NOTICE of Appearance by Bradley Robert McVay on behalf of Florida Department of State, Division of Elections, Florida Secretary of State (McVay, Bradley) (Entered: 06/07/2022)
06/08/2022	9	WAIVER of service returned executed on June 7, 2022 by People's Party of Florida as to Florida Secretary of State. (Kruger, Christopher) (Entered: 06/08/2022)
06/08/2022	10	NOTICE of Appearance by Andy Bardos on behalf of Pasco County Supervisor of Elections (Bardos, Andy) (Entered: 06/08/2022)
06/08/2022	11	MOTION for Reconsideration re 5 Order on Motion for Preliminary Injunction,,,, Order on Motion for Temporary Restraining Order,,, by All Plaintiffs. (Attachments: # 1 Exhibit) (Kruger, Christopher) (Entered: 06/08/2022)
06/08/2022	12	NOTICE by People's Party of Florida re 1 Complaint, *Verifications* (Attachments: # 1 Exhibit)(Kruger, Christopher) (Entered: 06/08/2022)
06/09/2022	13	WAIVER of service returned executed on June 7, 2022 by People's Party of Florida, Elise Mysels, Victor Nieto as to Pasco County Supervisor of Elections. (Kruger, Christopher) (Entered: 06/09/2022)
06/09/2022	14	**ENDORSED ORDER: "Plaintiffs' Motion for Reconsideration of the Court's June 6, 2022 Order, and for Entry of a Revised Expedited Briefing Schedule on their Emergency Motion for a Preliminary Injunction" (Doc. 11) is denied. The Court notes that the motion for preliminary injunction remains pending, and the Court maintains the ability to rule on that motion and grant a preliminary injunction, if appropriate, prior to the June 17, 2022, filing deadline. The Court declines to act without input from Defendants. Signed by Judge Thomas P. Barber on 6/9/2022. (ANL)** (Entered: 06/09/2022)
06/09/2022	15	NOTICE of supplemental authority re 3 MOTION for Preliminary Injunction MOTION for Temporary Restraining Order by Elise Mysels, Victor Nieto, People's Party of Florida, Carolyn Wolfe. (Kruger, Christopher) (Entered: 06/09/2022)
06/13/2022	16	NOTICE to Counsel of Local Rule 1.07(c), Local Rule 3.02(a)(2), and Local Rule 3.03. **-Local Rule 1.07(c)** requires lead counsel to *promptly* file a **Notice of a Related Action** that identifies and describes any related action pending in the Middle District or elsewhere.

		-Local Rule 3.02(a)(2) requires the parties in every civil proceeding, except those described in subsection (d), to file a case management report (CMR) using the uniform form at www.flmd.uscourts.gov. The CMR must be filed (1) within forty days after any defendant appears in an action originating in this court, (2) within forty days after the docketing of an action removed or transferred to this court, or (3) within seventy days after service on the United States attorney in an action against the United States, its agencies or employees. Judges may have a special CMR form for certain types of cases. These forms can be found at www.flmd.uscourts.gov under the Forms tab for each judge. **-Local Rule 3.03** requires each party to file a disclosure statement with the first appearance that identifies (1) each person that has or might have an interest in the outcome, (2) each entity with publicly traded shares or debt potentially affected by the outcome, (3) each additional entity likely to actively participate, and (4) each person arguably eligible for restitution. The disclosure statement must include this certification - *I certify that, except as disclosed, I am unaware of an actual or potential conflict of interest affecting the district judge or the magistrate judge in this action, and I will immediately notify the judge in writing within fourteen days after I know of a conflict.* (Signed by Deputy Clerk). (SRC) (Entered: 06/13/2022)
06/13/2022	17	NOTICE informing the parties that they may consent to the jurisdiction of a United States magistrate judge by filing Form AO 85 Notice, Consent, and Reference of a Civil Action to a Magistrate Judge using the event **Consent to Jurisdiction of US Magistrate Judge**. (Signed by Deputy Clerk). (SRC) (Entered: 06/13/2022)
06/14/2022	18	CERTIFICATE of interested persons and corporate disclosure statement by Pasco County Supervisor of Elections. (Bardos, Andy) (Entered: 06/14/2022)
06/14/2022	19	CERTIFICATE of interested persons and corporate disclosure statement by Florida Department of State, Division of Elections, Florida Secretary of State. (Davis, Ashley) (Entered: 06/14/2022)
06/16/2022	20	*****TERMINATED-INCORRECT EVENT-COUNSEL TO REFILE WITH CORRECT EVENT*****CERTIFICATE of counsel *of Interested Persons and Corporate Disclosure Statement* by Christopher Kruger on behalf of Elise Mysels, Victor Nieto, People's Party of Florida, Carolyn Wolfe (Kruger, Christopher) Modified on 6/17/2022 (LSS). (Entered: 06/16/2022)
06/16/2022	21	RESPONSE in Opposition re 3 MOTION for Preliminary Injunction MOTION for Temporary Restraining Order filed by Pasco County Supervisor of Elections. (Attachments: # 1 Exhibit A - Declaration of Supervisor Corley, # 2 Exhibit B - Bylaws of People's Party)(Bardos, Andy) (Entered: 06/16/2022)
06/17/2022	22	MOTION to Supplement 3 MOTION for Preliminary Injunction MOTION for Temporary Restraining Order, 21 Response in Opposition to Motion, *Leave to Reply* by Elise Mysels, Victor Nieto, People's Party of Florida, Carolyn Wolfe. (Attachments: # 1 Appendix Plaintiffs' Proposed Reply, # 2 Affidavit Appendix 1, # 3 Affidavit Appendix 2, # 4 Affidavit Appendix 3, # 5 Appendix Appendix 4, # 6 Appendix Appendix 5, # 7 Appendix Appendix 6, # 8 Appendix Appendix 7, # 9 Appendix Appendix 8, # 10 Appendix Appendix 9, # 11 Appendix Appendix 10)(Kruger, Christopher) (Entered: 06/17/2022)
06/20/2022	23	RESPONSE in Opposition re 22 MOTION to Supplement 3 MOTION for Preliminary Injunction MOTION for Temporary Restraining Order, 21 Response in Opposition to Motion, *Leave to Reply AND DEFENDANTS' CONDITIONAL MOTION FOR LEAVE TO FILE SUR-REPLY* filed by Florida Department of State, Division of Elections, Florida Secretary of State, Pasco County Supervisor of Elections. (Bardos, Andy) (Entered: 06/20/2022)

06/21/2022	24	**ENDORSED ORDER: "Plaintiffs' Motion for Leave to Reply" (Doc. 22) is denied. If necessary to resolve the pending motion, the Court will direct the parties to file supplemental memoranda or set a hearing to further address the legal issues and arguments in this case. The Court notes that the motion does not comply with Local Rule 3.01. Plaintiffs should take care to comply with the Local Rules of this Court. Signed by Judge Thomas P. Barber on 6/21/2022. (ANL)** (Entered: 06/21/2022)
06/22/2022	25	**ORDER: Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order" (Doc. 3) is hereby denied. See Order for details. Signed by Judge Thomas P. Barber on 6/22/2022. (ANL)** (Entered: 06/22/2022)
06/30/2022	26	Emergency MOTION for Reconsideration re 25 Order on Motion for Preliminary Injunction, *and for Expedited Briefing* by All Plaintiffs. (Attachments: # 1 Affidavit Affidavit of Elise Mysels w Exhibits 1 of 3, # 2 Affidavit Affidavit of Elise Mysels w Exhibits 2 of 3, # 3 Affidavit Affidavit of Elise Mysels w Exhibits 3 of 3, # 4 Affidavit Additional Affidavits of Named Plaintiffs Wolfe & Nieto, # 5 Appendix Appendix to Plaintiffs' Motion to Reconsider and for Expedited Briefing)(Kruger, Christopher) (Entered: 06/30/2022)
07/01/2022	27	Case Reassigned to Magistrate Judge Mac R. McCoy. New case number: 8:22-cv-1274-TPB-MRM. Magistrate Judge Anthony E. Porcelli no longer assigned to the case. (KE) (Entered: 07/01/2022)
07/06/2022	28	CERTIFICATE of interested persons and corporate disclosure statement *as to all Plaintiffs* by People's Party of Florida. (Kruger, Christopher) (Entered: 07/06/2022)
07/06/2022	29	NOTICE of supplemental authority re 26 Emergency MOTION for Reconsideration re 25 Order on Motion for Preliminary Injunction, *and for Expedited Briefing* by People's Party of Florida. (Kruger, Christopher) (Entered: 07/06/2022)
07/06/2022	30	CERTIFICATE of interested persons and corporate disclosure statement by Elise Mysels, Victor Nieto, People's Party of Florida, Carolyn Wolfe. (Kruger, Christopher) (Entered: 07/06/2022)
07/14/2022	31	RESPONSE in Opposition re 26 Emergency MOTION for Reconsideration re 25 Order on Motion for Preliminary Injunction, *and for Expedited Briefing* filed by Florida Department of State, Division of Elections, Florida Secretary of State, Pasco County Supervisor of Elections. (Attachments: # 1 Exhibit A - Corley Declaration)(Bardos, Andy) (Entered: 07/14/2022)
07/25/2022	32	**ENDORSED ORDER: "Plaintiffs' Emergency Rule 59(e) Motion to Reconsider the Denial of Preliminary Injunctive Relief and Motion for an Expedited Briefing Schedule" (Doc. 26) is denied. Signed by Judge Thomas P. Barber on 7/25/2022. (ANL)** (Entered: 07/25/2022)

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PEOPLE'S PARTY OF FLORIDA, et al.,

Plaintiffs,

v. Case No. 8:22-cv-1274-TPB-AEP

FLORIDA DEPARTMENT OF STATE,
DIVISION OF ELECTIONS, et al.,

Defendants.
_________________________________/

ORDER DENYING IN PART AND DEFERRING IN PART PLAINTIFFS' "EMERGENCY MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER"

This matter is before the Court on Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order," filed by counsel on June 3, 2022. (Doc. 3). After reviewing the motion, court file, and the record, the Court finds as follows:

Plaintiffs – a newly-recognized minor political party, two officers of the political party, and a candidate seeking to be placed on the ballot – file suit to enjoin Defendants from enforcing § 99.021, *F.S*, which they contend violates their First and Fourteenth Amendment rights.

A district court is authorized to issue a temporary restraining order without notice to the adverse party only in limited emergency circumstances. *See* Fed. R. Civ. P. 65(b); M.D. Fla. Local Rule 6.01. A motion seeking a temporary restraining order must be supported by allegations of specific facts shown in the verified complaint or accompanying affidavits, not only that the moving party is threatened

with irreparable injury, but that such injury is so imminent that notice and a hearing on the application for preliminary injunction is impractical.

Plaintiffs have failed to plead or demonstrate that notice and a hearing on the motion is impractical. Plaintiffs do not detail *any* efforts made to give notice of the TRO motion to Defendants, and they do not provide any reason why notice should not be required. Absent a showing of emergency, the Court is not able to address Plaintiffs' allegations without input from Defendants.

Because Plaintiffs have failed to meet the high burden for the issuance of a TRO, Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order" must be denied. Although Plaintiffs are not entitled to a TRO, the Court will consider the motion for preliminary injunction after Defendants are served with a complaint and a copy of any such motion and given an opportunity to respond.

Accordingly, it is

ORDERED, **ADJUDGED**, and **DECREED**:

(1) Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order" (Doc. 3) is hereby **DENIED** to the extent that Plaintiffs seek a temporary restraining order.

(2) Plaintiffs are directed to immediately serve on Defendants a copy of the complaint, a copy of Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or **Temporary** Restraining

Order," and a copy of this Order. Plaintiffs are further **DIRECTED** to file proof of service on or before Thursday, June 9, 2022.

(3) On or before Thursday, June 16, 2022, Defendants may file one consolidated response in opposition to the motion seeking a preliminary injunction.

(4) The Court may set a hearing to address the motion, if warranted.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 6th day of June 2022.

TOM BARBER
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PEOPLE'S PARTY OF FLORIDA, et al.,

Plaintiffs,

v. Case No. 8:22-cv-1274-TPB-AEP

FLORIDA DEPARTMENT OF STATE,
DIVISION OF ELECTIONS, et al.,

Defendants.
____/

ORDER DENYING PLAINTIFFS' "EMERGENCY MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER"

This matter is before the Court on Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order," filed by counsel on June 3, 2022. (Doc. 3). On June 6, 2022, the Court denied the motion to the extent it sought a temporary restraining order and directed an expedited briefing schedule to address the request for preliminary injunction. (Doc. 5). On June 16, 2022, Defendants filed a response in opposition to the motion. (Doc. 21). After reviewing the motion, response, court file, and the record, the Court finds as follows:

Background

Plaintiffs – a newly-recognized minor political party, two officers of the political party, and a candidate seeking to be placed on the ballot – file suit to enjoin Defendants from enforcing § 99.021, *F.S*, which they contend violates their First and

Fourteenth Amendment rights under the U.S. Constitution.[1] Specifically, Plaintiffs seek to enjoin Defendants from requiring Plaintiff Elise Mysels to sign a candidate oath that she has been a member of her political party, and not a member of another political party, for the 365 days before the beginning of the applicable qualifying period for the purpose of ballot access.[2] Plaintiffs claim that they are injured by Defendants' refusal to recognize the People's Party as a political party for the purpose of running candidates for federal, state, or multicounty district office until after September 1, 2022.

Legal Standard

To obtain a preliminary injunction, a movant must establish: "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005); *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, 2020 WL 6948354, at *1 (Nov. 25, 2020). "A preliminary injunction is an extraordinary and drastic remedy, and [the movant] bears the burden of persuasion to clearly stablish all four of these

[1] The People's Party was recognized by the State of Florida as a minor political party as of September 1, 2021. Plaintiff Elise Mysels, a resident of Lutz, Florida, seeks to be the People's Party candidate for the Pasco County Board of County Commissioners. Plaintiff Victor Nieto is a resident of Miami-Dade County, Florida and is the current chairperson for the People's Party of Florida. Plaintiff Carolyn Wolfe is a resident of St. John's County, Florida, and is a member of the People's Party Executive Committee.

[2] To qualify for nomination as a candidate of a political party, § 99.021, *F.S.* requires a person to swear or affirm, among other things, that he or she has been a registered member of the political party for 365 days before the beginning of qualifying period preceding the general election for which the person seeks to qualify.

prerequisites." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016) (internal quotations omitted).

Analysis

Absent extraordinary circumstances, "federal district courts ordinarily should not enjoin state election laws in the period close to an election." *League of Women Voters v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022) (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring)). After careful review, the Court finds that Plaintiffs cannot meet the threshold for a preliminary injunction.

No Substantial Likelihood of Success on the Merits

When an election is close, a party seeking a preliminary injunction must do more than establish a likelihood of success on the merits. Rather, the party must prove that "its position is entirely clearcut." *Id*. at 1372 (citing *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (quotation marks omitted)). That is not the case here. The right to vote in any manner and the right to associate for political purposes through the ballot are not absolute. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). "[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Id*. (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Courts, including the United States Supreme Court, have upheld both "sore loser" statutes and disaffiliation statutes that

include one-year restrictions. *Storer*, 415 U.S. at 728; *Curry v. Buescher*, 394 F. App'x 438, 446; 448 (10th Cir. 2010); *Van Susteren v. Jones*, 331 F.3d 1024, 1026 (9th Cir. 2003).

Defendants assert several compelling interests for the Affiliation and Disaffiliation Provisions contained within Florida's current election laws, including stabilization of the political process and preventing voter confusion, party-swapping, and fraudulent and frivolous candidacies. These types of interests have been frequently recognized by various courts and justify reasonable regulation of ballot access. *See, e.g., Storer*, 415 U.S. at 732-33, 36; *Bullock v. Carter*, 405 U.S. 134, 145 (1972); *Libertarian Party of Fla. v. State of Fla.*, 710 F.2d 790, 792 (11th Cir. 1983); *Fowler v. Adams*, 315 F. Supp. 592, 594-95 (M.D. Fla. 1970); *Wetherington v. Adams*, 309 F. Supp. 318, 321 (N.D. Fla. 1970). The primary case relied upon by Plaintiffs, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 210 (1986), is distinguishable and does not stand for the sweeping propositions that Plaintiffs claim. Accordingly, the Court concludes that Plaintiffs have failed to demonstrate a likelihood of success on the merits.

No Irreparable Injury

Plaintiffs also have not shown a substantial threat of irreparable injury. Because "a preliminary injunction is premised on the need for speedy and urgent action to protect a plaintiff's rights before a case can be resolve don its merits," a "delay in seeking a preliminary injunction of even only a few months . . . militates against a finding of irreparable harm." *Wreal*, LLC, 840 F.3d at 1248. The People's Party of Florida achieved minor political party status in Florida, and Mysels became a

member of the Party, in September 2021. Plaintiffs have failed to provide any explanation for the delay in challenging the restrictions at issue in this case. Outside of the delay, Plaintiffs have not shown any voter support outside of the individual Plaintiffs, and two of the individual Plaintiffs are not even eligible to vote in Pasco County. Finally, the Party may have its candidates, such as Mysels, run as write-in candidates in this election cycle, and it may endorse, campaign for, and contribute to any candidate. Under these facts, there is no substantial threat of irreparable harm.

Weighing Harm to the Public Interest and to Plaintiffs' Interests

When the government opposes a motion for preliminary injunction, its interest and harm merge with the public interest. *State of Fla. v. Dep't of Health & Hum. Servs.*, 19 F.4th 1271, 1293 (11th Cir. 2021) (citing Swain v. Junior, 958 F.3d 1081, 1091 (11th Cir. 2020). The "inability to enforce its duly enacted [laws] clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n. 17 (2018). In addition, as mentioned, Defendants have also presented several compelling State interests supporting the Affiliation and Disaffiliation Provisions that are being challenged here, including the stability of the political system. In this case, the injunction requested disserves the public interest, and the harm to the public interest outweighs any harm to Plaintiffs.

Conclusion

Plaintiffs could have filed this lawsuit much earlier – such as in May 2021, when the Affiliation Provision became effective, or in September 2021, when the People's Party achieved minor party status, or when Mysels became a member of the party. Instead, Plaintiffs filed their complaint and emergency motion in the midst of

the election process, shortly before the end of the qualifying period. Plaintiffs, who "unduly delayed bringing the complaint to the court," cannot overcome *Purcell*. *See Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Injunctive relief is not warranted because Plaintiffs' position as to the Affiliation and Disaffiliation Provisions is not entirely clearcut and there is no substantial likelihood of success on the merits, there is no showing of irreparable harm, and the harm to the public outweighs potential injury to Plaintiffs. The motion is denied.[3]

Accordingly, it is

ORDERED, **ADJUDGED**, and **DECREED**:

1. Plaintiffs' "Emergency Motion and Memorandum of Law in Support of Preliminary Injunction and/or Temporary Restraining Order" (Doc. 3) is hereby **DENIED**.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 22nd day of June, 2022.

TOM BARBER
UNITED STATES DISTRICT JUDGE

[3] The Court does not address the argument that Plaintiffs lack standing against the Secretary at this time, but this argument may be raised and addressed should this case proceed.

EXHIBIT B

Part 1 -
Complaint Filed June 3, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PEOPLE'S PARTY OF FLORIDA; ELISE MYSELS;)
CAROLYN WOLFE; VICTOR NIETO) No. **Not Assigned**
)
Plaintiffs,)
v.) 8:22 CV 1274 TPB-AEP
) Judge Not Assigned
)
FLORIDA DEPARTMENT OF STATE, DIVISION) Magistrate Judge Not Assigned
OF ELECTIONS; CORD BYRD, FLORIDA)
SECRETARY OF STATE in his official capacity;)
BRIAN CORLEY, PASCO COUNTY SUPERVISOR)
OF ELECTIONS in his official capacity;)
Defendants.)

VERIFIED COMPLAINT

Plaintiffs, the **People's Party of Florida; Elise Mysels; Carolyn Wolfe; and Victor Nieto,** through their attorney, file their verified complaint and respectfully request entry of a declaratory judgment and other relief pursuant to 42 U.S.C. §1983 against Defendants, **Florida Department of State, Division of Elections**; **Laurel M. Lee,** in her official capacity as Florida Secretary of State, Division of Elections; and **Brian Corley**, in his official capacity as Supervisor of Elections, Pasco County, Florida, and state as follows:

Proposition

(1). A Florida law requiring (a) that a political party to be registered with the Department of State, Division of Elections for 365 days prior to becoming eligible to run its candidates, and (b) that a candidate be a registered member of that party for 365 days prior to filing his or her candidacy, is repugnant to the First and Fourteenth Amendments under the principles set forth by the United States Supreme Court in ***Tashjian v. Republican Party***, (479 U.S. 208 (1986)), and its progeny.

TPA-6661 $402.00

Nature of the Case

1. This is an action for a declaratory judgment and other relief, seeking a declaration that the People's Party of Florida is not barred from running candidates in the **November 8, 2022 general election**, notwithstanding the 365-day "waiting period" provisions found at "Form of Candidate Oath," see Fla. Stat. 99.021 *et seq.*, and for an order directing the Defendants, Pasco County, Supervisor of Elections, as well as the Florida Department of State, Division of Elections to accept nomination papers from People's Party candidates for the November 8, 2022 general election as Minor Political Party candidates under the provisions of Title IX of the Florida Statutes, "Electors and Elections." *See* Fla. Stat. §§ 97.011 *et seq.*

2. Since **September 1, 2021**, the People's Party has been recognized by the State of Florida at its listing of Minor Political Parties, found at https://dos.myflorida.com/elections/candidates-committees/political-parties (last visited April 28, 2022); *see also* **Group Exhibit A,** *List of Parties*, April 28, 2022, & *Acknowledgement Letter* dated September 1, 2021, at pgs. 1-5.

3. To qualify as the candidate of a political party for purposes of ballot access, the State of Florida has established two "qualifying periods" thusly: a First Qualifying Period which pertains to candidates for the judicial branch: State Attorney, Public Defender, Justice of the Supreme Court, District Court of Appeal Judges, and Circuit Court Judges. The First Qualifying Period in this cycle lasted from Noon, Monday, April 25, 2022 – Noon, Friday, April 29, 2022. *See* Florida Statutes, attached hereto; Fla. Stat. § 99.061; *see also* https://dos.myflorida.com/elections/candidates-committees/qualifying/ ; see also Group Exhibit A at pgs. 6-9.

4. In addition, the State of Florida has established a Second Qualifying Period, which pertains to candidates for United States Senator, Representative in Congress, Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture, State Senator, State Representative and Multicounty Districts. Noon, Monday, June 13, 2022 – Noon, Friday, June 17, 2022. *Id.*

5. The Second Qualifying Period and pre-qualifying submission period above also applies to County and District Offices. However, for these offices, the qualifying paperwork must be submitted to the county Supervisor of Elections' office as the qualifying officer. *Id.*

6. Lastly, in any year in which the Legislature apportions the state, "the qualifying period for persons seeking to qualify for nomination or election to federal office shall be between noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the primary election", i.e., the Second Qualifying Period. *Id.* at Fla. Stat. § 99.061(9).

7. Florida law also provides for a "Petition process in lieu of a qualifying fee and party assessment" pursuant to Fla. Stat. § 99.095. However, because of the **365-day waiting period** imposed by Fla. Stat. § 99.021 et seq., the Party was not permitted to submit petitions under the which were due to be submitted before the **May 16, 2022** deadline.

8. Nor will the Party, because of the 365-day waiting period (sometimes referred to as a "lockout" by election attorneys), be permitted to file its qualification papers by the end of the qualifying period and pay the qualifying fee pursuant to Fla. Stat. § 99.061, consisting of the filing fee, election assessment, and party assessment pursuant to Fla. Stat. § 99.092 before noon on **Friday, June 17, 2022.** See Florida Statutes, Title IX, *Electors and Elections*, Chapter 99 *Candidates*, attached hereto.

9. Defendants are the election authorities that are willfully and intentionally denying to Plaintiffs their First Amendment rights of association, expression and of ballot access, and their Fourteenth Amendment right to equal protection and due process under the law.

Parties

10. Plaintiff, People's Party of Florida ("People's Party"), is a minor political party within the State of Florida that seeks to run candidates for elected offices in Florida for the November 8, 2022 general election.

11. Plaintiff, Elise Mysels ("Mysels") is a resident of Lutz, Florida, as well as a registered voter in Lutz, Pasco County, FL., and is the People's Party candidate for the Pasco County Board of County Commissioners.

12. Plaintiff Victor Nieto ("Nieto") is a resident of Bay Harbor Islands; a registered voter in Miami-Dade County, FL; and is the current Chairperson for the People's Party of Florida.

13. Plaintiff Carolyn Wolfe ("Wolfe") is a resident of St. Augustine; is a registered voter in St. John's County, FL, and is a member of the People's Party Executive Committee.

14. Defendant Florida Department of State, Division of Elections (hereinafter "DOE"), is the state agency which, according to its website, "provides administrative support to the Secretary of State, Florida's Chief Election Officer, to ensure that Florida has fair and accurate elections…the Division ensures compliance with the election laws, provides statewide coordination of election administration and promotes public participation in the electoral process. The Division also assists county Supervisors of Elections in their duties, including providing technical support." *See* https://dos.myflorida.com/elections/about-us/ (last visited April 28, 2022).

15. Defendant Cord Byrd is the Florida Secretary of State, and is being sued in his official capacity.

16. The Pasco County Supervisor of Elections, Brian Corley (hereinafter "Supervisor"), is responsible for administering all elections in Pasco County and qualifying candidates for county offices, pursuant to Fla. Stat. 99.061(2). Supervisor Corley maintains an official web site at pascovotes.gov. The Supervisor is being sued in his official capacity.

17. At all times relevant to this action, Defendants were engaged in state action under color of state law.

18. The individual Defendants are being sued in their official capacities for declaratory and injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, as well as for costs and attorney's fees under 42 U.S.C. § 1988(b).

Jurisdiction

19. Jurisdiction in this case is predicated on 28 U.S.C. § 1331, 1343(a)(3), and 134(a)(4), this being a case arising under the Constitution of the United States and 42 U.S.C. § 1983 and 1988.

Venue

20. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the Plaintiffs' claims occurred in the Middle District of Florida.

Relevant Facts & Title IX Florida Statutes – "Electors and Elections"

21. The DOE maintains an online log of all documents it receives from political parties attempting to get on the ballot. The searchable database may be found at https://dos.elections.myflorida.com/campaign-docs/default.aspx (last visited May 21, 2022).

22. According to DOE's database, it first received documents from the People's Party on July 15, 2021, when it received the first draft of the Party's By-laws. See Group Exhibit A, pg. 10, *Campaign Documents Search* print-out from DOE.

23. The People's Party eventually received an Acknowledgement Letter dated 9/1/21 that indicated that the DOE had received the People's Party's documents, and that the Party had been "added to the minor party list." Group Exhibit A at 4-5.

24. On May 10, 2022, Plaintiff Elise Mysels, in email correspondence submitted to the Pasco County Supervisor of Elections staff at "webcomment@pascovotes.gov" inquired as to whether she was eligible to run for local offices. *Id* at 11-14.

25. On May 11, staff for the Pasco County Supervisor of Elections responded, confirming that Mysels was not permitted, under Fla. Stat. 99.021, to run as a People's Party candidate: "Your record shows that you are registered in the People's Party (PEO) as of September 13, 2021. Prior to that date, you were registered NPA (no party affiliation). So, it appears you are currently unable to run no party affiliation and you would be unable to sign the oath stating you have been a member of the PEO party for 365 days to run as a minor political party candidate for PEO party…." *Id.*

26. In fact, Mysels had tried to register as a People's Party affiliated voter on June 21, 2021; but because the People's Party had not yet been recognized by DOE, Mysels' registration indicated she had changed from "Dem" to "NPA" (no party affiliation) on that date. *Id.*

27. The Florida Statutes, at Title IX, Electors and Elections, Chapter 99 Candidates (attached) provide the 2 methods by which minor political party candidates may be qualified for election: either by paying a filing fee, or by submitting petitions containing the signatures of qualified voters thusly, in the case of county offices, stating in relevant portion:

"…each person seeking to qualify for nomination or election to a county office, or district office not covered by subsection (1), **shall file his or her qualification papers with, and pay the qualifying fee**, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the supervisor of elections of the county, **or shall qualify by the petition process** pursuant to s. 99.095 with the supervisor of elections, or shall qualify by the petition process pursuant to s. 99.095 with the supervisor of elections, at any time after noon of the 1st day for qualifying…"

Fla. Stats. § 99.061(1) & (2). **Emphasis supplied.**

28. The 365-day waiting period registration requirement may be found at Fla. Stat. § 99.021(1)(a)1, *Form of Candidate Oath,* in relevant portion:

***

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. **That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.**

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) **In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.**

(d) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

***

Statute may also be found at the *Official Internet Site of the Florida Legislature*, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0099/Sections/0099.021.html (last visited April 27, 2022). **(Emphasis supplied).**

29. Additionally, the Florida Division of Elections *2022 Candidate Petition Handbook* states in relevant portion, at page 10:

ATTENTION: Recent law (s. 11 of Chapter 2021-11, Laws of Florida) requires a person seeking nomination as a candidate of a political party to be a member of that political party for the 365 days BEFORE the beginning of the applicable qualifying period. Additionally, the law requires a person seeking to qualify for office as a candidate with no party affiliation to not be a member of any political party for the 365 days BEFORE the beginning of the applicable qualifying period.

See *2022 Candidate Petition Handbook*, found at

https://files.floridados.gov/media/704776/candidate-petition-handbook-2022-11-2-21.pdf (last visited April 27, 2022).

30. Therefore, it logically follows that, if a candidate must be a member of a given party for 365 prior to running as a candidate, then the party itself must be registered with the Division of Elections for 365 days prior to running any candidates whatsoever.

31. Such a requirement, of having to be a member of a party for 365 prior to running as that party's candidate, impermissibly burdens the First Amendment speech and associational rights of the People's Party and its members, as well as its candidates and the candidates' constituencies.

32. Limiting the field of potential candidates to party members, whatsoever, violates the black-letter of U.S. Supreme Court guidance as expressed in ***Tashjian***, *supra*, even without

the 365-day waiting period; the 365-day waiting period merely exacerbates the egregiousness of the constitutional deprivation.

33. Additionally, then, it necessarily follows that the People's Party having only been acknowledged as a minor party on **September 1, 2021** is being denied standing to run any candidates whatsoever in the November general election, as both the **May 16, 2022** petition deadline and the noon **June 17, 2022** qualifying period deadline are inside the 365-day waiting period.

34. Denying new parties the right to run candidates violates the First Amendment speech and associational rights of those parties, their voters, their candidates and their candidates' constituencies and violates the fundamental right to associate for political purposes and to participate in the electoral process, all well-established tenets of ballot access as established in ***Williams v. Rhodes***, 393 U.S. 23, 30 (1968), and cases following.

35. Plaintiffs are thus injured and damaged, and denied their First Amendment and Fourteenth Amendment ballot access rights through the Defendants' refusal to recognize the People's Party as a political party for purposes of running candidates for federal, state, or multicounty district office until after September 1, 2022.

36. Plaintiffs are further being delayed in their ability to organize, campaign, promote the People's Party as a minor party, and gather signatures.

37. Plaintiffs are further harmed and damaged through denial of the Plaintiffs' right to campaign and promote the People's Party to voters in relation to the general election on November 8, 2022, otherwise denied First and Fourteenth Amendment rights.

38. Plaintiffs are further injured, harmed, defamed, and continue to suffer harm to their reputation and recognition through the DOE's refusal to permit the People's Party to

function as a duly recognized, registered minor political party within the geographic boundaries of the State of Florida, thereby hampering and obstructing the People's Party's First Amendment right to associate as a political party, build memberships, promote its platform and candidates, generate financial and other support from voters, and otherwise build and grow the People's Party within the State of Florida.

COUNT I – DECLARATORY JUDGMENT
Declaratory Judgment that the 365-Day "Waiting Period" Requirement in Fla. Stat. §99.021 "Candidate Oath" is Unconstitutional

39. Plaintiffs repeat and reallege paragraphs 1-38 as if fully restated herein.

40. In *Eu v. San Francisco County Democratic Central Comm.*, 489 US 214, 223 (1989) the U.S. Supreme Court confirmed that First Amendment protections are applicable to political party speech as follows:

> Indeed, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office. *Monitor Patriot Co. v. Roy,* 401 U. S. 265, 272 (1971); see also *Mills v. Alabama*, 384 U. S. 214, 218 (1966). Free discussion about candidates for public office is critical, as the "election campaign is a means of disseminating ideas as well as attaining political office." *Id.*

41. The statute's denying to minor political parties the right to run candidates in the November 8, 2022 general election, as well as the anticipated refusal of the Defendants to accept qualifying papers from People's Party candidates (without a directive from this Court) directly damages, obstructs, and harms the ability of the People's Party to promote its platform, policy positions, and candidates, to all voters in the State of Florida, including, but not limited to Pasco County voters, at the November 8, 2022 general election; and denies all voters in the State of Florida the ability to have greater diversity and candidates to select from for federal, state and county offices.

42. The Plaintiffs, and each of them, enjoy First Amendment protected ballot access rights as a political party, as members of a political party, and as voters, which have been recognized by the Supreme Court in *Eu*, *supra*, 489 US 214, 223 as follows:

> Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association. It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. *Tashjian v. Republican Party*, 479 U.S. 208 (1986), at 214; see also *Elrod v. Burns*, 427 U. S. 347, 357 (1976) (plurality opinion). Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, *Tashjian*, *supra*, at 214 (quoting *Kusper*, *supra*, at 57), but also that a political party has a right to " 'identify the people who constitute the association,' " *Tashjian*, *supra*, at 214 (quoting *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U. S. 107, 122 (1981)); cf. *NAACP v. Alabama ex rel. Patterson*, 357 U. S. 449, 460-462 (1958), and to select a "standard bearer who best represents the party's ideologies and preferences." *Ripon Society, Inc. v. National Republican Party*, 173 U. S. App. D. C. 350, 384, 525 F.2d 567, 601 (1975) (Tamm, J., concurring in result), *cert. denied*, 424 U. S. 933 (1976).

43. The statute's denial, and the Defendants' actions in enforcing the statute, violate the Plaintiffs' First Amendment right to associate as a political party to nominate Plaintiffs' candidates of their choice, their First Amendment right to petition voters, and a denial of their First Amendment right to promote the People's Party at the November 8, 2022 general election.

44. A real and actual controversy exists between the parties.

45. Plaintiffs have no adequate remedy at law, other than this action pursuant to 42 U.S.C. § 1983 for declaratory and equitable relief.

46. Plaintiffs are suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless the statute and the Pasco County Supervisor's and the DOE's enforcement of it is declared unlawful and enjoined by this Honorable Court.

47. A declaration of the Plaintiffs' rights would assist all parties as well as all Florida voters, including but not limited to Pasco County voters, and provide direction to the Defendants

in their official capacities as the election authorities within the State of Florida in advance of the November 8, 2022 general election.

WHEREFORE, Plaintiffs, through their attorney, respectfully request entry of a declaratory judgment as follows:

(a) Declaring that the 365-day "waiting period" requirements of Fla. Stat. 99.021, denying the People's Party the right to run candidates in the November 8, 2022 general election are unconstitutional, void and unenforceable.

(b) Declaring that the People's Party of Florida, as a registered minor political party under Florida law, is vested with all rights of minor parties under Florida law and enjoys all rights and benefits conferred upon a minor political party under the laws of Florida for the November 8, 2022 general election.

(c) Declaring that the 365-day "waiting period" purporting to bar candidates, including Plaintiff Mysels, from running unless they have been registered with a party for 365 days is unconstitutional, void and unenforceable.

(d) Directing the State of Florida, Department of State, Division of Elections and the Pasco County Supervisor of Elections to place the name of Elise Mysels on the ballot as the People's Party candidate for the office of County Commissioner, Pasco County Board, Second District for the November 8, 2022 general election.

(e) Otherwise adjusting the dates, signature requirements, payment of fees, and/or other provisions of the Florida Statutes governing submission of People's Party candidate qualifying papers in the interests of justice and to balance the Plaintiffs' Constitutional rights being denied by the State of Florida.

(f) Retain jurisdiction over this matter to enforce this court's order,

(g) Order Defendants to pay to Plaintiffs their reasonable fees and costs pursuant to 42 U.S.C. § 1988, and

(h) Order Defendants to provide to Plaintiffs such further and additional relief as the Court deems just and appropriate.

Count II
Denial of First Amendment ballot access rights (42 U.S.C. § 1983)

48. Plaintiffs repeat and reallege paragraphs 1-47 as if fully restated herein.

49. The Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 1570 (1983), instructed lower courts to "consider the character and magnitude of the asserted injury to the rights protected" by the constitution, to "identify and evaluate the precise interests put forth by the State," and then to decide whether the interests justify the restriction.

50. Defendants' actions violate rights guaranteed to these Plaintiffs by the First Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983.

WHEREFORE, the Plaintiffs respectfully request that this Court enter judgment as follows:

(1) Assume original jurisdiction over this case;

(2) Issue a temporary restraining order and/or preliminary injunction as follows:

a. directing the Defendants to amend any Candidate Handbooks, websites or any other literature or publications to delete the language in the "ATTENTION" notice found at ¶ 29, *supra*, setting forth the 365-day waiting period requirement and its applicability to the November 8, 2022 general election, or any other inaccurate references to the unconstitutional provision, explaining that the provision has been declared unconstitutional, and otherwise amending

and revising Defendants' publications to remedy Defendants' unconstitutional acts.

b. prohibiting Defendants from striking, rejecting, or refusing acceptance of petitions and/or qualifying papers from People's Party of Florida candidates seeking ballot access for the November 8, 2022 general election based on any imposition of the unconstitutional 365-day waiting period.

c. directing Defendants to accept petitions and/or qualifying papers and filing fees from People's Party candidates for the November 8, 2022 general election.

(3) Issue a declaratory judgment stating that the People's Party of Florida is established as a minor political party within the State of Florida with all associated rights allowed under the Florida law to minor political parties for all elective and political party offices;

(4) Issue a permanent injunction against Defendants, enjoining them from enforcing Fla. Stat. 99.021's requirement imposing a 365-day waiting period for candidates to be registered as members of a party before they can run as that party's candidate in an election.

(5) Issue a permanent injunction against Defendants, enjoining them from enforcing Fla. Stat. 99.021's requirement imposing a 365-day waiting period for the People's Party before that party is permitted to nominate and run candidates in any election in the State of Florida.

(6) Order Defendants to pay to Plaintiffs their costs and a reasonable attorney's fees under 42 U.S.C. § 1988(b);

(7) Retain jurisdiction over this matter to enforce this court's order, and

(8) Order Defendants to provide to Plaintiffs such further and additional relief as the Court deems just and appropriate.

Count III
Denial of Fourteenth Amendment equal protection rights (42 U.S.C. § 1983)

51. Plaintiffs repeat and restate paragraphs 1-50 as if fully restated and realleged herein.

52. The Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 1570 (1983), instructed lower courts to "consider the character and magnitude of the asserted injury to the rights protected" by the constitution, to "identify and evaluate the precise interests put forth by the State," and then to decide whether the interests justify the restriction.

53. Defendants' actions violate rights guaranteed to these Plaintiffs by the Fourteenth Amendment to the United States Constitution to equal protection under the law, as enforced through 42 U.S.C. § 1983.

WHEREFORE, the Plaintiffs respectfully request that this Court enter judgment as follows:

(1) Assume original jurisdiction over this case;

(2) Issue a temporary restraining order and/or preliminary injunction as follows:

a. directing the Defendants to amend their Handbooks, websites or any other publications correcting the language in the "ATTENTION" notice found at ¶ 29, *supra*, setting forth the 365-day waiting period requirement and its applicability to the November 8, 2022 general election, and indicating that the provision has been declared unconstitutional, and otherwise amending

and revising Defendants' publications to remedy Defendants' unconstitutional acts.

b. prohibiting Defendants from striking, rejecting, or refusing acceptance of petitions and/or qualifying papers and filing fees from People's Party of Florida candidates seeking ballot access for the November 8, 2022 general election based on the 365-day waiting period.

c. directing Defendants to accept petitions and qualifying papers from People's Party candidates for the November 8, 2022 general election.

d. directing Defendants to prepare all forms of ballots and voting devices for the inclusion of the People's Party's candidates in the general election on to be held on November 8, 2022 in each of their respective jurisdictions, and to administer all provisions of a general election for People's Party candidates within the State of Florida.

(3) Issue a declaratory judgment stating that the People's Party of Florida is established as a minor political party within the State of Florida with all associated rights allowed under the Florida law to minor political parties for all elective and political party offices;

(4) Issue a permanent injunction against Defendants, enjoining them from enforcing Fla. Stat. 99.021's requirement imposing a 365-day waiting period for candidates to be registered as members of a party before they can run as that party's candidate in an election.

(5) Issue a permanent injunction against Defendants, enjoining them from enforcing Fla. Stat. 99.021's requirement imposing a 365-day waiting period for the

People's Party before that party is permitted to nominate and run candidates in any election in the State of Florida.

(6) Order Defendants to pay to Plaintiffs their costs and reasonable attorney's fees under 42 U.S.C. § 1988(b); and

(7) Retain jurisdiction over this matter to enforce this court's order, and

(8) Such further and additional relief as the Court deems just and appropriate.

Respectfully submitted:

By: /s/ Christopher Kruger
Attorney for Plaintiffs

Christopher Kruger
The Law Offices of Christopher Kruger
2022 Dodge Avenue
Evanston, IL 60201-3434
Phone 847 420 1763
Fax 847 733 9537
Email chris@krugerandgruber.com

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
People's Party of Florida; Elise Mysels; Carolyn Wolf; Victor Nieto

(b) County of Residence of First Listed Plaintiff: Pasco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Christopher Kruger, 2022 Dodge Ave. Evanston IL 60201 (847) 420 1763

DEFENDANTS
Florida Dept. of State, Div. Elections; Cord Bryd; Brian Corley, Supervisor of Elections, Pasco County

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
unknown

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. sec, 1983

Brief description of cause:
Constitutiional challenge to ballot access rule

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: 5/31/22

SIGNATURE OF ATTORNEY OF RECORD: /s/ Christopher Davis Kruger, atty no. 6281923 (Illinois) (Special admission pending)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PEOPLE'S PARTY OF FLORIDA; ELISE MYSELS;	)	
CAROLYN WOLFE; VICTOR NIETO	)	No. **Not Assigned**
	)	
Plaintiffs,	)	
v.	)	
	)	Judge Not Assigned
	)	
FLORIDA DEPARTMENT OF STATE, DIVISION	)	Magistrate Judge Not Assigned
OF ELECTIONS; CORD BYRD, FLORIDA	)	
SECRETARY OF STATE in his official capacity;	)	
BRIAN CORLEY, PASCO COUNTY SUPERVISOR	)	
OF ELECTIONS in his official capacity;	)	
Defendants.	)	

"GROUP EXHIBIT A"

Respectfully submitted:

By: _____/s/ Christopher Kruger_____
Attorney for Plaintiffs (Special Admission Pending)

Christopher Kruger
The Law Offices of Christopher Kruger
2022 Dodge Avenue
Evanston, IL 60201-3434
Phone 847 420 1763
Fax 847 733 9537
Email chris@krugerandgruber.com

FLORIDA DEPARTMENT of STATE

Para español, seleccione de la lista

Department of State / Division of Elections / Candidates & Committees / Political Parties

Political Parties

The political parties listed below are registered with the state of Florida. Three-letter party abbreviations are used to designate political parties in candidate reports and contests. If a person is registered to vote with a political party, that voter's record will include the party's name and/or abbreviation. **If a person is registered to vote without a party affiliation, that voter's record will reflect no party affiliation and/or NPA.**

Major Political Parties

- Florida Democratic Party (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=1539) DEM
- Republican Party of Florida (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=4700) REP

Minor Political Parties

- Constitution Party of Florida (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=30592) CPF

1

- **Ecology Party of Florida** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=45815) **ECO**
- **Green Party of Florida** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=9192) **GRE**
- **Independent Party of Florida** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=69767) **IND**
- **Libertarian Party of Florida** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=3402) **LPF**
- **Party for Socialism and Liberation - Florida** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=46324) **PSL**
- **People's Party** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=79665) **PEO**
- **Reform Party of Florida** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=21195) **REF**
- **Unity Party of Florida** (https://dos.elections.myflorida.com/committees/ComDetail.asp?account=79428) **UPF**

Ron DeSantis, Governor

Laurel M. Lee, Secretary of State

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2

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Florida Department of State

Phone: 850.245.6500

R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

>

FLORIDA DEPARTMENT Of STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

September 1, 2021

Victor Nieto, Chairperson
People's Party (79665)
10143 East Bay Harbor Drive, #8-B
Harbor Islands, Florida 33154

Dear Mr. Nieto:

This will acknowledge receipt of the documents for the **People's Party** that were placed on file in our office on August 19, 2021. This information appears to comply with the requirements of Section 103.095, Florida Statutes, and the name of this minor party executive committee has been added to the minor party list.

Campaign Treasurer's Reports

Your first campaign treasurer's report will be due on **October 12, 2021**. The cover period for this report is July 1, 2021 – September 30, 2021. All party executive committees that file reports with the Division of Elections are required to file by means of the Division's Electronic Filing System (EFS).

Credentials and Sign-ons

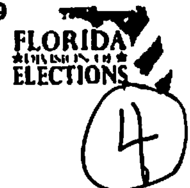
Below is the web address to access the EFS and the party's user identification number. The enclosure contains the party's initial password and credentials.

EFS Website Address: https://efs.dos.state.fl.us
Identification Number: **79665**

Timely Filing

All reports must be completed and filed through the EFS no later than midnight, Eastern Standard Time, of the due date. Reports not filed by midnight of the due date are late filed and subject to the penalties in Section 106.07(8), Florida Statutes. In the event that the EFS is inoperable on the

Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6240 • 850.245.6260 (Fax) • DOS.MyFlorida.com/elections



due date, the report will be accepted as timely filed if filed no later than midnight of the first business day the EFS becomes operable. No fine will be levied during the period the EFS was inoperable.

Any state executive committee failing to file a report on the designated due date shall be subject to a fine of $1,000 per day for each late day, not to exceed 25% of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, if an executive committee fails to file a report on the Friday immediately preceding the special election or general election, the fine shall be $10,000 per day for each late day.

Electronic Receipts

The person submitting the report on the EFS will be issued an electronic receipt indicating and verifying the report was filed. Each campaign treasurer's report filed by means of the EFS is considered to be under oath by the chairperson and campaign treasurer, and such persons are subject to the provisions of Section 106.07(5), Florida Statutes.

Instructions and Assistance

An online instruction guide is available to you on the EFS to assist with navigation, data entry, and submission of reports. The Division of Elections will also provide assistance to all users by contacting the EFS Help Desk at (850) 245-6280.

All of the Division's publications and forms are available on the Division of Elections' website at dos.myflorida.com/elections. It is your responsibility to read, understand, and follow the requirements of Florida's election laws. Therefore, please print a copy of the following documents: Chapters 103, 104 and 106, Florida Statutes, *Calendar of Reporting Dates*, and Rules 1S-2.017 and 1S-2.050, Florida Administrative Code.

Please let me know if you need additional information.

Sincerely,

Donna S. Brown, Chief
Bureau of Election Records

DSB/mcc

Enclosures

pc: Elise Mysels, Treasurer

FLORIDA DEPARTMENT *of* STATE

Para español, seleccione de la lista Select Language Powered by Google Translate

Department of State / Division of Elections / Candidates & Committees / Qualifying Information

Qualifying Information

Webpage last updated: April 8, 2022

Qualifying Dates

ATTENTION: Recent law (s. 11 of Chapter 2021-11, Laws of Florida (http://laws.flrules.org/2021/11)) requires a person seeking nomination as a candidate of a political party to be a member of that political party for the 365 days BEFORE the beginning of the applicable qualifying period. Additionally, the law requires a person seeking to qualify for office as a candidate with no party affiliation to not be a member of any political party for the 365 days BEFORE the beginning of the applicable qualifying period. Therefore, the last day for such person to make the applicable change is April 24, 2021, for the first qualifying period and June 12, 2021, for the second qualifying period in order for the person to meet the 365-day requirement.

1ST QUALIFYING PERIOD: STATE ATTORNEY (6TH AND 20TH JUDICIAL CIRCUITS), PUBLIC DEFENDER (20TH JUDICIAL CIRCUIT), JUSTICE OF SUPREME COURT, DISTRICT COURT OF APPEAL JUDGE, AND CIRCUIT COURT JUDGE

- Noon, Monday, April 25, 2022 – Noon, Friday, April 29, 2022
- Note: The Division will begin accepting qualifying documents on April 11, 2022. *See* Section 99.061(8) (http://www.leg.state.fl.us/statutes/index.cfm?

App_mode=Display_Statute&Search_String=&URL=0000-0099/0099/Sections/0099.061.html), F.S.

2ND QUALIFYING PERIOD: U.S. SENATOR, REPRESENTATIVE IN CONGRESS, GOVERNOR, ATTORNEY GENERAL, CHIEF FINANCIAL OFFICER, COMMISSIONER OF AGRICULTURE, STATE SENATOR, STATE REPRESENTATIVE, AND MULTI-COUNTY SPECIAL DISTRICTS

- Noon, Monday, June 13, 2022 – Noon, Friday, June 17, 2022
- Note: The Division will begin accepting qualifying documents on May 30, 2022. *See* Section 99.061(8) (http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0099/Sections/0099.061.html), F.S. While state offices are closed on Memorial Day, qualifying documents can still be placed in the secure drop-box provided just inside the front lobby doors of the R.A. Gray Building located at 500 South Bronough Street, Tallahassee, Florida 32399 between the hours of 8 AM – 5 PM on May 30. State offices will reopen at 8 AM on May 31, 2022.

Note: The 2nd qualifying period and pre-qualifying submission period above also applies to COUNTY AND DISTRICT OFFICES. However, the qualifying paperwork must be submitted to the county Supervisor of Elections' office as the qualifying officer. Please contact your county Supervisor of Elections (/elections/contacts/supervisor-of-elections/) for more information.

Qualifying In Year of Apportionment

- State Senate Redistricting Memo (/media/705367/state-senate-redistricting-memo.pdf)
- State Representative Redistricting Memo (/media/705368/state-representatives-redistricting-memo.pdf)
- Florida Redistricting 2022 (https://www.floridaredistricting.gov/) (includes information on House and Senate Redistricting Committees and House Congressional Redistricting Committee, Submitted Plans and other resources)
- Florida Supreme Court order approving Florida Legislative Plans 2022 (https://efactssc-public.flcourts.org/casedocuments/2022/131/2022-131_disposition_155066_d10.pdf)

Qualifying Materials

*Materials relating to the 2022 Cycle will be available soon. *For 2020 Election Year Handbooks, go to the Publications Archive* (/elections/forms-publications/publications/publications-archive/) *Page.*

- **2022 Qualifying Fees** (/media/704649/2022-qualifying-fees.pdf)
- **2022 Petition Signature Requirements** (/media/704705/2022-petition-signature-requirements.pdf)
- **2022 Candidate Petition Handbook** (/media/704776/candidate-petition-handbook-2022-11-2-21.pdf)
- **2022 State Qualifying Handbook** (/media/705090/statequalifyinghandbook_2022-new-draft-3-23-22.pdf)
- **2022 Federal Qualifying Handbook** (/media/705089/federal-qualifying-handbook-2022-final-11-16-21.pdf)
- **Candidate Oaths** (/elections/forms-publications/forms/forms-incorporated-in-rule/)
- **Candidate Petition Form (DS-DE 104)**
  - **English PDF** (/media/693291/dsde104.pdf)
  - **Español PDF** (/media/693293/dsde104_spa.pdf)
- **Affidavit of Undue Burden - Candidate (DS-DE 19A)**
  - **English PDF** (/media/693811/dsde19a-aff-undue-burden-can-11-2-21.pdf)
  - **Español PDF** (/media/693810/dsde19a_spa.pdf)
- **Use of Nickname on Ballot** (/media/696453/use-of-nickname-on-ballot.pdf)
- **Qualifying Memo - Supreme Court Justice and District Court of Appeals** (/media/705486/qualifying-memo-supreme-court-justice-and-district-court-of-appeals.pdf)
- **Qualifying Memo - Circuit Court Judge** (/media/705487/qualifying-memo-circuit-court-judge.pdf)
- **Qualifying Memo - Public Defender and State Attorney** (/media/705488/qualifying-memo-public-defender-and-state-attorney.pdf)

Qualifying Office

Below is the name, location and address of Florida's qualifying office for U.S. President and Vice-President, U.S. Senate, U.S. House of Representatives, Governor, Lieutenant Governor, Cabinet, State Senate, State House of Representatives, Judicial (except county judges), multi-county state offices (State Attorney and Public Defender), and multi-county special district candidates:

Department of State, Division of Elections
Bureau of Election Records
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Special Election Qualifying

Qualifying information for special elections can be found on our Special Elections (/elections/for-voters/special-elections/) page.

Ron DeSantis, Governor
Laurel M. Lee, Secretary of State

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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Florida Department of State
Phone: 850.245.6500

R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

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Campaign Documents Search

Forms are available in Adobe's Acrobat PDF format for viewing or printing at your site. Accessing documents in PDF format requires use of Adobe's Acrobat Reader, which may be installed free of charge.

Account Num	
Account Name	People's Party
Account Type	all
Form Desc	
Election Id	all
Office Desc	
Submit	Clear

Name	Type	Received	Description	Select
People's Party	PTY	03/21/22	Party Annual Audit	PDF
People's Party	PTY	02/01/22	Miscellaneous	PDF
People's Party	PTY	01/14/22	Party Rules/Bylaws/Charter	PDF
People's Party	PTY	01/11/22	Miscellaneous	PDF
People's Party	PTY	01/11/22	In-kind Contr Acceptance	PDF
People's Party	PTY	01/07/22	Party Rules/Bylaws/Charter	PDF
People's Party	PTY	01/07/22	Miscellaneous	PDF
People's Party	PTY	11/22/21	Miscellaneous	PDF
People's Party	PTY	09/15/21	Miscellaneous	PDF
People's Party	PTY	09/01/21	Acknowledgment Letter	PDF
People's Party	PTY	08/19/21	Party Rules/Bylaws/Charter	PDF
People's Party	PTY	07/15/21	Party Rules/Bylaws/Charter	PDF

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Reply all Delete Junk Block ...

Candidate Eligibility

EM Elise Mysels <elise.mysels@gmail.com>
To: webcomment@pascovotes.gov
Tue 5/10/2022 7:47 PM

I am interested in running as a Pasco County candidate for local office and seek to file the appropriate documents with your office by the required due date.

1. I am uncertain as to my eligibility, given the recent change in the law (s. 11 of Chapter 2021-11, Laws of Florida) and ask that you review my voter registration history to determine if I can qualify for any public office either affiliated with the Democratic Party, Non-Party Affiliated, or affiliated with the People's Party.

2. There are (3) State and Local Partisan Office Candidate Oaths to choose from to my understanding, and I am uncertain as to which form to use:
A-With party Affiliation
B-Without party Affiliation
C-Write-in Candidate

3. Moreover, if the office in which I am seeking to be eligible for, is by designation, a non-party one, am I eligible?

4. Likewise, it appears that a County Commissioner seat in Pasco County is indeed partisan, vs Miami-Dade as NOP, for example. Please clarify if partisanship is applicable for Pasco County Commissioner.

5. Additionally, please confirm the following qualifying dates apply to Pasco County:

Petition filing deadline

- **PRIOR to NOON, May 16, 2022 –** Federal*, state, multi-county, county and district

Qualifying documents

- May 30th, 2022 - Acceptance submittal.
- Noon June 13 - 17, 2022 - Received date.

Your prompt attention to this matter is greatly appreciated and I do apologize for taking up your time.

Elise Mysels <elise.mysels@gmail.com>

Candidate Eligibility

Tiffannie Alligood <talligood@pascovotes.gov> Wed, May 11, 2022 at 3:17 PM
To: "elise.mysels@gmail.com" <elise.mysels@gmail.com>
Cc: Rebecca Sarzynski <rsarzynski@pascovotes.gov>

Hello,

Answers to your questions listed below are:

1. Your record shows that you are registered in the People's Party (PEO) as of September 13, 2021. Prior to that date, you were registered NPA (no party affiliation). So, it appears you are currently unable to run no party affiliation and you would be unable to sign the oath stating you have been a member of the PEO party for 365 days to run as a minor political party candidate for PEO party. And, you switched parties to PEO on June 21, 2021 from Dem to NPA (which is still within 365 days vs. outside of 365 days) … However, you are the one that would determine this, not our office. We are ministerial in nature and do not go beyond the "4-corners of the page" but someone could file a complaint against your qualifying documents with the Florida Elections Commission if you sign the oath and do not comply with its intent.
    a. So, an option would be to run for a "nonpartisan office". However, you live in school board district 2 which is not up for election this year … it would be on the 2024 election ballot. The only other nonpartisan race you would be eligible for is Mosquito Control
2. To run as PEO party you would use the With Party Affiliation form … however, you would have to attest to the "Statemen of Party" oath in the middle of the form …
3. You are not registered no party affiliation so you are not able to run no party affiliation … you may be referring to a Nonpartisan office (like judge, school board, special district)
4. BOCC in Pasco IS a partisan office … we have nothing to do with Miami-Dade County or how their districts work
5. The dates listed are correct … https://www.pascovotes.gov/Candidates/Guide-for-Candidates/Candidate-Qualifying

When and where do I file my qualifying papers?

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Pursuant to 99.061, Florida Statutes, Federal, Judicial, State Attorney and Public Defender candidates must file their qualifying papers with their qualifying officer any time between

Noon, April 25,2022 - Noon, April 29, 2022

Pursuant to 99.061, Florida Statutes, Statewide, Multicounty (except State Attorney and Public Defender), County and Special District candidates must file their qualifying papers with their qualifying officer any time between

Noon, June 13, 2022 - Noon, June 17, 2022

Qualifying papers will be accepted in the Dade City, New Port Richey, and Land O' Lakes offices any time during the qualifying period. If you wish to qualify by mail, you may forward your completed papers to:

HONORABLE BRIAN E. CORLEY
Supervisor of Elections
P.O. Box 300
Dade City, FL 33526-0300

No qualifying papers will be accepted after the 12:00 Noon deadline.

- The signed petitions must be submitted to the Supervisor of Elections prior to 12:00 Noon on May 16, 2022, for verification. (Noon, March 28, 2022 for Federal, Judicial, State Attorney,and Public Defender)

Tiffannie Alligood, MFCEP

Chief Administrative Officer

PO Box 300

Dade City FL 33526-0300

352-521-4302

talligood@pascovotes.gov

13

From: Elise Mysels <elise.mysels@gmail.com>
Sent: Tuesday, May 10, 2022 8:47 PM
To: Web Comment <webcomment@pascovotes.gov>
Subject: Candidate Eligibility

You don't often get email from elise.mysels@gmail.com. Learn why this is important

OUTSIDE EMAIL: Take caution with links or attachments.

[Quoted text hidden]

14

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PEOPLE'S PARTY OF FLORIDA; ELISE MYSELS;	)	
CAROLYN WOLFE; VICTOR NIETO	)	No. **Not Assigned**
	)	
Plaintiffs,	)	
v.	)	
	)	Judge Not Assigned
	)	
FLORIDA DEPARTMENT OF STATE, DIVISION	)	Magistrate Judge Not Assigned
OF ELECTIONS; CORD BYRD, FLORIDA	)	
SECRETARY OF STATE in his official capacity;	)	
BRIAN CORLEY, PASCO COUNTY SUPERVISOR	)	
OF ELECTIONS in his official capacity;	)	
Defendants.	)	

FLORIDA STATUTES-
TITLE IX, CHAPTER 99 from *Sunshine Online, the Official Internet Website of the Florida Legislature* -

Fla. Stat. 99.021, *Form of Candidate Oath* (Challenged by Plaintiffs)

Respectfully submitted:

By: /s/ Christopher Kruger
Attorney for Plaintiffs (Special Admission Pending)

Christopher Kruger
The Law Offices of Christopher Kruger
2022 Dodge Avenue
Evanston, IL 60201-3434
Phone 847 420 1763
Fax 847 733 9537
Email chris@krugerandgruber.com

FLORIDA STATUTES-
TITLE IX, CHAPTER 99 from *Sunshine Online, the Official Internet Website of the Florida Legislature -*

Select Year: 2021 Go

The 2021 Florida Statutes

Title IX
ELECTORS AND ELECTIONS

Chapter 99
CANDIDATES

View Entire Chapter

CHAPTER 99
CANDIDATES

99.012 Restrictions on individuals qualifying for public office.
99.021 Form of candidate oath.
99.061 Method of qualifying for nomination or election to federal, state, county, or district office.
99.063 Candidates for Governor and Lieutenant Governor.
99.081 United States Senators elected in general election.
99.091 Representatives to Congress.
99.092 Qualifying fee of candidate; notification of Department of State.
99.093 Municipal candidates; election assessment.
99.095 Petition process in lieu of a qualifying fee and party assessment.
99.0955 Candidates with no party affiliation; name on general election ballot.
99.096 Minor political party candidates; names on ballot.
99.09651 Signature requirements for ballot position in year of apportionment.
99.097 Verification of signatures on petitions.
99.103 Department of State to remit part of filing fees and party assessments of candidates to state executive committee.
99.121 Department of State to certify nominations to supervisors of elections.

99.012 Restrictions on individuals qualifying for public office.—

(1) As used in this section:

(a) "Officer" means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, the term "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.

(b) "Subordinate officer" means a person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.

(2) No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.

(3)(a) No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.

(b) The resignation is irrevocable.

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.

(d) The resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer must submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f) The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(g) Any officer who submits his or her resignation, effective immediately or effective on a date prior to the date of his or her qualifying for office, may then qualify for office as a nonofficeholder, and the provisions of this subsection do not apply.

(4)(a) Any officer who qualifies for federal public office must resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted at least 10 days before the first day of qualifying for the office he or she intends to seek.

(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer shall submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer shall submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers shall submit their resignations to the Governor with a copy to the Department of State.

(f)1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he or she presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county, or municipal officer, a copy to:

a. The officer before whom he or she qualified if the officer held an elective office; or

b. The officer or authority who appointed him or her if the officer held an appointive office.

(g) The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(5) A person who is a subordinate officer, deputy sheriff, or police officer must resign effective upon qualifying pursuant to this chapter if the person is seeking to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

(6) If an order of a court that has become final determines that a person did not comply with this section, the person shall not be qualified as a candidate for election and his or her name may not appear on the ballot.

(7) This section does not apply to:

(a) Political party offices.

(b) Persons serving without salary as members of an appointive board or authority.

(8) Subsections (3) and (4) do not apply to persons holding any federal office. Subsection (4) does not apply to an elected officer if the term of the office that he or she presently holds is scheduled to expire and be filled by election in the same primary and general election period as the federal office he or she is seeking.

History.—s. 1, ch. 63-269; s. 2, ch. 65-378; s. 1, ch. 70-80; s. 10, ch. 71-373; s. 1, ch. 74-76; s. 3, ch. 75-196; s. 1, ch. 79-391; s. 47, ch. 81-259; s. 1, ch. 83-15; s. 28, ch. 84-302; s. 31, ch. 91-107; s. 534, ch. 95-147; s. 1, ch. 99-146; s. 1, ch. 2000-274; s. 14, ch. 2007-30; s.

14, ch. 2008-4; s. 9, ch. 2008-95; s. 12, ch. 2011-40; s. 1, ch. 2018-126; s. 11, ch. 2021-11.

99.021 Form of candidate oath.—

(1)(a)1. Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105 or a federal office, shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is a qualified elector of County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.
(Signature and title of officer administering oath)

2. Each candidate for federal office, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to office shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is qualified under the Constitution and laws of the United States to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; and that he or she will support the Constitution of the United States.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.
(Signature and title of officer administering oath)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

(d) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

(2) The provisions of subsection (1) relating to the oath required of candidates, and the form of oath prescribed, shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee.

(3) This section does not apply to a person who seeks to qualify for election pursuant to ss. 103.021 and 103.101.

History.—ss. 22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; s. 3, ch. 19663, 1939; s. 3, ch. 26870, 1951; s. 10, ch. 28156, 1953; s. 1, ch. 57-742; s. 1, ch. 61-128; s. 2, ch. 63-269; s. 1, ch. 63-66; s. 1, ch. 65-376; s. 1, ch. 67-149; s. 2, ch. 70-269; s. 19, ch. 71-355; s. 6, ch. 77-175; s. 3, ch. 79-365; s. 27, ch. 79-400; s. 2, ch. 81-105; s. 3, ch. 86-134; s. 535, ch. 95-147; s. 7, ch. 99-6; s. 8, ch. 99-318; s. 15, ch. 2007-30; s. 10, ch. 2008-95; s. 13, ch. 2011-40; s. 12, ch. 2021-11.

Note.—Former ss. 102.29, 102.30.

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(1) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a federal, state, or multicounty district office, other than election to a judicial office as defined in chapter 105 or the office of school board member, shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the Department of State, or qualify by the petition process pursuant to s. 99.095 with the Department of State, at any time after noon of the 1st day for qualifying, which shall be as follows: the 120th day prior to the primary election, but not later than noon of the 116th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to federal office or to the office of the state attorney or the public defender; and noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to a state or multicounty district office, other than the office of the state attorney or the public defender.

(2) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a county office, or district office not covered by subsection (1), shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the supervisor of elections of the county, or shall qualify by the petition process pursuant to s. 99.095 with the supervisor of elections, at any time after noon of the 1st day for qualifying, which shall be the 71st day prior to the primary election, but not later than noon of the 67th day prior to the date of the primary election. Within 30 days after the closing of qualifying time, the supervisor of elections shall remit to the secretary of the state executive committee of the political party to which the candidate belongs the amount of the filing fee, two-thirds of which shall be used to promote the candidacy of candidates for county offices and the candidacy of members of the Legislature.

(3) Notwithstanding the provisions of any special act to the contrary, each person seeking to qualify for election to a special district office shall qualify between noon of the 71st day prior to the primary election and noon of the 67th day prior to the date of the primary election. Candidates for single-county special districts shall qualify with the supervisor of elections in the county in which the district is located. If the district is a multicounty district, candidates shall qualify with the Department of State. All special district candidates shall qualify by paying a filing fee of $25 or qualify by the petition process pursuant to s. 99.095. Notwithstanding s. 106.021, a candidate who does not collect contributions and whose only expense is the filing fee or signature verification fee is not required to appoint a campaign treasurer or designate a primary campaign depository.

(4)(a) Each person seeking to qualify for election to office as a write-in candidate shall file his or her qualification papers with the respective qualifying officer at any time after noon of the 1st day for qualifying, but not later than noon of the last day of the qualifying period for the office sought.

(b) Any person who is seeking election as a write-in candidate shall not be required to pay a filing fee, election assessment, or party assessment. A write-in candidate is not entitled to have his or her name printed on any ballot; however, space for the write-in candidate's name to be written in must be provided on the general election ballot. A person may not qualify as a write-in candidate if the person has also otherwise qualified for nomination or election to such office.

(5) At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145.

(6) The Department of State shall certify to the supervisor of elections, within 7 days after the closing date for qualifying, the names of all duly qualified candidates for nomination or election who have qualified with the Department of State.

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the candidate is running without party affiliation for a partisan office, the written statement required by s. 99.021(1)(c).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(b) If the filing officer receives qualifying papers during the qualifying period prescribed in this section which do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

(c) The filing officer performs a ministerial function in reviewing qualifying papers. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items required by paragraph (a) have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified pursuant to s. 92.525(1)(a). The filing officer may not determine whether the contents of the qualifying papers are accurate.

(8) Notwithstanding the qualifying period prescribed in this section, a qualifying office may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

(9) Notwithstanding the qualifying period prescribed by this section, in each year in which the Legislature apportions the state, the qualifying period for persons seeking to qualify for nomination or election to federal office shall be between noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the primary election.

(10) The Department of State may prescribe by rule requirements for filing papers to qualify as a candidate under this section.

(11) The decision of the filing officer concerning whether a candidate is qualified is exempt from the provisions of chapter 120.

History.—ss. 25, 26, ch. 6469, 1913; RGS 329, 330; CGL 386, 387; ss. 4, 5, ch. 13761, 1929; s. 1, ch. 16990, 1935; CGL 1936 Supp. 386; ss. 1, chs. 19007, 19008, 19009, 1939; CGL 1940 Supp. 4769(3); s. 1, ch. 20619, 1941; s. 1, ch. 21851, 1943; s. 1, ch. 23006, 1945; s. 1, ch. 24163, 1947; s. 3, ch. 26870, 1951; s. 11, ch. 28156, 1953; s. 4, ch. 29936, 1955; s. 10, ch. 57-1; s. 1, ch. 59-84; s. 1, ch. 61-373 and s. 4, ch. 61-530; s. 1, ch. 63-502; s. 7, ch. 65-378; s. 2, ch. 67-531; ss. 10, 35, ch. 69-106; s. 5, ch. 69-281; s. 1, ch. 69-300; s. 1, ch. 70-42; s. 1, ch. 70-93; s. 1, ch. 70-439; s. 6, ch. 77-175; s. 1, ch. 78-188; s. 3, ch. 81-105; s. 2, ch. 83-15; s. 2, ch. 83-25; s. 1, ch. 83-251; s. 29, ch. 84-302; s. 1, ch. 86-7; s. 6, ch. 89-338; s. 8, ch. 90-315; s. 32, ch. 91-107; s. 536, ch. 95-147; s. 1, ch. 95-156; s. 9, ch. 99-318; s. 9, ch. 99-326; s. 3, ch. 2001-75; s. 11, ch. 2005-277; s. 51, ch. 2005-278; s. 7, ch. 2005-286; s. 16, ch. 2007-30; s. 14, ch. 2011-40; s. 13, ch. 2021-11.

Note.—Former ss. 102.32, 102.33, 102.351, 102.36, 102.66, 102.69.

99.063 Candidates for Governor and Lieutenant Governor.—

(1) No later than 5 p.m. of the 9th day following the primary election, each candidate for Governor shall designate a Lieutenant Governor as a running mate. Such designation must be made in writing to the Department of State.

(2) No later than 5 p.m. of the 9th day following the primary election, each designated candidate for Lieutenant Governor shall file with the Department of State:

(a) The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

(b) If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the office sought is without party affiliation, the written statement required by s. 99.021(1)(c).

(c) The full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution. A public officer who has filed the full and public disclosure with the Commission on Ethics prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(3) A designated candidate for Lieutenant Governor is not required to pay a separate qualifying fee or obtain signatures on petitions. Ballot position obtained by the candidate for Governor entitles the designated candidate for Lieutenant Governor, upon receipt by the Department of State of the qualifying papers required by subsection (2), to have his or her name placed on the ballot for the joint candidacy.

(4) In order to have the name of the candidate for Lieutenant Governor printed on the primary election ballot, a candidate for Governor participating in the primary must designate the candidate for Lieutenant Governor, and the designated candidate must qualify no later than the end of the qualifying period specified in s. 99.061.

(5) Failure of the Lieutenant Governor candidate to be designated and qualified by the time specified in subsection (2) shall result in forfeiture of ballot position for the candidate for Governor for the general election.

History.—s. 1, ch. 99-140; s. 45, ch. 2001-40; s. 12, ch. 2005-277; s. 8, ch. 2005-286; s. 15, ch. 2011-40; s. 5, ch. 2019-162; s. 14, ch. 2021-11.

99.081 United States Senators elected in general election.—United States Senators from Florida shall be elected at the general election held preceding the expiration of the present term of office, and such election shall conform as nearly as practicable to the methods provided for the election of state officers.

History.—s. 3, ch. 26870, 1951; s. 6, ch. 77-175; s. 7, ch. 89-338.

Note.—Former s. 106.01.

99.091 Representatives to Congress.—

(1) A Representative to Congress shall be elected in and for each congressional district at each general election.

(2) When Florida is entitled to additional representatives according to the last census, representatives shall be elected from the state at large and at large thereafter until the state is redistricted by the Legislature.

History.—ss. 2, 3, ch. 3879, 1889; RS 157; s. 4, ch. 4328, 1895; s. 3, ch. 4537, 1897; GS 174; RGS 218; CGL 253; s. 2, ch. 25383, 1949; s. 3, ch. 26870, 1951; s. 6, ch. 77-175.

Note.—Former s. 98.07.

99.092 Qualifying fee of candidate; notification of Department of State.—

(1) Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify by the petition process pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate, shall pay a qualifying fee, which shall consist of a filing fee and election assessment, to the officer with whom the person qualifies, and any party assessment levied, and shall attach the original or signed duplicate of the receipt for his or her party assessment or pay the same, in accordance with the provisions of s. 103.121, at the time of filing his or her other qualifying papers. The amount of the filing fee is 3 percent of the annual salary of the office. The amount of the election assessment is 1 percent of the annual salary of the office sought. The election assessment shall be transferred to the Elections Commission Trust Fund. The amount of the party assessment is 2 percent of the annual salary. The annual salary of the office for purposes of computing the filing fee, election assessment, and party assessment shall be computed by multiplying 12 times the monthly salary, excluding any special qualification pay, authorized for such office as of July 1 immediately preceding the first day of qualifying. No qualifying fee shall be returned to the candidate unless the candidate withdraws his or her candidacy before the last date to qualify. If a candidate dies prior to an election and has not withdrawn his or her candidacy before the last date to qualify, the candidate's qualifying fee shall be returned to his or her designated beneficiary, and, if the filing fee or any portion thereof has been transferred to the political party of the candidate, the Secretary of State shall direct the party to return that portion to the designated beneficiary of the candidate.

(2) The supervisor of elections shall, immediately after the last day for qualifying, submit to the Department of State a list containing the names, party affiliations, and addresses of all candidates and the offices for which they qualified.

History.—s. 24, ch. 6469, 1913; RGS 328; CGL 385; s. 3, ch. 26870, 1951; s. 12, ch. 29934, 1955; s. 4, ch. 65-378; s. 1, ch. 67-531; ss. 10, 35, ch. 69-106; s. 6, ch. 69-281; s. 1, ch. 74-119; s. 1, ch. 75-123; s. 1, ch. 75-247; s. 6, ch. 77-175; s. 28, ch. 79-400; s. 4, ch. 81-105; s. 1, ch. 83-242; s. 8, ch. 89-338; s. 1, ch. 91-107; s. 537, ch. 95-147; s. 11, ch. 97-13; s. 2, ch. 99-140; s. 10, ch. 99-318; s. 13, ch. 2005-277; s. 2, ch. 2010-16; s. 16, ch. 2011-40.

Note.—Former ss. 102.31, 99.031.

99.093 Municipal candidates; election assessment.—

(1) Each person seeking to qualify for nomination or election to a municipal office shall pay, at the time of qualifying for office, an election assessment. The election assessment shall be an amount equal to 1 percent of the annual salary of the office sought. Within 30 days after the close of qualifying, the qualifying officer shall forward all assessments collected pursuant to this section to the Florida Elections Commission for deposit in the Elections Commission Trust Fund.

(2) Any person seeking to qualify for nomination or election to a municipal office who is unable to pay the election assessment without imposing an undue burden on personal resources or on resources otherwise available to him or her shall, upon written certification of such inability given under oath to the qualifying officer, be exempt from paying the election assessment.

History.—s. 9, ch. 89-338; s. 2, ch. 91-107; s. 538, ch. 95-147; s. 12, ch. 97-13; s. 3, ch. 2010-16; s. 17, ch. 2011-40.

99.095 Petition process in lieu of a qualifying fee and party assessment.—

(1) A person who seeks to qualify as a candidate for any office and who meets the petition requirements of this section is not required to pay the qualifying fee or party assessment required by this chapter.

(2)(a) Except as provided in paragraph (b), a candidate must obtain the number of signatures of voters in the geographical area represented by the office sought equal to at least 1 percent of the total number of registered

voters of that geographical area, as shown by the compilation by the department for the immediately preceding general election. Signatures may not be obtained until the candidate has filed the appointment of campaign treasurer and designation of campaign depository pursuant to s. 106.021 and are valid only for the qualifying period immediately following such filings.

(b) A candidate for a special district office shall obtain 25 signatures of voters in the geographical area represented by the office sought.

(c) The format of the petition shall be prescribed by the division and shall be used by candidates to reproduce petitions for circulation. If the candidate is running for an office that requires a group or district designation, the petition must indicate that designation and, if it does not, the signatures are not valid. A separate petition is required for each candidate.

(d) In a year of apportionment, any candidate for county or district office seeking ballot position by the petition process may obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries. The candidate shall obtain at least the number of signatures equal to 1 percent of the total number of registered voters, as shown by a compilation by the department for the immediately preceding general election, divided by the total number of districts of the office involved.

(3) Each petition must be submitted before noon of the 28th day preceding the first day of the qualifying period for the office sought to the supervisor of elections of the county in which such petition was circulated. Each supervisor shall check the signatures on the petitions to verify their status as voters in the county, district, or other geographical area represented by the office sought. No later than the 7th day before the first day of the qualifying period, the supervisor shall certify the number of valid signatures.

(4)(a) Certifications for candidates for federal, state, multicounty district, or multicounty special district office shall be submitted to the division no later than the 7th day before the first day of the qualifying period for the office sought. The division shall determine whether the required number of signatures has been obtained and shall notify the candidate.

(b) For candidates for county, district, or special district office not covered by paragraph (a), the supervisor shall determine whether the required number of signatures has been obtained and shall notify the candidate.

(5) If the required number of signatures has been obtained, the candidate is eligible to qualify pursuant to s. 99.061.

History.—s. 2, ch. 74-119; s. 6, ch. 77-175; s. 29, ch. 79-400; s. 10, ch. 89-338; s. 9, ch. 90-315; s. 539, ch. 95-147; s. 3, ch. 99-140; s. 1, ch. 99-318; s. 14, ch. 2005-277; s. 9, ch. 2005-286; s. 17, ch. 2007-30; s. 11, ch. 2008-95; s. 18, ch. 2011-40.

99.0955 Candidates with no party affiliation; name on general election ballot.—

(1) Each person seeking to qualify for election as a candidate with no party affiliation shall file his or her qualifying papers and pay the qualifying fee or qualify by the petition process pursuant to s. 99.095 with the officer and during the times and under the circumstances prescribed in s. 99.061. Upon qualifying, the candidate is entitled to have his or her name placed on the general election ballot.

(2) The qualifying fee for candidates with no party affiliation shall consist of a filing fee and an election assessment as prescribed in s. 99.092. Filing fees paid to the Department of State shall be deposited into the General Revenue Fund of the state. Filing fees paid to the supervisor of elections shall be deposited into the general revenue fund of the county.

History.—s. 6, ch. 70-269; s. 1, ch. 70-439; s. 3, ch. 74-119; s. 7, ch. 77-175; s. 2, ch. 78-188; s. 11, ch. 89-338; s. 10, ch. 90-315; s. 540, ch. 95-147; s. 13, ch. 95-280; s. 4, ch. 99-140; s. 2, ch. 99-318; s. 15, ch. 2005-277.

Note.—Former s. 99.152.

99.096 Minor political party candidates; names on ballot.—Each person seeking to qualify for election as a candidate of a minor political party shall file his or her qualifying papers with, and pay the qualifying fee and, if one has been levied, the party assessment, or qualify by the petition process pursuant to s. 99.095, with the officer and at the times and under the circumstances provided in s. 99.061.

History.—s. 5, ch. 70-269; s. 1, ch. 70-439; s. 4, ch. 74-119; s. 8, ch. 77-175; s. 3, ch. 78-188; s. 12, ch. 89-338; s. 1, ch. 90-229; s. 11, ch. 90-315; s. 541, ch. 95-147; s. 3, ch. 99-318; s. 16, ch. 2005-277; s. 18, ch. 2007-30.

Note.—Former s. 101.261.

99.09651 Signature requirements for ballot position in year of apportionment.—

(1) In a year of apportionment, any candidate for representative to Congress, state Senate, or state House of Representatives seeking ballot position by the petition process prescribed in s. 99.095 shall obtain at least the number of signatures equal to one-third of 1 percent of the ideal population for the district of the office being sought.

(2) For the purposes of this section, "ideal population" means the total population of the state based upon the most recent decennial census divided by the number of districts for representative to Congress, state Senate, or state House of Representatives. For the purposes of this section, ideal population shall be calculated as of July 1 of the year prior to apportionment. The ideal population for a state Senate district and a state representative district shall be calculated by dividing the total population of the state by 40 for a state Senate district and by dividing by 120 for a state representative district.

(3) Signatures may be obtained from any registered voter in Florida regardless of party affiliation or district boundaries.

(4) Petitions shall state the name of the office the candidate is seeking, but shall not include a district number.

(5) Except as otherwise provided in this section, all requirements and procedures relating to the petition process shall conform to the requirements and procedures in nonapportionment years.

History.—s. 3, ch. 91-107; s. 4, ch. 99-318; s. 17, ch. 2005-277.

99.097 Verification of signatures on petitions.—

(1)(a) As determined by each supervisor, based upon local conditions, the checking of names on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

1. A check of each petition; or

2. A check of a random sample, as provided by the Department of State, of the petitions. The sample must be such that a determination can be made as to whether or not the required number of signatures has been obtained with a reliability of at least 99.5 percent.

(b) Rules and guidelines for petition verification shall be adopted by the Department of State. Rules and guidelines for a random sample method of verification may include a requirement that petitions bear an additional number of names and signatures, not to exceed 15 percent of the names and signatures otherwise required. If the petitions do not meet such criteria or if the petitions are prescribed by s. 100.371, the use of the random sample method of verification is not available to supervisors.

(2) When a petitioner submits petitions which contain at least 15 percent more than the required number of signatures, the petitioner may require that the supervisor of elections use the random sampling verification method in certifying the petition.

(3)(a) If all other requirements for the petition are met, a signature on a petition shall be verified and counted as valid for a registered voter if, after comparing the signature on the petition and the signature of the registered voter in the voter registration system, the supervisor is able to determine that the petition signer is the same as the registered voter, even if the name on the petition is not in substantially the same form as in the voter registration system.

(b) In any situation in which this code requires the form of the petition to be prescribed by the division, no signature shall be counted toward the number of signatures required unless it is on a petition form prescribed by the division.

(c) If a voter signs a petition and lists an address other than the legal residence where the voter is registered, the supervisor shall treat the signature as if the voter had listed the address where the voter is registered.

(4) The supervisor shall be paid in advance the sum of 10 cents for each signature checked or the actual cost of checking such signature, whichever is less, by the candidate or, in the case of a petition to have an issue placed on the ballot, by the person or organization submitting the petition. However, if a candidate, person, or organization seeking to have an issue placed upon the ballot cannot pay such charges without imposing an undue burden on personal resources or upon the resources otherwise available to such candidate, person, or organization, such candidate, person, or organization shall, upon written certification of such inability given under oath to the

supervisor, be entitled to have the signatures verified at no charge. In the event a candidate, person, or organization submitting a petition to have an issue placed upon the ballot is entitled to have the signatures verified at no charge, the supervisor of elections of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Chief Financial Officer no later than December 1 of the general election year, and the Chief Financial Officer shall cause such supervisor of elections to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each name checked or the actual cost of checking such signatures, whichever is less. In no event shall such reimbursement of costs be deemed or applied as extra compensation for the supervisor. Petitions shall be retained by the supervisors for a period of 1 year following the election for which the petitions were circulated.

(5) The results of a verification pursuant to subparagraph (1)(a)2. may be contested in the circuit court by the candidate; an announced opponent; a representative of a designated political committee; or a person, party, or other organization submitting the petition. The contestant shall file a complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court in the county in which the petition is certified or in Leon County if the petition covers more than one county within 10 days after midnight of the date the petition is certified; and the complaint shall set forth the grounds on which the contestant intends to establish his or her right to require a complete check of the petition pursuant to subparagraph (1)(a)1. In the event the court orders a complete check of the petition and the result is not changed as to the success or lack of success of the petitioner in obtaining the requisite number of valid signatures, then such candidate, unless the candidate has filed the oath stating that he or she is unable to pay such charges; announced opponent; representative of a designated political committee; or party, person, or organization submitting the petition, unless such person or organization has filed the oath stating inability to pay such charges, shall pay to the supervisor of elections of each affected county for the complete check an amount calculated at the rate of 10 cents for each additional signature checked or the actual cost of checking such additional signatures, whichever is less.

(6)(a) If any person is paid to solicit signatures on a petition, an undue burden oath may not subsequently be filed in lieu of paying the fee to have signatures verified for that petition.

(b) If an undue burden oath has been filed and payment is subsequently made to any person to solicit signatures on a petition, the undue burden oath is no longer valid and a fee for all signatures previously submitted to the supervisor of elections and any that are submitted thereafter shall be paid by the candidate, person, or organization that submitted the undue burden oath. If contributions as defined in s. 106.011 are received, any monetary contributions must first be used to reimburse the supervisor of elections for any signature verification fees that were not paid because of the filing of an undue burden oath.

History.—s. 2, ch. 76-233; s. 10, ch. 77-175; s. 2, ch. 80-20; s. 1, ch. 82-141; s. 13, ch. 89-338; s. 2, ch. 90-229; s. 12, ch. 90-315; s. 542, ch. 95-147; s. 21, ch. 97-13; s. 7, ch. 99-318; s. 109, ch. 2003-261; s. 19, ch. 2011-40.

99.103 Department of State to remit part of filing fees and party assessments of candidates to state executive committee.—

(1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members and if such party is declared by the Department of State to have recorded on the registration books of the counties, as of the first Tuesday after the first Monday in January prior to the primary election in general election years, 5 percent of the total registration of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the Department of State from its candidates less an amount equal to 15 percent of the filing fees, which amount the Department of State shall deposit in the General Revenue Fund of the state.

(2) Not later than 20 days after the close of qualifying in even-numbered years, the Department of State shall remit 95 percent of all filing fees, less the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by the department to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the Department of State shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of chapter 103. The remainder of filing fees or

party assessments collected by the Department of State shall be remitted to the appropriate state executive committees not later than the date of the primary election.

History.—s. 1, ch. 29935, 1955; s. 24, ch. 57-1; s. 1, ch. 57-62; s. 4, ch. 57-166; s. 1, ch. 69-295; ss. 10, 35, ch. 69-106; s. 11, ch. 77-175; s. 2, ch. 83-251; s. 4, ch. 91-107; s. 14, ch. 97-13; s. 10, ch. 2005-286.

99.121 Department of State to certify nominations to supervisors of elections.—The Department of State shall certify to the supervisor of elections of each county affected by a candidacy for office the names of persons nominated to such office. The names of such persons shall be printed by the supervisor of elections upon the ballot in their proper place as provided by law.

History.—s. 30, ch. 4328, 1895; s. 10, ch. 4537, 1897; GS 215, 3824; s. 54, ch. 6469, 1913; RGS 259, 358, 5885; CGL 315, 415, 8148; s. 11, ch. 26329, 1949; s. 3, ch. 26870, 1951; s. 5, ch. 57-166; ss. 10, 35, ch. 69-106; s. 11, ch. 77-175.

Note.—Former ss. 99.13, 102.51.

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Fla. Stat. 99.021, *Form of Candidate Oath* (Challenged as unconstitutional by Plaintiffs)

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The 2021 Florida Statutes

Title IX
ELECTORS AND ELECTIONS

Chapter 99
CANDIDATES

View Entire Chapter

99.021 Form of candidate oath.—

(1)(a)1. Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105 or a federal office, shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is a qualified elector of County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.

(Signature and title of officer administering oath)

2. Each candidate for federal office, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to office shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is qualified under the Constitution and laws of the United States to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; and that he or she will support the Constitution of the United States.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.

(Signature and title of officer administering oath)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

(d) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

(2) The provisions of subsection (1) relating to the oath required of candidates, and the form of oath prescribed, shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee.

(3) This section does not apply to a person who seeks to qualify for election pursuant to ss. 103.021 and 103.101.

History.—ss. 22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; s. 3, ch. 19663, 1939; s. 3, ch. 26870, 1951; s. 10, ch. 28156, 1953; s. 1, ch. 57-742; s. 1, ch. 61-128; s. 2, ch. 63-269; s. 1, ch. 63-66; s. 1, ch. 65-376; s. 1, ch. 67-149; s. 2, ch. 70-269; s. 19, ch. 71-355; s. 6, ch. 77-175; s. 3, ch. 79-365; s. 27, ch. 79-400; s. 2, ch. 81-105; s. 3, ch. 86-134; s. 535, ch. 95-147; s. 7, ch. 99-6; s. 8, ch. 99-318; s. 15, ch. 2007-30; s. 10, ch. 2008-95; s. 13, ch. 2011-40; s. 12, ch. 2021-11.

Note.—Former ss. 102.29, 102.30.

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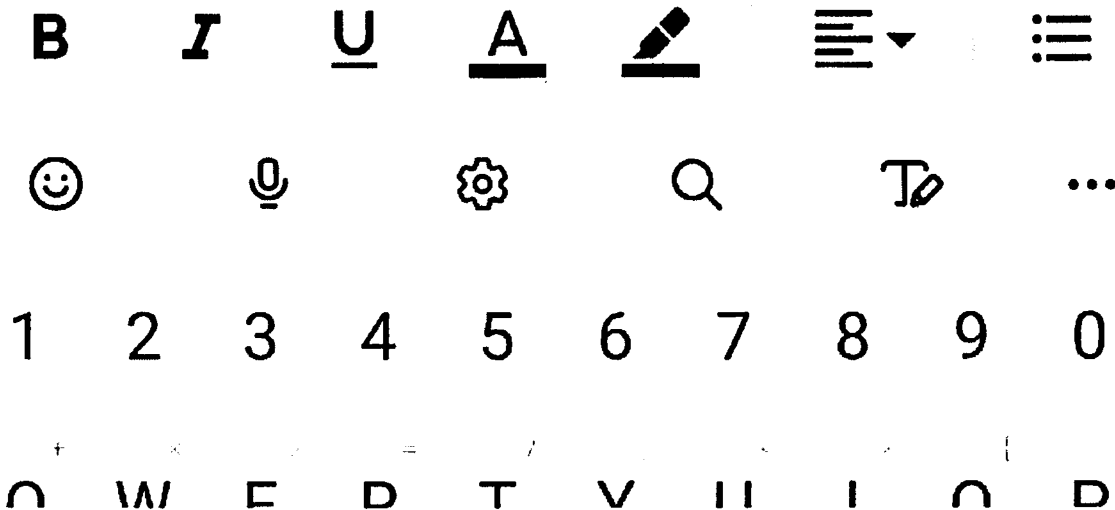
Verification under 28 U.S.C. § 1746

I, Carolyn Wolfe, declare under penalty of perjury that the facts in the foregoing Verified Complaint are true and correct. Executed on _05/31/2022____________.

Carolyn Wolfe



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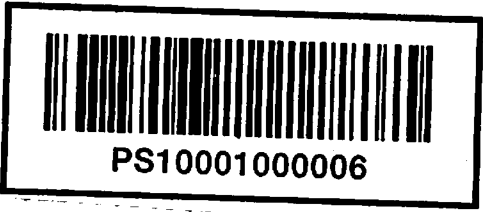

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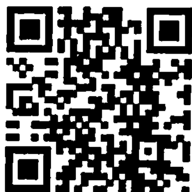

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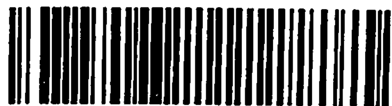

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EXHIBIT B

Part 2 -
Emergency Motion for
Preliminary Injunction Filed
June 3, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

2022 JUN -3 AM 10: 10
CLERK, U.S. DISTRICT COURT

PEOPLES PARTY OF FLORIDA; ELISE MYSELS; CAROLYN WOLFE; VICTOR NIETO

Plaintiffs,

v.

FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS; CORD BYRD, FLORIDA SECRETARY OF STATE; BRIAN CORLEY, PASCO COUNTY SUPERVISOR OF ELECTIONS in their Official Capacities;

Defendants.

No. **Not Assigned**

8:22 cv 1274 TPB-AEP

Judge Not Assigned

Magistrate Judge Not Assigned

EMERGENCY[1] MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER

Plaintiffs include a newly-recognized minor political party; one of the minor-party's candidates seeking to be placed on the ballot; and voters desiring to associate as a political party, select the candidates of their choice, and be able to vote effectively for their candidates at the November 8, 2022 general election. Plaintiffs seek to preserve their First and Fourteenth Amendment rights in relation to the June 13-June 17 filing period for qualifying papers for the November 8, 2022 general election. Plaintiffs are submitting a Memorandum of Law in support of this Motion.

Plaintiffs respectfully request entry of a preliminary injunction and/or temporary restraining order pursuant to Federal Rules of Civil Procedure 65(a) and (b), enjoining Defendants from the wrongful and unconstitutional denial of Plaintiffs' rights under the First and Fourteenth Amendment rights of the United States Constitution.

[1]Local Rule 3.01(e), requires counsel to designate a motion as "Emergency" or "Time Sensitive" when circumstances so dictate; as the Qualifying Period for candidates to file under state law expires at Noon, June 17, 2022, plaintiffs' counsel has chosen to designate this motion as an "Emergency."

Plaintiffs are requesting that this Court enjoin the Defendants from enforcing a Florida law, Fla. Stat. §99.021[2], which purports to require a person seeking nomination as a candidate of a political party to sign a Candidate Oath that he or she has been a member of that political party for the 365 days before the beginning of the applicable qualifying period, for purposes of ballot access.

The 365-day registration requirement may be found at Title IX, *Electors and Elections*, Chapter 99 *Candidates*, § 99.021(1)(a)1, *Form of Candidate Oath,* in relevant portion:

***

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. **The party of which the person is a member.**

2. **That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.**

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) **In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.**

(d) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall

---

[2] All related statutes and handbooks are posted by Defendant DOE at https://dos.myflorida.com/elections/forms-publications/publications/
Statutes are additionally posted at *Online Sunshine, the Official Internet Site of the Florida Legislature* at http://www.leg.state.fl.us/Welcome/index.cfm

subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

***

Fla. Stat. § 99.21 *et seq.* (2021). Found at *Online Sunshine, the Official Internet Site of the Florida Legislature*,
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0099/Sections/0099.021.html (last visited April 27, 2022).

Additionally, the Florida Division of Elections *2022 Candidate Petition Handbook* states in relevant portion, at page 10:

ATTENTION: Recent law (s. 11 of Chapter 2021-11, Laws of Florida) requires a person seeking nomination as a candidate of a political party to be a member of that political party for the 365 days BEFORE the beginning of the applicable qualifying period. Additionally, the law requires a person seeking to qualify for office as a candidate with no party affiliation to not be a member of any political party for the 365 days BEFORE the beginning of the applicable qualifying period.

See *2022 Candidate Petition Handbook*, found at

https://files.floridados.gov/media/704776/candidate-petition-handbook-2022-11-2-21.pdf (last visited April 27, 2022).

PRAYER FOR RELIEF

Plaintiffs are requesting that this Court:

1. Enjoin the Defendants from enforcing a Florida law requiring, in effect, a minor party to wait 365 days before running candidates;

2. Enjoin the requirement that a person seeking nomination as a candidate of a political party must sign a Candidate Oath that he or she has been a member of that political party for the 365 days before the beginning of the applicable qualifying period, for purposes of ballot access.

3. In addition, Plaintiffs respectfully request that this Honorable Court enjoin the Defendants for the duration of this litigation, to:

   a. amend any 2022 Candidate Handbooks, any other literature, publications, websites or disclosures to delete the 365-day "lockout" registration provision and notify the public of the revision;

   b. direct Defendants to place Plaintiff Elise Mysels' name upon the November 8, 2022 election ballot as candidate of the People's Party for Pasco County Commissioner District 2.

   c. accept nomination petitions from additional otherwise-qualified candidates of the Peoples Party for the November 8, 2022 general election, as applicable;

   d. thereafter, in accordance with the Florida law, accept certifications to fill vacancies for the November 8, 2022 general election from the People's Party seeking to fill any vacancy in nominations.

   e. for their reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

   f. and for all other relief this Court deems just.

Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction and/or Temporary Restraining Order

A. Plaintiffs' Core First Amendment and Fourteenth Amendment Rights are being denied by the Defendants' actions.

Pursuant to the case law described *infra,* a state cannot constrain or unduly burden a party's choice of candidates or unduly constrain the electorate's freedom of association. The U.S. Supreme Court declared in *Reynolds v. Sims* that "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362 (1964).

The First and Fourteenth Amendments afford candidates vying for elected office, and their voting constituencies, the fundamental right to associate for political purposes and to participate in the electoral process. See, e.g., *Clingman v. Beaver,* 544 U.S. 581, 586 (2005); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

Ballot-access requirements that place more burdensome restrictions on certain types of candidates than on others implicate rights under the Equal Protection Clause as well. See *Williams, supra*, 393 U.S. 23, 30-31.

The Florida legislature's decision to burden ballot access to the People's Party and its candidates and voters is a partisan act taken to protect or insulate major party candidates, which is unconstitutional as explained by the United States Supreme Court as follows:

> Our U.S. Supreme Court has observed that interest in political stability 'does not permit a State to completely insulate the two-party system from minor parties' or independent candidates' competition and influence"

Timmons v. Twin Cities Area New Party, 520 U.S. 351, 366-87, 117 S.Ct. 1364 (1977).

In 1983 the United States Supreme Court, in *Anderson v. Celebrezze* recited the fundamental, "overlapping" constitutional rights that were implicated by overly burdensome legislation, explaining as follows:

> The impact of candidate eligibility requirements on voters implicates basic constitutional rights. Writing for a unanimous Court in *NAACP v. Alabama ex rel. Patterson,* 357 U. S. 449, 460 (1958), Justice Harlan stated that it "is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." In our first review of Ohio's electoral scheme, *Williams v. Rhodes*, 393 U. S. 23, 30-31 (1968), this Court explained the interwoven strands of "liberty" affected by ballot access restrictions:
>
> > "In the present situation the state laws place burdens on two different, although overlapping, kinds of rights — the right of individuals to associate for the

> advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms."
>
> As we have repeatedly recognized, voters can assert their preferences only through candidates or parties or both. "It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." *Lubin v. Panish*, 415 U. S. 709, 716 (1974). The right to vote is "heavily burdened" if that vote may be cast only for major-party candidates at a time when other parties or other candidates are "clamoring for a place on the ballot." *Id.*; *Williams v. Rhodes*, supra, at 31. The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.

Anderson v. Celebrezze, 460 U.S. 780, 786-788 (1983).

The *Anderson* court, citing to the landmark case *Storer v. Brown* 415 US 724 (1974), went on to explain a federal district court's process of evaluating challenged litigation as follows:

> Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions. *Storer*, supra, at 730. Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. See *Williams v. Rhodes*, supra, at 30-31; *Bullock v. Carter*, 405 U. S. 134, at 142-143; *American Party of Texas v. White*, 415 U. S. 767, 780-781 (1974); *Illinois Elections Bd. v. Socialist Workers Party*, 440 U. S. 173, 183 (1979). The results of this evaluation will not be automatic; as we have recognized, there is "no substitute for the hard judgments that must be made." *Storer v. Brown*, supra, at 730; *Anderson v. Celebrezze*, 460 U.S. 780, 789-790 (1983). See also *Green Party of Georgia v. Georgia,* 551 Fed.Appx 982 (11th Cir. 2014).

According to the *Anderson* court, the" 'primary concern is with the tendency of ballot access restrictions 'to limit the field of candidates from which voters might choose.' Therefore,

'[i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.'" *Anderson*, 460 U.S. at 786. (Internal citation omitted.)

The Supreme Court has repeatedly observed that, "[h]istorically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the *status quo* have in time made their way into the political mainstream." *Anderson*, 460 U.S. at 794; see *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-86 (1979).

B. Plaintiffs' High Probability of Success is Premised on *Tashjian v Republican Party of Connecticut* and related cases.[3]

(i) *Tashjian's* Central Holding.

Tashjian controls this case; and because *Tashjian* so clearly indicates, at page 215 of the opinion, that requiring candidates to be party members is unconstitutional, Plaintiffs have met the "probability of success" standard. *Tashjian v Republican Party of Connecticut,* 479 U.S. 208 (1986). In *Tashjian*, the Republican Party of Connecticut prevailed against an overly-restrictive closed primary statute that barred "raiding" of party primaries by voters not registered within those parties. A controversy arose when the Republican Party wanted to take advantage of the prevalence of independent voters in Connecticut, but, lacking a majority in the state house, was unable to change the state law. The Republicans then changed their party rule to allow independents to vote in their primary. The Republican Party and the Party's federal officeholders and state chairman then sued in Federal District Court challenging the constitutionality of the statute on the ground that it deprived the Party of its right under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing, The State

[3] Plaintiffs' are filing an Appendix to the Brief with a Table of Authorities and Cases contemporaneously with this Motion.

argued that its anti-raiding statute was well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests.

Held: "'[E]ven if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party.'" *Tashjian v Republican Party of Connecticut* 479 U.S. at 224, quoting *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107 at 123-124 (1981).

Thus, in *Tashjian*, the associational rights of the party trumped the State of Connecticut's interest. The Supreme Court in *Tashjian* distinguished the "sore loser" and closed primary statutes it had previously upheld in *Storer v. Brown*, supra, 415 U. S. at 730, and *Rosario v. Rockefeller*, 410 U. S. 752 (1973), observing that those measures were "undertaken to prevent the disruption of the political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates." *Tashjian*, supra, at 479 U.S. 224. In this case, the People's Party is totally barred from "taking internal steps affecting their own process" and the selection of candidates is severely burdened by the 365-day "lockout" membership requirement. "The statute in *Storer* was designed to protect the parties and the party system against the disorganizing effect of independent candidacies launched by unsuccessful putative party nominees" *Id.*

Tashjian held that, it was up to the Republican Party, and not the State of Connecticut, who would be allowed vote in the Republican primary in that state.

(ii) *Tashjian's* guidance, on page 215 of the Opinion, is settled doctrine, and is frequently relied on by courts in support of political parties' associational rights.

According to the Supreme Court in *Tashjian*, political parties have a right to broaden the base of public participation in and support for its activities, as such is conduct undeniably central to the exercise of the right of association. Defendants' 365-day waiting period unconstitutionally

burdens the People's Party and its would-be candidates and voters in this regard. "As we have said, the freedom to join together in furtherance of common political beliefs 'necessarily presupposes the freedom to identify the people who constitute the association.'" *Tashjian*, supra 479 U. S. 215. (internal citation omitted).

Tashjian gave further guidance as to what "join[ing] together in furtherance of common political beliefs" or "the freedom to identify the people who constitute the association" might look like:

> Were the State to restrict by statute financial support of the Party's candidates to Party members, <u>or to provide that only Party members might be selected as the Party's chosen nominees for public office,</u> such a prohibition of potential association with nonmembers would <u>clearly infringe</u> upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.
> *Tashjian*, supra 479 U. S. 215 (internal citation omitted) (<u>emphasis supplied</u>).
> Continuing, the Court noted:
> The statute here places limits upon the group of registered voters whom the Party may invite to participate in the basic function of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. Id. at 215-216.

Florida Statute 99.021 imposes the exact restrictions denounced in *Tashjian*- its places limits upon "the group of registered voters" to those persons affiliated with the People's Party for an entire year, and places the Party itself into a year-long state of Limbo, freezing its "associational opportunities at the crucial juncture" of the 2022 general election.

History illustrates that forbidding non-members for a year from running as candidates, or forbidding the party itself to run candidates for a year would have chilled political expression across the gamut of political views- from, as an example, independent Vermont Senator Bernie Sanders running for president in the Democratic Party to former Alabama Governor George

Wallace, a lifelong Democrat, forming the American Independent Party and running for president in 1968. The following sections demonstrate *Tashjian's* applicability in different scenarios.

(iii) Cases which uphold the overlapping associational rights of political parties, candidates, and voters.

In addition to ***Tashjian,*** supra, other cases which hold that parties have the right to nominate non-members (which necessarily invalidates Fla. Stat. § 99.021) include ***Woodruff v. Herrera***, (09-cv-0449 (consolidated with 10-cv-123 & 10-cv-124) (D.N.M. 2011) (March 31st., 2011)), a procedurally messy case which involved the Libertarian and Green Parties of New Mexico. The plaintiffs sought declarations that portions of the New Mexico Elections Code were unconstitutional, as well as injunctive relief directing the Secretary of State to qualify the political parties as "major" parties and to place the Plaintiff candidates on the general election ballot.

In ***Woodruff,*** the United States District Court relied on ***Tashjian*** in agreeing with the plaintiffs that Sections 1-8-18(A) and 1-8-2(D) of the Elections Code violated the First Amendment rights of political parties to free association by restricting their right to nominate as candidates those persons of their choosing.

Section 1-8-18(A) read as follows:

> No person shall become a candidate for nomination by a political party or have his name printed on the primary election ballot unless his record of voter registration shows: (1) his affiliation with that political party on the date of the governor's proclamation for the primary election; and (2) his residence in the district of the office for which he is a candidate on the date of the governor's proclamation for the primary election or in the case of a person seeking the office of . . . United States representative, his residence within New Mexico on the date of the governor's proclamation or the primary election.

Similarly, Section 1-8-2(D) provided that "Persons certified as nominees shall be

members of that party before the day the governor issues the primary election proclamation."

Woodruff v. Herrera, supra, 09-cv-0449, dkt. 244, pgs. 23-26. (March 31st., 2011) (attached).

The District Court observed: "Plaintiffs allege, and the Secretary of State admits, that these sections preclude a person who is a non-resident of New Mexico, or a resident who is a non-voter, at the time of the proclamation from being the nominee of a political party for the office of U.S. representative. Similarly, these provisions preclude political parties from nominating otherwise qualified candidates who are not registered voters, a practice already held by this Court to be invalid. Finally, these portions of the Election Code require political parties to nominate only candidates who are identified on their voter registration as members of that party."

The District Court in ***Woodruff*** held that the New Mexico provisions violated the Qualifications Clause under the 10th Circuit's holding in *Campbell v. Davidson*, 233 F.3d 1229 (10th Cir. 2000), by making voter registration a requirement for candidacy as well as violating the First Amendment rights of parties to free association by restricting their right to nominate as candidates persons of their choosing, as, under the statutes' provisions, political parties could only nominate individuals who are registered members of the party.

The New Mexico District Court in ***Woodruff*** then proceeded to cite to ***Tashjian's*** guidance, on page 215, and asserted that "the Supreme Court was unequivocal in stating that states may not prevent parties from nominating non-members for public office." Id.

Woodruff then observed that, in ***Eu v. San Francisco County Democratic Central Comm.,*** 489 U.S. 214, 223-24 (1989), another party-rights case, the Supreme Court struck down a California statute prohibiting political parties from endorsing and opposing candidates in the primary, as "preventing a party's governing body from stating whether a candidate adheres to the party's tenets or whether party officials believe that the candidate is qualified for the position

sought, the ban directly hampered the party's ability to spread its message and hamstrung voters seeking to inform themselves about the candidates and issues." By forbidding the People's Party from running candidates for a year and severely limiting its pool of potential candidates, Fla. Stat. 99.021 severely hampers the party's ability to spread its message and hamstrings voters.

In the unreported case ***Colorado Democratic Party v. Meyer***, 88 cv 7646 Denver District Court (May 5, 1988), the Colorado Democratic Party amended their rules to shorten the "lockout" time period as compared to the state law requiring party membership in order to be that party's nominee. The amended rule stated that "a person [would] be eligible for designation by assembly as a candidate for nomination at the primary election, or for appointment to a vacancy in such designation, if that person has been a registered Democrat for at least twelve months immediately preceding the date of the general election next following such primary election." See Opinion, attached. (Emphasis supplied).

The Colorado Democratic Party had adopted the amended rule in question to circumvent the effect of the statute C.R.S. 1-4-601(4), which provided that "no person shall be eligible for designation by assembly as a candidate for nomination at the primary election unless such person has been affiliated with the political party holding the assembly for at least twelve months immediately preceding the date of the assembly." Attached. (Emphasis supplied). As in the ***Tashjian*** case, the issue was whether the Colorado statute could be enforced against candidates in derogation of the party rule.

The Denver District Court noted that the statute in question had been prior held to be constitutional in several cases, but "in none of those cases was the statute in conflict with a rule of the party as in the case in the matter now before the court." Opinion at 4, attached. The court relied on ***Tashjian*** and quoted extensively from the case, including its page 215, concerning party membership and concluded "I think that's probably the key to this present controversy, that

language." Opinion at 5-8, attached (discussing ***Tashjian***).

Colorado Democratic Party concerned a potential candidate for Congress named Ezzard, who was barred from running under the longer time period restriction imposed by the statute. The Denver District Court observed, "Ms. Ezzard has elected to join the ranks of the Colorado Democratic Party and the Colorado Democratic Party has elected to permit her to associate politically with them. And I think that under the First and Fourteenth Amendments and in light of the ***Tashjian*** decision, she has a right to do that and so does the Colorado Democratic Party have the right to permit her to do that." Opinion at 11.

On August 24, 2018, in ***State of Alaska v. Alaska Democratic Party***, Appeal S-16875, 426 P3d 901 (Alaska 2018), the Alaska Supreme Court struck down a law after the Alaska Division of Elections refused to allow independent voter candidates on the Democratic Party primary election ballot, taking the position that Alaska election law — specifically the "party affiliation rule" — prevented anyone not registered as a Democrat from being a candidate in the Democratic Party's primary elections. The Alaska Democratic Party had amended its bylaws to allow registered independent voters to run as candidates in its primary elections without having to become Democratic Party members, seeking to expand its field of candidates and thereby nominate general election candidates more acceptable to Alaska voters. *Id.*

The Alaska Supreme Court began by affirming the "uncontroversial premise that political parties have a constitutional right to choose their general election nominees." Further, the court noted that even in U.S. Supreme Court cases upholding "sore loser" and "anti-raiding" laws, "the existence of this right has not been questioned" citing to *Timmons*, supra, 520 U.S. at 359 ("[T]he New Party, and not someone else, has the right to select the New Party's 'standard bearer.' "); *Storer v. Brown*, 415 U.S. 724, 736-37 (1974) (upholding a disaffiliation law because of important state interests, not failure to assert a right); *S.D. Libertarian Party v. Gant*, 60 F. Supp.

3d 1043, 1050 (D.S.D. 2014) (holding that the affiliation requirement "only minimally burdens [the political party's] associational rights." *Id.* The case at bar here, is not about raiding or sore losers from without, it is about hobbling the People's Party from within, by limiting its ability to run and its pool of potential candidates. ***State of Alaska v. Alaska Democratic Party*** cites to ***Tashjian*** no less than 11 times in concluding that the party affiliation rule severely burdened the Democratic Party's right to choose its general election nominees.

(iv) Cases striking down temporal restrictions on newly-recognized parties' ability to run candidates.

The right of newly-recognized parties to run candidates free of temporal restrictions even pre-dates ***Tashjian,*** all the way back to the height of the civil rights era:

> The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties <u>at a time when other parties are clamoring for a place on the ballot.</u>
> ***Williams v. Rhodes,*** 393 U.S. 23 (1968). (<u>Emphasis supplied</u>).

Thus, Fla. Stat. § 99.021's one-year delay in allowing ballot access for the People's Party, while the Party is "clamoring" to run candidate renders the right to form a party illusory and meaningless, under the principles announced in *Williams*; and impair ballot access at the "crucial juncture" of the 2022 general election.

The first minor party challenge to a modern ballot access law came before the Supreme Court in 1968. In ***Williams v. Rhodes***, the Ohio American Independent Party challenged Ohio's statutory scheme, which required new party candidates to submit 433,100 signatures by February during an election year. The Ohio Independent Party had met the requirement of the Herculean signature task, but was late in submitting the petitions. The United States Supreme Court found that Ohio's statutory scheme imposed a heavy burden on "two different, although overlapping,

kinds of rights-the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." ***Williams***, supra, 393 U.S. at 29.

The Nevada Supreme Court, following in the footsteps of ***Williams v. Rhodes***, decided the case of ***Long v. Swackhammer***, 538 P.2d 587, 91 Nev. 498 (Nev. 1975) (per curiam). In that case, the Nevada Secretary of State refused to accept Long's candidacy on the ground that Long, who had been a Republican, had changed his party affiliation after a September 1, 1973 deadline. Since the Independent American Party had not become qualified as a political party in Nevada until June 25, 1974, after the applicable deadline, the Nevada Supreme Court held the statute "inapposite." *Id.* Interestingly, ***Williams v Rhodes*** was the only case cited in ***Long***. *Id.* at *passim.*

> We believe, and so hold, that NRS 293.176[4] has no application at all to a new political party coming into existence after September 1 of the preceding year. A qualified political party that has met standards for qualification should be afforded an opportunity to express its views at election time through its candidates. ***Long v. Swackhamer*** 538 P.2d 587 at 589.

Long contextualizes ***Williams*** thusly:

> The right of citizens to associate and organize for the advancement of their political beliefs, and the right of voters, regardless of their political persuasion, to cast their votes as they wish, are two of our most precious freedoms protected by the First and Fourteenth Amendments to the Constitution of the United States. NRS 293.176 has no application to one in the position of Petitioner Long. For these reasons, we heretofore entered the order granting peremptory writ of mandate compelling Respondent Secretary of State to accept and file the declaration of candidacy for the office of lieutenant governor of the State of

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[4] The Nevada statute read: "No person may be a candidate for a party nomination in any primary election if he has changed the designation of his political party affiliation on an official affidavit of registration in the State of Nevada or in any other state since September 1 prior to the closing filing date for such election." NRS §293.176 (1975)

Nevada.

Long v. Swackhamer, 538 P.2d 587 at 589.

Yet another case striking down a temporal restriction was ***Crussel v. Oklahoma State Election Bd.***, 497 F.Supp. 646 (W.D. Okla. 1980). ***Crussel*** was decided prior to ***Tashjian*** and after ***Williams***, as was ***Long***. ***Crussel*** concerned a six-month waiting period, similar to the 365-day waiting period in the case at bar. Also as in ***Long***, the plaintiff was a candidate for a newly-recognized party; ***Crussel*** sought a writ to compel the Election Board to reinstate her name upon the ballot for the general election as a candidate of the Libertarian Party of Oklahoma. She alleged that the statute was unconstitutional in that it violated the First and Fourteenth Amendments.

The Libertarian Party had become a recognized political party on June 13, 1980. On June 16, 1980, the plaintiff registered as a Libertarian. Prior to that she was registered as an "Independent" which had the effect of no party registration. The filing period for elective office commenced on July 7, 1980, and terminated on July 9, 1980. On July 9, 1980, Plaintiff filed her declaration of candidacy with the State Election Board. ***Crussel***, *supra*, 497 F.Supp. at 648.

At that time, state law required that an individual desiring to run must have been a registered member of that party for six months immediately preceding the filing period for the election. Additionally, a person could not register as a member of a party unless that party was recognized, as is the case here, in the case at bar.

The combined effect of the two statutes was that a person could register as a member of a party newly recognized within the six-month period prior to the filing period, but be unable to meet the six month registration requirement to run as a candidate of that political party. That is precisely the same case here, as Plaintiff Elise Mysels is unable to fulfill the 365-day requirement, as the People's Party was only recognized on September 1, 2021.

In deciding ***Crussel***, the United States District Court for the Western District of Oklahoma noted that the six-month party registration requirement did in fact place a restriction on access to the ballot. As ***Crussel*** was prior to ***Anderson v. Calabrezze*** and ***Tashjian***, the District Court could not conclusively establish which standard of review should be used to gauge a law that affects the right of access to the ballot. At that time the United States Supreme Court had never held that the right the right to vote or the right of reasonable ballot access arose from the First Amendment. However, ***Crussel*** noted, the Supreme Court had stated that those two rights are so intertwined and essential to the First Amendment right of political association as to require that a statute significantly burdening the exercise of those rights be justified by 'more than a mere showing of legitimate state interest.' ***Crussel*** at 497 F. Supp. 650, citing, *inter alia,* ***Kusper v. Pontikes***, 414 U.S. 51, 58, 94 S.Ct. 303, 308, (1973); ***Williams v. Rhodes***, 393 U.S. 23, 31, 89 S.Ct. 5, 11, (1968).

"In this case [Crussel], the voters are denied the ability to vote for county and state legislative candidates of a party that is officially recognized by the State of Oklahoma. The fact that the party has sufficient support from the electorate to have gained state recognition indicates that there will be voters expecting to find candidates with the subject party affiliation. A frustration of that voter expectation and collateral limitation of voting options constitutes a heavy burden on the right to vote." ***Crussel***, 497 F. Supp. 650.

C. Plaintiffs are in dire need of immediate preliminary injunctive relief.

(i) The Preliminary Injunction Standard

In the Eleventh Circuit, "A district court may grant a preliminary injunction only if the moving party establishes that: (1) it has a substantial likelihood of success on the merits; (2) it will suffer an irreparable injury unless the injunction is granted; (3) the harm from the threatened injury outweighs the harm the injunction would cause the opposing party; and (4) the injunction

would not be adverse to the public interest." *Gonzalez v. Governor of Ga.*, 978 F.3d 1266 (11th Cir. 2020); accord *Swain v. Junior*, 961 F.3d 1276 (11th Cir. 2020). The third and fourth factors "'merge' when, as here, the [g]overnment is the opposing party." *Swain* , 961 F.3d at 1293 (internal quotation marks and citation omitted); cf . *Nken v. Holder*, 556 U.S. 418, 435, 129 S.Ct. 1749 (2009).

The U.S. Supreme Court has stated that first two *Nken* factors "are the most critical." Id. at 434, 129 S.Ct. 1749. Regarding the first factor, *Nken* held that it is not enough that the likelihood of success on the merits is "better than negligible" or that there is a "mere possibility of relief." Id. (internal quotation marks omitted). In this case, there is more than a mere or negligible possibility of relief, because the "lockdown" provision burdens the speech and associational rights of all Floridians to vote effectively.

(ii) Plaintiffs Have No Adequate Remedy at Law and Will Suffer Irreparable Harm if the Court Does Not Grant Injunctive Relief.

Plaintiffs urgently need relief from this Court because they seek to exercise their First Amendment right to associate as an established political party, file qualifying papers, and mount a campaign for their candidates at the November 8, 2022 primary election. The nomination papers for minor political parties are to be filed between noon, June 13, 2022 and before noon, June 17, 2022 with the Supervisor(s) of Elections Office(s), including, but not limited to, Defendant Pasco County Supervisor of Elections.

Plaintiffs have suffered, and will continue to suffer, irreparable harm, unless they receive relief from this Court. In addition to the voters known to the People's Party, the 365-day waiting period chills the speech and associational rights of the general electorate, because they cannot affiliate with the People's Party, *i.e.*, be a candidate for a year after joining. This operates as a prior restraint on political speech.

Plaintiff Elise Mysels has requested information about candidacies and has been informed that she cannot run as the People's Party candidate for Pasco County Board of Commissioners, Second District, because of the requirements of Fla. Stat. § 99.021. Consequently, Plaintiffs have no adequate remedy except to seek the requested injunctive relief from this Court. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673 2690 (1976) (plurality opinion). Further, Plaintiffs lack an adequate remedy at law as any post-election remedy would not compensate them for the loss of their freedom of speech.

(iii) Directly Placing the People's Party and its Candidate on the Ballot is appropriate in this case.

When states fail to provide candidates and parties with a procedure by which they may qualify for the ballot, the United States Supreme Court and lower federal courts have not hesitated to remedy the defect by placing candidates and parties on the ballot by Court Order. In this case, the State of Florida has effectively banned, by utilizing its 365-day waiting period, the People's Party from ballot access. Thus the People's Party is entitled to ballot placement.

In 1976, for instance, several states provided no procedure for independent candidates to qualify for the ballot. In each of these states, independent presidential candidate Eugene McCarthy sought relief in federal court, and without exception federal courts ordered that he be placed on the ballot.[5] As Justice Powell observed in *McCarthy v. Briscoe,* (429 U.S. 1317, 97 S. Ct. 10 (1976)), the Supreme Court had followed the same procedure in 1968, when it ordered that several candidates who successfully challenged the constitutionality of Ohio's ballot access

[5] See *McCarthy v. Briscoe*, 429 U.S. 1317, 97 S. Ct. 10 (1976) (Powell, J. in Chambers) (placing McCarthy on Texas ballot); *McCarthy v. Askew*, 540 F.2d 1254, 1255 (5th Cir. 1976) (per curiam) (affirming order placing McCarthy on Florida's ballot); *McCarthy v. Noel,* 420 F. Supp. 799 (D. R.I. 1976) (placing McCarthy on Rhode Island ballot); *McCarthy v. Tribbitt*, 421 F. Supp. 1193 (D. Del. 1976) (placing McCarthy on Delaware ballot); *McCarthy v. Austin*, 423 F. Supp. 990 (W.D. Mich. 1976) (placing McCarthy on Michigan ballot).

laws be placed on its ballot. See *McCarthy v. Briscoe*, supra, (Powell, J. in Chambers), citing ***Williams v. Rhodes***, 89 S. Ct. 1, 21 L.Ed.2d 69 (Stewart, J., in Chambers, 1968). McCarthy's independent candidacy is thus analogous to the People's Party's potential candidacies implicated in the case at bar.

In 1980, the State of Michigan had failed to enact a procedure for independent candidates to access the ballot following the decision in *McCarthy v. Austin*, (see fn 2, below), and two independent candidates running for president and vice-president filed suit. See *Hall v. Austin*, 495 F. Supp. 782 (E.D. Mich. 1980). Once again, a federal court ordered that the independent candidates be placed on Michigan's ballot. See *id.* at 791-92. In 1984, because Michigan still had not enacted a procedure for independent candidates to qualify for the ballot, an independent candidate for the State Board of Education filed suit, the district court again declared Michigan's ballot access scheme unconstitutional, and ordered the candidate placed on the ballot. See *Goldman-Frankie v. Austin*, 727 F.2d 603, 607-08 (6th Cir. 1984).

In *Williams*, the Supreme Court explained the rationale for federal courts to grant such relief: the Constitution does not permit states to restrict access to the ballot in a manner that "favors two particular parties – the Republicans and the Democrats – and in effect tends to give them a complete monopoly." ***Williams v. Rhodes***, 393 U.S. 23, 32 (1968)).

Plaintiffs similarly request that their candidate for Pasco County Commissioner, District 2 – Plaintiff Elise Mysels- be placed on the ballot.

(iv) Defendants' actions do not pass scrutiny under the *Anderson-Burdick* framework.

Plaintiffs are also entitled to relief because Fla. Stat. § 99.021, facially and as applied, cannot withstand constitutional scrutiny under the Supreme Court's *Anderson-Burdick* framework. Under that analysis, a reviewing court must:

> [* * *] first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789.

This framework establishes a "flexible standard," according to which "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged restriction burdens First and Fourteenth Amendment rights." *Burdick v. Takushi*, supra 504 U.S. at 434. Restrictions that 'severely burden' the exercise of constitutional rights must be 'narrowly drawn to advance a state interest of compelling importance.'" *Id.* at 433. Under this standard, "reasonable, nondiscriminatory restrictions" are subject to less exacting review, whereas laws that imposes "severe" burdens are subject to strict scrutiny. See *Id.* (citations omitted). But in every case, "However slight [the] burden may appear ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 128 S.Ct. 1610, 1616 (2008) (citation and quotation marks omitted). No such legitimate state interest is present here. **SAY MORE??**

In the matter presented to this Court the burden imposed by the Defendants could not be more severe – complete denial of ballot access for an entire party, its candidate and voters, equating to an entire election cycle, and a rolling 365-day waiting period for members to run as candidates, limiting the pool of potential candidates. Such a complete exclusion constitutes a severe burden on the First and Fourteenth Amendment rights of the People's Party, its affected voters and candidates, as Defendants are prohibited from taking partisan, monopolistic action

that seeks to protect major political parties or insulates the two-party system. See *Timmons*, supra, 520 U.S. 351, 366-67.

(v) Balancing of harms weighs heavily in Plaintiffs' favor.

Plaintiffs are being denied ballot access, and Defendants position also harms the growth and promotion of the People's Party within Florida. Voters will be deprived of the opportunity to vote for People's Party candidates to be their representatives and deprived of the opportunity to hear their political views. The Party will further be denied the opportunity that other established political parties enjoy, including promoting its platform for all elected offices at the general election. Such promotion of a political party and its candidates is an invaluable opportunity to disseminate information about the Party, and grow support.

The Supreme Court has expressly found that such irreparable harms justify granting the relief that Plaintiffs request here. See, e.g., *Norman v. Reed*, 502 U.S. 279, 288-89 (1992); *Anderson*, 460 U.S. at 793-94; *Williams*, 393 U.S. at 30-31.

The Court's admonition in *Williams* speaks to grave injustice and harm that the Plaintiffs suffer through the Clerk's denial of their rights:

> The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.

Williams, 393 U.S. at 31. (Emphasis supplied).

Similarly, balancing the harms with the requested relief confirms that Plaintiff Mysels should be placed upon the ballot. The Florida legislature has already adopted a qualifying period utilizing the same filing dates for the November 8, 2022 general election as the primary election, which means that the Defendants have plenty of time to correct the unconstitutional provision.

On the other hand, the Plaintiffs have a very short time, as the current deadline for filing qualifying papers is the one week duration, June 13-17, 2022, and this matter may not be resolved on the merits prior to the filing deadline.

There is no added cost to print the names of Plaintiff Elise Mysels upon the November 8 general election ballot, or others who may submit nomination papers by noon, June 17, 2022.

The requested relief for the Defendants to revise and publicly disseminate their publications to delete the unconstitutional waiting period provision "General Information" is a nominal cost. Indeed, disseminating such information will also help candidates and voters obtain accurate and complete information, have greater choices at the ballot, and protect their rights to vote effectively.

(vi) The Requested Relief is not Adverse to the Public Interest.

Preliminary relief will benefit the public because it will protect the First Amendment rights of Floridians to cast their votes effectively and to associate with candidates and parties they support. "Injunctions protecting First Amendment freedoms are always in the public interest." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 298 (5th Cir. 2012) This factor therefore, unquestionably, weighs in Plaintiffs' favor.

(vii) No Security is Required.

A security is not mandatory under Rule 65(c), and can be dispensed with in the discretion of the court. See, e.g., *Moltan Co. v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995). No security is needed in this case, as this is not a commercial case, nor does it threaten any financial harm to Defendants.

D. <u>Conclusion.</u>

Wherefore, Plaintiffs, through their attorney, for the foregoing reasons respectfully request entry of a preliminary injunction directing Defendants as follows:

(a) to Prohibit Defendants from enforcing the 365-day waiting period against the People's Party to prohibit it from running candidates for the November 8, 2022 general election;

(b) to Prohibit Defendants from enforcing the 365-day waiting period against persons wishing to run as People's Party candidates;

(c) to Prominently correct all literature, publications, websites, disclosure to reflect the fact that the 365-day waiting period in Fla. Stat. § 99.021 is unconstitutional and unenforceable;

(d) to Prominently notify the public at all physical office locations of the fact that the 365-day waiting period in Fla. Stat. § 99.021 is unconstitutional and unenforceable;

(e) to Direct Defendants to place the name of Plaintiff Elise Mysels general election ballot as the candidate of the People's Party for Pasco County Board Commissioners, District 2;

(d) to Direct Defendants to accept nomination papers from otherwise qualified candidates of the People's Party for all offices subject to Fla. Stat. § 99.021;

(f) to pay Plaintiffs' their reasonable attorney's fees and costs, pursuant to 42 U.S.C § 1988, and

(g) otherwise as just and appropriate and/or agreed to between the parties, to protect Plaintiffs' First and Fourteenth Amendment rights, and for all available relief.

Respectfully submitted:

By: /s/Christopher Kruger
Attorney for Plaintiffs (Special Admission Pending)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PEOPLES PARTY OF FLORIDA; ELISE MYSELS; CAROLYN WOLFE; VICTOR NIETO	)	No. **Not Assigned**
Plaintiffs,	)	
v.	)	Judge Not Assigned
FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS; CORD BYRD, FLORIDA SECRETARY OF STATE; BRIAN CORLEY, PASCO COUNTY SUPERVISOR OF ELECTIONS in their Official Capacities;	)	Magistrate Judge Not Assigned
Defendants.	)	

PLAINTIFFS' APPENDIX Vol. I

**(Including Table of Authorities and Case Law)
in Support of their-**

EMERGENCY[1] MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER

Respectfully submitted:

By: /s/Christopher Kruger, atty no. 6281923
Attorney for Plaintiffs (Special Admission Pending)

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[1]Local Rule 3.01(e), requires counsel to designate a motion as "Emergency" or "Time Sensitive" when circumstances so dictate; as the Qualifying Period for candidates to file under state law expires at Noon, June 17, 2022, plaintiffs' counsel has chosen to designate this motion as an "Emergency."

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AUTHORITIES PRINCIPALLY RELIED UPON

UNITED STATES CONSTITUTION

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV sect. 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FLORIDA CONSTITUTION

FL Const. Art. 1 sect. 4. Freedom of speech and press.

Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press…

FLORIDA STATUTES

Title IX, Chapter 99 – Candidates- (attached hereto)

Fla. Stat. § 99.021(b) & (c):

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of **subscribing to the oath** or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election

for which the person seeks to qualify.

***

Emphasis supplied.

CASES APPENDED

***Tashjian v Republican Party of Connecticut*, 479 U.S. 208 (1986)**

***Woodruff v. Herrera*, (09-cv-0449 (consolidated with 10-cv-123 & 10-cv-124) (D.N.M. 2011) (March 31st., 2011) (See pages 23-26)**

***Campbell v. Davidson*, 233 F.3d 1229 (10th Cir. 2000)**

***Colorado Democratic Party v. Meyer*, 88 cv 7646 Denver District Court (May 5, 1988)**

***State of Alaska v. Alaska Democratic Party*, Appeal S-16875, 426 P3d 901 (Alaska 2018)**

***Long v. Swackhammer*, 538 P.2d 587, 91 Nev. 498 (Nev. 1975) (per curiam).**

***Crussel v. Oklahoma State Election Bd.*, 497 F.Supp. 646 (W.D. Okla. 1980)**

FLORIDA STATUTES-
TITLE IX, CHAPTER 99 from *Sunshine Online, the Official Internet Website of the Florida Legislature* -

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The 2021 Florida Statutes

Title IX
ELECTORS AND ELECTIONS

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CHAPTER 99
CANDIDATES

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99.096 Minor political party candidates; names on ballot.
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99.103 Department of State to remit part of filing fees and party assessments of candidates to state executive committee.
99.121 Department of State to certify nominations to supervisors of elections.

99.012 Restrictions on individuals qualifying for public office.—

(1) As used in this section:

(a) "Officer" means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, the term "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.

(b) "Subordinate officer" means a person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.

(2) No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.

(3)(a) No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.

(b) The resignation is irrevocable.

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.

(d) The resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer must submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f) The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(g) Any officer who submits his or her resignation, effective immediately or effective on a date prior to the date of his or her qualifying for office, may then qualify for office as a nonofficeholder, and the provisions of this subsection do not apply.

(4)(a) Any officer who qualifies for federal public office must resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted at least 10 days before the first day of qualifying for the office he or she intends to seek.

(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or

2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer shall submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer shall submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers shall submit their resignations to the Governor with a copy to the Department of State.

(f)1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he or she presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county, or municipal officer, a copy to:

a. The officer before whom he or she qualified if the officer held an elective office; or

b. The officer or authority who appointed him or her if the officer held an appointive office.

(g) The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(5) A person who is a subordinate officer, deputy sheriff, or police officer must resign effective upon qualifying pursuant to this chapter if the person is seeking to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

(6) If an order of a court that has become final determines that a person did not comply with this section, the person shall not be qualified as a candidate for election and his or her name may not appear on the ballot.

(7) This section does not apply to:

(a) Political party offices.

(b) Persons serving without salary as members of an appointive board or authority.

(8) Subsections (3) and (4) do not apply to persons holding any federal office. Subsection (4) does not apply to an elected officer if the term of the office that he or she presently holds is scheduled to expire and be filled by election in the same primary and general election period as the federal office he or she is seeking.

History.—s. 1, ch. 63-269; s. 2, ch. 65-378; s. 1, ch. 70-80; s. 10, ch. 71-373; s. 1, ch. 74-76; s. 3, ch. 75-196; s. 1, ch. 79-391; s. 47, ch. 81-259; s. 1, ch. 83-15; s. 28, ch. 84-302; s. 31, ch. 91-107; s. 534, ch. 95-147; s. 1, ch. 99-146; s. 1, ch. 2000-274; s. 14, ch. 2007-30; s.

14, ch. 2008-4; s. 9, ch. 2008-95; s. 12, ch. 2011-40; s. 1, ch. 2018-126; s. 11, ch. 2021-11.

99.021 Form of candidate oath.—

(1)(a)1. Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105 or a federal office, shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is a qualified elector of County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.

(Signature and title of officer administering oath)

2. Each candidate for federal office, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to office shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is qualified under the Constitution and laws of the United States to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; and that he or she will support the Constitution of the United States.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.

(Signature and title of officer administering oath)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.
2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.
3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

(d) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

(2) The provisions of subsection (1) relating to the oath required of candidates, and the form of oath prescribed, shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee.

(3) This section does not apply to a person who seeks to qualify for election pursuant to ss. 103.021 and 103.101.

History.—ss. 22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; s. 3, ch. 19663, 1939; s. 3, ch. 26870, 1951; s. 10, ch. 28156, 1953; s. 1, ch. 57-742; s. 1, ch. 61-128; s. 2, ch. 63-269; s. 1, ch. 63-66; s. 1, ch. 65-376; s. 1, ch. 67-149; s. 2, ch. 70-269; s. 19, ch. 71-355; s. 6, ch. 77-175; s. 3, ch. 79-365; s. 27, ch. 79-400; s. 2, ch. 81-105; s. 3, ch. 86-134; s. 535, ch. 95-147; s. 7, ch. 99-6; s. 8, ch. 99-318; s. 15, ch. 2007-30; s. 10, ch. 2008-95; s. 13, ch. 2011-40; s. 12, ch. 2021-11.

Note.—Former ss. 102.29, 102.30.

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(1) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a federal, state, or multicounty district office, other than election to a judicial office as defined in chapter 105 or the office of school board member, shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the Department of State, or qualify by the petition process pursuant to s. 99.095 with the Department of State, at any time after noon of the 1st day for qualifying, which shall be as follows: the 120th day prior to the primary election, but not later than noon of the 116th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to federal office or to the office of the state attorney or the public defender; and noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to a state or multicounty district office, other than the office of the state attorney or the public defender.

(2) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a county office, or district office not covered by subsection (1), shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the supervisor of elections of the county, or shall qualify by the petition process pursuant to s. 99.095 with the supervisor of elections, at any time after noon of the 1st day for qualifying, which shall be the 71st day prior to the primary election, but not later than noon of the 67th day prior to the date of the primary election. Within 30 days after the closing of qualifying time, the supervisor of elections shall remit to the secretary of the state executive committee of the political party to which the candidate belongs the amount of the filing fee, two-thirds of which shall be used to promote the candidacy of candidates for county offices and the candidacy of members of the Legislature.

(3) Notwithstanding the provisions of any special act to the contrary, each person seeking to qualify for election to a special district office shall qualify between noon of the 71st day prior to the primary election and noon of the 67th day prior to the date of the primary election. Candidates for single-county special districts shall qualify with the supervisor of elections in the county in which the district is located. If the district is a multicounty district, candidates shall qualify with the Department of State. All special district candidates shall qualify by paying a filing fee of $25 or qualify by the petition process pursuant to s. 99.095. Notwithstanding s. 106.021, a candidate who does not collect contributions and whose only expense is the filing fee or signature verification fee is not required to appoint a campaign treasurer or designate a primary campaign depository.

(4)(a) Each person seeking to qualify for election to office as a write-in candidate shall file his or her qualification papers with the respective qualifying officer at any time after noon of the 1st day for qualifying, but not later than noon of the last day of the qualifying period for the office sought.

(b) Any person who is seeking election as a write-in candidate shall not be required to pay a filing fee, election assessment, or party assessment. A write-in candidate is not entitled to have his or her name printed on any ballot; however, space for the write-in candidate's name to be written in must be provided on the general election ballot. A person may not qualify as a write-in candidate if the person has also otherwise qualified for nomination or election to such office.

(5) At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145.

(6) The Department of State shall certify to the supervisor of elections, within 7 days after the closing date for qualifying, the names of all duly qualified candidates for nomination or election who have qualified with the Department of State.

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the candidate is running without party affiliation for a partisan office, the written statement required by s. 99.021(1)(c).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(b) If the filing officer receives qualifying papers during the qualifying period prescribed in this section which do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

(c) The filing officer performs a ministerial function in reviewing qualifying papers. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items required by paragraph (a) have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified pursuant to s. 92.525(1)(a). The filing officer may not determine whether the contents of the qualifying papers are accurate.

(8) Notwithstanding the qualifying period prescribed in this section, a qualifying office may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

(9) Notwithstanding the qualifying period prescribed by this section, in each year in which the Legislature apportions the state, the qualifying period for persons seeking to qualify for nomination or election to federal office shall be between noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the primary election.

(10) The Department of State may prescribe by rule requirements for filing papers to qualify as a candidate under this section.

(11) The decision of the filing officer concerning whether a candidate is qualified is exempt from the provisions of chapter 120.

History.—ss. 25, 26, ch. 6469, 1913; RGS 329, 330; CGL 386, 387; ss. 4, 5, ch. 13761, 1929; s. 1, ch. 16990, 1935; CGL 1936 Supp. 386; ss. 1, chs. 19007, 19008, 19009, 1939; CGL 1940 Supp. 4769(3); s. 1, ch. 20619, 1941; s. 1, ch. 21851, 1943; s. 1, ch. 23006, 1945; s. 1, ch. 24163, 1947; s. 3, ch. 26870, 1951; s. 11, ch. 28156, 1953; s. 4, ch. 29936, 1955; s. 10, ch. 57-1; s. 1, ch. 59-84; s. 1, ch. 61-373 and s. 4, ch. 61-530; s. 1, ch. 63-502; s. 7, ch. 65-378; s. 2, ch. 67-531; ss. 10, 35, ch. 69-106; s. 5, ch. 69-281; s. 1, ch. 69-300; s. 1, ch. 70-42; s. 1, ch. 70-93; s. 1, ch. 70-439; s. 6, ch. 77-175; s. 1, ch. 78-188; s. 3, ch. 81-105; s. 2, ch. 83-15; s. 2, ch. 83-25; s. 1, ch. 83-251; s. 29, ch. 84-302; s. 1, ch. 86-7; s. 6, ch. 89-338; s. 8, ch. 90-315; s. 32, ch. 91-107; s. 536, ch. 95-147; s. 1, ch. 95-156; s. 9, ch. 99-318; s. 9, ch. 99-326; s. 3, ch. 2001-75; s. 11, ch. 2005-277; s. 51, ch. 2005-278; s. 7, ch. 2005-286; s. 16, ch. 2007-30; s. 14, ch. 2011-40; s. 13, ch. 2021-11.

Note.—Former ss. 102.32, 102.33, 102.351, 102.36, 102.66, 102.69.

99.063 Candidates for Governor and Lieutenant Governor.—

(1) No later than 5 p.m. of the 9th day following the primary election, each candidate for Governor shall designate a Lieutenant Governor as a running mate. Such designation must be made in writing to the Department of State.

(2) No later than 5 p.m. of the 9th day following the primary election, each designated candidate for Lieutenant Governor shall file with the Department of State:

(a) The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

(b) If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the office sought is without party affiliation, the written statement required by s. 99.021(1)(c).

(c) The full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution. A public officer who has filed the full and public disclosure with the Commission on Ethics prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(3) A designated candidate for Lieutenant Governor is not required to pay a separate qualifying fee or obtain signatures on petitions. Ballot position obtained by the candidate for Governor entitles the designated candidate for Lieutenant Governor, upon receipt by the Department of State of the qualifying papers required by subsection (2), to have his or her name placed on the ballot for the joint candidacy.

(4) In order to have the name of the candidate for Lieutenant Governor printed on the primary election ballot, a candidate for Governor participating in the primary must designate the candidate for Lieutenant Governor, and the designated candidate must qualify no later than the end of the qualifying period specified in s. 99.061.

(5) Failure of the Lieutenant Governor candidate to be designated and qualified by the time specified in subsection (2) shall result in forfeiture of ballot position for the candidate for Governor for the general election.

History.—s. 1, ch. 99-140; s. 45, ch. 2001-40; s. 12, ch. 2005-277; s. 8, ch. 2005-286; s. 15, ch. 2011-40; s. 5, ch. 2019-162; s. 14, ch. 2021-11.

99.081 United States Senators elected in general election.—United States Senators from Florida shall be elected at the general election held preceding the expiration of the present term of office, and such election shall conform as nearly as practicable to the methods provided for the election of state officers.

History.—s. 3, ch. 26870, 1951; s. 6, ch. 77-175; s. 7, ch. 89-338.

Note.—Former s. 106.01.

99.091 Representatives to Congress.—

(1) A Representative to Congress shall be elected in and for each congressional district at each general election.

(2) When Florida is entitled to additional representatives according to the last census, representatives shall be elected from the state at large and at large thereafter until the state is redistricted by the Legislature.

History.—ss. 2, 3, ch. 3879, 1889; RS 157; s. 4, ch. 4328, 1895; s. 3, ch. 4537, 1897; GS 174; RGS 218; CGL 253; s. 2, ch. 25383, 1949; s. 3, ch. 26870, 1951; s. 6, ch. 77-175.

Note.—Former s. 98.07.

99.092 Qualifying fee of candidate; notification of Department of State.—

(1) Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify by the petition process pursuant to s. 99.095 and except a person seeking to qualify as a write-in candidate, shall pay a qualifying fee, which shall consist of a filing fee and election assessment, to the officer with whom the person qualifies, and any party assessment levied, and shall attach the original or signed duplicate of the receipt for his or her party assessment or pay the same, in accordance with the provisions of s. 103.121, at the time of filing his or her other qualifying papers. The amount of the filing fee is 3 percent of the annual salary of the office. The amount of the election assessment is 1 percent of the annual salary of the office sought. The election assessment shall be transferred to the Elections Commission Trust Fund. The amount of the party assessment is 2 percent of the annual salary. The annual salary of the office for purposes of computing the filing fee, election assessment, and party assessment shall be computed by multiplying 12 times the monthly salary, excluding any special qualification pay, authorized for such office as of July 1 immediately preceding the first day of qualifying. No qualifying fee shall be returned to the candidate unless the candidate withdraws his or her candidacy before the last date to qualify. If a candidate dies prior to an election and has not withdrawn his or her candidacy before the last date to qualify, the candidate's qualifying fee shall be returned to his or her designated beneficiary, and, if the filing fee or any portion thereof has been transferred to the political party of the candidate, the Secretary of State shall direct the party to return that portion to the designated beneficiary of the candidate.

(2) The supervisor of elections shall, immediately after the last day for qualifying, submit to the Department of State a list containing the names, party affiliations, and addresses of all candidates and the offices for which they qualified.

History.—s. 24, ch. 6469, 1913; RGS 328; CGL 385; s. 3, ch. 26870, 1951; s. 12, ch. 29934, 1955; s. 4, ch. 65-378; s. 1, ch. 67-531; ss. 10, 35, ch. 69-106; s. 6, ch. 69-281; s. 1, ch. 74-119; s. 1, ch. 75-123; s. 1, ch. 75-247; s. 6, ch. 77-175; s. 28, ch. 79-400; s. 4, ch. 81-105; s. 1, ch. 83-242; s. 8, ch. 89-338; s. 1, ch. 91-107; s. 537, ch. 95-147; s. 11, ch. 97-13; s. 2, ch. 99-140; s. 10, ch. 99-318; s. 13, ch. 2005-277; s. 2, ch. 2010-16; s. 16, ch. 2011-40.

Note.—Former ss. 102.31, 99.031.

99.093 Municipal candidates; election assessment.—

(1) Each person seeking to qualify for nomination or election to a municipal office shall pay, at the time of qualifying for office, an election assessment. The election assessment shall be an amount equal to 1 percent of the annual salary of the office sought. Within 30 days after the close of qualifying, the qualifying officer shall forward all assessments collected pursuant to this section to the Florida Elections Commission for deposit in the Elections Commission Trust Fund.

(2) Any person seeking to qualify for nomination or election to a municipal office who is unable to pay the election assessment without imposing an undue burden on personal resources or on resources otherwise available to him or her shall, upon written certification of such inability given under oath to the qualifying officer, be exempt from paying the election assessment.

History.—s. 9, ch. 89-338; s. 2, ch. 91-107; s. 538, ch. 95-147; s. 12, ch. 97-13; s. 3, ch. 2010-16; s. 17, ch. 2011-40.

99.095 Petition process in lieu of a qualifying fee and party assessment.—

(1) A person who seeks to qualify as a candidate for any office and who meets the petition requirements of this section is not required to pay the qualifying fee or party assessment required by this chapter.

(2)(a) Except as provided in paragraph (b), a candidate must obtain the number of signatures of voters in the geographical area represented by the office sought equal to at least 1 percent of the total number of registered

voters of that geographical area, as shown by the compilation by the department for the immediately preceding general election. Signatures may not be obtained until the candidate has filed the appointment of campaign treasurer and designation of campaign depository pursuant to s. 106.021 and are valid only for the qualifying period immediately following such filings.

(b) A candidate for a special district office shall obtain 25 signatures of voters in the geographical area represented by the office sought.

(c) The format of the petition shall be prescribed by the division and shall be used by candidates to reproduce petitions for circulation. If the candidate is running for an office that requires a group or district designation, the petition must indicate that designation and, if it does not, the signatures are not valid. A separate petition is required for each candidate.

(d) In a year of apportionment, any candidate for county or district office seeking ballot position by the petition process may obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries. The candidate shall obtain at least the number of signatures equal to 1 percent of the total number of registered voters, as shown by a compilation by the department for the immediately preceding general election, divided by the total number of districts of the office involved.

(3) Each petition must be submitted before noon of the 28th day preceding the first day of the qualifying period for the office sought to the supervisor of elections of the county in which such petition was circulated. Each supervisor shall check the signatures on the petitions to verify their status as voters in the county, district, or other geographical area represented by the office sought. No later than the 7th day before the first day of the qualifying period, the supervisor shall certify the number of valid signatures.

(4)(a) Certifications for candidates for federal, state, multicounty district, or multicounty special district office shall be submitted to the division no later than the 7th day before the first day of the qualifying period for the office sought. The division shall determine whether the required number of signatures has been obtained and shall notify the candidate.

(b) For candidates for county, district, or special district office not covered by paragraph (a), the supervisor shall determine whether the required number of signatures has been obtained and shall notify the candidate.

(5) If the required number of signatures has been obtained, the candidate is eligible to qualify pursuant to s. 99.061.

History.—s. 2, ch. 74-119; s. 6, ch. 77-175; s. 29, ch. 79-400; s. 10, ch. 89-338; s. 9, ch. 90-315; s. 539, ch. 95-147; s. 3, ch. 99-140; s. 1, ch. 99-318; s. 14, ch. 2005-277; s. 9, ch. 2005-286; s. 17, ch. 2007-30; s. 11, ch. 2008-95; s. 18, ch. 2011-40.

99.0955 Candidates with no party affiliation; name on general election ballot.—

(1) Each person seeking to qualify for election as a candidate with no party affiliation shall file his or her qualifying papers and pay the qualifying fee or qualify by the petition process pursuant to s. 99.095 with the officer and during the times and under the circumstances prescribed in s. 99.061. Upon qualifying, the candidate is entitled to have his or her name placed on the general election ballot.

(2) The qualifying fee for candidates with no party affiliation shall consist of a filing fee and an election assessment as prescribed in s. 99.092. Filing fees paid to the Department of State shall be deposited into the General Revenue Fund of the state. Filing fees paid to the supervisor of elections shall be deposited into the general revenue fund of the county.

History.—s. 6, ch. 70-269; s. 1, ch. 70-439; s. 3, ch. 74-119; s. 7, ch. 77-175; s. 2, ch. 78-188; s. 11, ch. 89-338; s. 10, ch. 90-315; s. 540, ch. 95-147; s. 13, ch. 95-280; s. 4, ch. 99-140; s. 2, ch. 99-318; s. 15, ch. 2005-277.

Note.—Former s. 99.152.

99.096 Minor political party candidates; names on ballot.—Each person seeking to qualify for election as a candidate of a minor political party shall file his or her qualifying papers with, and pay the qualifying fee and, if one has been levied, the party assessment, or qualify by the petition process pursuant to s. 99.095, with the officer and at the times and under the circumstances provided in s. 99.061.

History.—s. 5, ch. 70-269; s. 1, ch. 70-439; s. 4, ch. 74-119; s. 8, ch. 77-175; s. 3, ch. 78-188; s. 12, ch. 89-338; s. 1, ch. 90-229; s. 11, ch. 90-315; s. 541, ch. 95-147; s. 3, ch. 99-318; s. 16, ch. 2005-277; s. 18, ch. 2007-30.

Note.—Former s. 101.261.

99.09651 Signature requirements for ballot position in year of apportionment.—

(1) In a year of apportionment, any candidate for representative to Congress, state Senate, or state House of Representatives seeking ballot position by the petition process prescribed in s. 99.095 shall obtain at least the number of signatures equal to one-third of 1 percent of the ideal population for the district of the office being sought.

(2) For the purposes of this section, "ideal population" means the total population of the state based upon the most recent decennial census divided by the number of districts for representative to Congress, state Senate, or state House of Representatives. For the purposes of this section, ideal population shall be calculated as of July 1 of the year prior to apportionment. The ideal population for a state Senate district and a state representative district shall be calculated by dividing the total population of the state by 40 for a state Senate district and by dividing by 120 for a state representative district.

(3) Signatures may be obtained from any registered voter in Florida regardless of party affiliation or district boundaries.

(4) Petitions shall state the name of the office the candidate is seeking, but shall not include a district number.

(5) Except as otherwise provided in this section, all requirements and procedures relating to the petition process shall conform to the requirements and procedures in nonapportionment years.

History.—s. 3, ch. 91-107; s. 4, ch. 99-318; s. 17, ch. 2005-277.

99.097 Verification of signatures on petitions.—

(1)(a) As determined by each supervisor, based upon local conditions, the checking of names on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

1. A check of each petition; or

2. A check of a random sample, as provided by the Department of State, of the petitions. The sample must be such that a determination can be made as to whether or not the required number of signatures has been obtained with a reliability of at least 99.5 percent.

(b) Rules and guidelines for petition verification shall be adopted by the Department of State. Rules and guidelines for a random sample method of verification may include a requirement that petitions bear an additional number of names and signatures, not to exceed 15 percent of the names and signatures otherwise required. If the petitions do not meet such criteria or if the petitions are prescribed by s. 100.371, the use of the random sample method of verification is not available to supervisors.

(2) When a petitioner submits petitions which contain at least 15 percent more than the required number of signatures, the petitioner may require that the supervisor of elections use the random sampling verification method in certifying the petition.

(3)(a) If all other requirements for the petition are met, a signature on a petition shall be verified and counted as valid for a registered voter if, after comparing the signature on the petition and the signature of the registered voter in the voter registration system, the supervisor is able to determine that the petition signer is the same as the registered voter, even if the name on the petition is not in substantially the same form as in the voter registration system.

(b) In any situation in which this code requires the form of the petition to be prescribed by the division, no signature shall be counted toward the number of signatures required unless it is on a petition form prescribed by the division.

(c) If a voter signs a petition and lists an address other than the legal residence where the voter is registered, the supervisor shall treat the signature as if the voter had listed the address where the voter is registered.

(4) The supervisor shall be paid in advance the sum of 10 cents for each signature checked or the actual cost of checking such signature, whichever is less, by the candidate or, in the case of a petition to have an issue placed on the ballot, by the person or organization submitting the petition. However, if a candidate, person, or organization seeking to have an issue placed upon the ballot cannot pay such charges without imposing an undue burden on personal resources or upon the resources otherwise available to such candidate, person, or organization, such candidate, person, or organization shall, upon written certification of such inability given under oath to the

supervisor, be entitled to have the signatures verified at no charge. In the event a candidate, person, or organization submitting a petition to have an issue placed upon the ballot is entitled to have the signatures verified at no charge, the supervisor of elections of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Chief Financial Officer no later than December 1 of the general election year, and the Chief Financial Officer shall cause such supervisor of elections to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each name checked or the actual cost of checking such signatures, whichever is less. In no event shall such reimbursement of costs be deemed or applied as extra compensation for the supervisor. Petitions shall be retained by the supervisors for a period of 1 year following the election for which the petitions were circulated.

(5) The results of a verification pursuant to subparagraph (1)(a)2. may be contested in the circuit court by the candidate; an announced opponent; a representative of a designated political committee; or a person, party, or other organization submitting the petition. The contestant shall file a complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court in the county in which the petition is certified or in Leon County if the petition covers more than one county within 10 days after midnight of the date the petition is certified; and the complaint shall set forth the grounds on which the contestant intends to establish his or her right to require a complete check of the petition pursuant to subparagraph (1)(a)1. In the event the court orders a complete check of the petition and the result is not changed as to the success or lack of success of the petitioner in obtaining the requisite number of valid signatures, then such candidate, unless the candidate has filed the oath stating that he or she is unable to pay such charges; announced opponent; representative of a designated political committee; or party, person, or organization submitting the petition, unless such person or organization has filed the oath stating inability to pay such charges, shall pay to the supervisor of elections of each affected county for the complete check an amount calculated at the rate of 10 cents for each additional signature checked or the actual cost of checking such additional signatures, whichever is less.

(6)(a) If any person is paid to solicit signatures on a petition, an undue burden oath may not subsequently be filed in lieu of paying the fee to have signatures verified for that petition.

(b) If an undue burden oath has been filed and payment is subsequently made to any person to solicit signatures on a petition, the undue burden oath is no longer valid and a fee for all signatures previously submitted to the supervisor of elections and any that are submitted thereafter shall be paid by the candidate, person, or organization that submitted the undue burden oath. If contributions as defined in s. 106.011 are received, any monetary contributions must first be used to reimburse the supervisor of elections for any signature verification fees that were not paid because of the filing of an undue burden oath.

History.—s. 2, ch. 76-233; s. 10, ch. 77-175; s. 2, ch. 80-20; s. 1, ch. 82-141; s. 13, ch. 89-338; s. 2, ch. 90-229; s. 12, ch. 90-315; s. 542, ch. 95-147; s. 21, ch. 97-13; s. 7, ch. 99-318; s. 109, ch. 2003-261; s. 19, ch. 2011-40.

99.103 Department of State to remit part of filing fees and party assessments of candidates to state executive committee.—

(1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members and if such party is declared by the Department of State to have recorded on the registration books of the counties, as of the first Tuesday after the first Monday in January prior to the primary election in general election years, 5 percent of the total registration of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the Department of State from its candidates less an amount equal to 15 percent of the filing fees, which amount the Department of State shall deposit in the General Revenue Fund of the state.

(2) Not later than 20 days after the close of qualifying in even-numbered years, the Department of State shall remit 95 percent of all filing fees, less the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by the department to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the Department of State shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of chapter 103. The remainder of filing fees or

party assessments collected by the Department of State shall be remitted to the appropriate state executive committees not later than the date of the primary election.

History.—s. 1, ch. 29935, 1955; s. 24, ch. 57-1; s. 1, ch. 57-62; s. 4, ch. 57-166; s. 1, ch. 69-295; ss. 10, 35, ch. 69-106; s. 11, ch. 77-175; s. 2, ch. 83-251; s. 4, ch. 91-107; s. 14, ch. 97-13; s. 10, ch. 2005-286.

99.121 Department of State to certify nominations to supervisors of elections.—The Department of State shall certify to the supervisor of elections of each county affected by a candidacy for office the names of persons nominated to such office. The names of such persons shall be printed by the supervisor of elections upon the ballot in their proper place as provided by law.

History.—s. 30, ch. 4328, 1895; s. 10, ch. 4537, 1897; GS 215, 3824; s. 54, ch. 6469, 1913; RGS 259, 358, 5885; CGL 315, 415, 8148; s. 11, ch. 26329, 1949; s. 3, ch. 26870, 1951; s. 5, ch. 57-166; ss. 10, 35, ch. 69-106; s. 11, ch. 77-175.

Note.—Former ss. 99.13, 102.51.

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Fla. Stat. 99.021, *Form of Candidate Oath* (Challenged as Unconstitutional by Plaintiffs)

Select Year: 2021 Go

The 2021 Florida Statutes

Title IX
ELECTORS AND ELECTIONS

Chapter 99
CANDIDATES

View Entire Chapter

99.021 Form of candidate oath.—

(1)(a)1. Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105 or a federal office, shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is a qualified elector of County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.

(Signature and title of officer administering oath)

2. Each candidate for federal office, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to office shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared _(please print name as you wish it to appear on the ballot)_, to me well known, who, being sworn, says that he or she is a candidate for the office of ; that he or she is qualified under the Constitution and laws of the United States to hold the office to which he or she desires to be nominated or elected; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; and that he or she will support the Constitution of the United States.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this day of , _(year)_, at County, Florida.

(Signature and title of officer administering oath)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

(d) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

(2) The provisions of subsection (1) relating to the oath required of candidates, and the form of oath prescribed, shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee.

(3) This section does not apply to a person who seeks to qualify for election pursuant to ss. 103.021 and 103.101.

History.—ss. 22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; s. 3, ch. 19663, 1939; s. 3, ch. 26870, 1951; s. 10, ch. 28156, 1953; s. 1, ch. 57-742; s. 1, ch. 61-128; s. 2, ch. 63-269; s. 1, ch. 63-66; s. 1, ch. 65-376; s. 1, ch. 67-149; s. 2, ch. 70-269; s. 19, ch. 71-355; s. 6, ch. 77-175; s. 3, ch. 79-365; s. 27, ch. 79-400; s. 2, ch. 81-105; s. 3, ch. 86-134; s. 535, ch. 95-147; s. 7, ch. 99-6; s. 8, ch. 99-318; s. 15, ch. 2007-30; s. 10, ch. 2008-95; s. 13, ch. 2011-40; s. 12, ch. 2021-11.

Note.—Former ss. 102.29, 102.30.

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CASES APPENDED

***Tashjian v Republican Party of Connecticut,* 479 U.S. 208 (1986)**

***Woodruff v. Herrera*, (09-cv-0449 (consolidated with 10-cv-123 & 10-cv-124) (D.N.M. 2011) (March 31st., 2011) (See pages 23-26)**

***Campbell v. Davidson*, 233 F.3d 1229 (10th Cir. 2000)**

***Colorado Democratic Party v. Meyer*, 88 cv 7646 Denver District Court (May 5, 1988)**

***State of Alaska v. Alaska Democratic Party*, Appeal S-16875, 426 P3d 901 (Alaska 2018)**

***Long v. Swackhammer*, 538 P.2d 587, 91 Nev. 498 (Nev. 1975) (per curiam).**

***Crussel v. Oklahoma State Election Bd.*, 497 F.Supp. 646 (W.D. Okla. 1980)**

479 U.S. 208
107 S.Ct. 544
93 L.Ed.2d 514
Julia H. TASHJIAN, Secretary of State of Connecticut, Appellant

v.

REPUBLICAN PARTY OF CONNECTICUT et al.

No. 85-766.

Argued Oct. 8, 1986.
Decided Dec. 10, 1986.

Syllabus

A Connecticut statute (§ 9-431), enacted in 1955, requires voters in any political party primary to be registered members of that party. In 1984, appellee Republican Party of Connecticut (Party) adopted a Party rule that permits independent voters registered voters not affiliated with any party—to vote in Republican primaries for federal and statewide offices. The Party and the Party's federal officeholders and state chairman (also appellees) brought an action in Federal District Court challenging the constitutionality of § 9-431 on the ground that it deprives the Party of its right under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing, and seeking declaratory and injunctive relief. The District Court granted summary judgment in appellees' favor, and the Court of Appeals affirmed.

Held:

1. Section 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. Pp. 213-225.

(a) The freedom of association protected by those Amendments includes partisan political organization. Section 9-431 places limits upon the group of registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. The fact that the State has the power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association. Pp. 213-217.

(b) The interests asserted by appellant Secretary of State of Connecticut as justification for the statute—that it ensures the administrability of the primary, prevents voter raiding, avoids voter confusion, and protects the integrity of the two-party system and the responsibility

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of party government—are insubstantial. The possibility of increases in the cost of administering the election system is not a sufficient basis for infringing appellees' First Amendment rights. The interest in curtailing raiding is not implicated, since § 9-431 does not impede a raid on the Republican Party by independent voters; independent raiders need only register as Republicans and vote in the primary. The interest in preventing voter confusion does not make it necessary to burden the Party's associational rights. And even if the State were correct in arguing that § 9-431 in providing for a closed primary system is designed to save the Party from undertaking conduct destructive of its own interests, the State may not constitutionally substitute its judgment for that of the Party, whose determination of the boundaries of its own association and of the structure that best allows it to pursue its political goals is protected by the Constitution. Pp. 217-225.

2. The implementation of the Party rule will not violate the Qualifications Clause of the Constitution—which provides that the House of Representatives "shall be composed of Members chosen . . . by the People of the several States, and

the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature"—and the parallel provision of the Seventeenth Amendment, because it does not disenfranchise any voter in a federal election who was qualified to vote in a primary or general election for the more numerous house of the state legislature. The Clause and the Amendment are not violated by the fact that the Party rule establishes qualifications for voting in congressional elections that differ from the qualifications in elections for the state legislature. Where state law, as here, has made the primary an integral part of the election procedure, the requirements of the Clause and the Amendment apply to primaries as well as to general elections. The achievement of the goal of the Clause to prevent the mischief that would arise if state voters found themselves disqualified from participating in federal elections does not require that qualifications for exercise of the federal franchise be precisely equivalent to the qualifications for exercising the franchise in a given State. Pp. 225-229.

770 F.2d 265 (CA2 1985), affirmed.

MARSHALL, J., delivered the opinion of the Court, in which BRENNAN, WHITE, BLACKMUN, and POWELL, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 230. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and O'CONNOR, J., joined, *post*, p. 234.

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Elliot F. Gerson, Hartford, Conn., for appellant.

David S. Golub, Stamford, Conn., for appellees.

Stephen E. Gottlieb, Albany, for James McGregor Burns.

Justice MARSHALL delivered the opinion of the Court.

Appellee Republican Party of the State of Connecticut (Party) in 1984 adopted a Party rule which permits independent voters registered voters not affiliated with any political party—to vote in Republican primaries for federal and state-wide offices. Appellant Julia Tashjian, the Secretary of the State of Connecticut, is charged with the administration of the State's election statutes, which include a provision requiring voters in any party primary to be registered mem-

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bers of that party. Conn.Gen.Stat. § 9-431 (1985).[1] Appellees, who in addition to the Party include the Party's federal officeholders and the Party's state chairman, challenged this eligibility provision on the ground that it deprives the Party of its First Amendment right to enter into political association with individuals of its own choosing. The District Court granted summary judgment in favor of appellees. 599 F.Supp. 1228 (Conn.1984). The Court of Appeals affirmed. 770 F.2d 265 (CA2 1985). We noted probable jurisdiction, 474 U.S. 1049, 106 S.Ct. 783, 88 L.Ed.2d 762 (1986), and now affirm.

I

In 1955, Connecticut adopted its present primary election system. For major parties,[2] the process of candidate selection for federal and statewide offices requires a statewide convention of party delegates; district conventions are held to select candidates for seats in the state legislature. The party convention may certify as the party-endorsed candidate any person receiving more than 20% of the votes cast in a roll-call vote at the convention. Any candidate not endorsed by the party who received 20% of the vote may challenge the party-endorsed candidate in a primary election, in which the candidate receiving the plurality of votes becomes the party's nominee. Conn.Gen.Stat. §§ 9-382, 9-400, 9-444 (1985). Candidates selected by the major parties, whether through convention or primary, are automatically accorded a place on the ballot at the general election.

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§ 9-379. The costs of primary elections are paid out of public funds. See, *e.g.*, § 9-441.

The statute challenged in these proceedings, § 9-431, has remained substantially unchanged since the adoption of the State's primary system. In 1976, the statute's constitutionality was upheld by a three-judge District Court against a challenge by an independent voter who sought a declaration of his right to vote in the Republican primary. *Nader v. Schaffer*, 417 F.Supp. 837 (Conn.), summarily aff'd, 429 U.S. 989, 97 S.Ct. 516, 50 L.Ed.2d 602 (1976). In that action, the Party opposed the plaintiff's efforts to participate in the Party primary.

Subsequent to the decision in *Nader*, however, the Party changed its views with respect to participation by independent voters in Party primaries. Motivated in part by the demographic importance of independent voters in Connecticut politics,[3] in September 1983 the Party's Central Committee recommended calling a state convention to consider altering the Party's rules to allow independents to vote in Party primaries. In January 1984 the state convention adopted the Party rule now at issue, which provides:

"Any elector enrolled as a member of the Republican Party and any elector not enrolled as a member of a party shall be eligible to vote in primaries for nomination of candidates for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Secretary of the State, Attorney General, Comptroller and Treasurer." App. 20.

During the 1984 session, the Republican leadership in the state legislature, in response to the conflict between the newly enacted Party rule and § 9-431, proposed to amend the statute to allow independents to vote in primaries when permitted by Party rules. The proposed legislation was de-

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feated, substantially along party lines, in both houses of the legislature, which at that time were controlled by the Democratic Party.[4]

The Party and the individual appellees then commenced this action in the District Court, seeking a declaration that § 9-431 infringes appellees' right to freedom of association for the advancement of common political objectives guaranteed by the First and Fourteenth Amendments, and injunctive relief against its further enforcement. After discovery, the parties submitted extensive stipulations of fact to the District Court, which granted summary judgment for appellees. The District Court concluded that "[a]ny effort by the state to substitute its judgment for that of the party on . . . the question of who is and is not sufficiently allied in interest with the party to warrant inclusion in its candidate selection process . . . substantially impinges on First Amendment rights." 599 F.Supp., at 1238. Rejecting the state interests proffered by appellant to justify the statute, the District Court held that "as applied to the Republican Party rule permitting unaffiliated voters to participate in certain Republican Party primaries, the statute abridges the right of association guaranteed by the First Amendment." *Id.*, at 1241.

The Court of Appeals affirmed, holding that § 9-431 "substantially interferes with the Republican Party's first amendment right to define its associational boundaries, determine the content of its message, and engage in effective political association." 770 F.2d, at 283.

II

We begin from the recognition that "[c]onstitutional challenges to specific provisions of a State's election laws . . . cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions." *Anderson v. Cele*

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brezze, 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983) (quoting *Storer v. Brown*,

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415 U.S. 724, 730, 94 S.Ct. 1274, 1279, 39 L.Ed.2d 714 (1974)). "Instead, a court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." 460 U.S., at 789, 103 S.Ct., at 1570.

The nature of appellees' First Amendment interest is evident. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 460, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488 (1958); see *NAACP v. Button,* 371 U.S. 415, 430, 83 S.Ct. 328, 336, 9 L.Ed.2d 405 (1963); *Bates v. Little Rock,* 361 U.S. 516, 522-523, 80 S.Ct. 412, 416-417, 4 L.Ed.2d 480 (1960). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. *Elrod v. Burns,* 427 U.S. 347, 357, 96 S.Ct. 2673, 2681, 49 L.Ed.2d 547 (1976) (plurality opinion); *Buckley v. Valeo,* 424 U.S. 1, 15, 96 S.Ct. 612, 632, 46 L.Ed.2d 659 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes,* 414 U.S. 51, 57, 94 S.Ct. 303, 307, 38 L.Ed.2d 260 (1973).

The Party here contends that § 9-431 impermissibly burdens the right of its members to determine for themselves with whom they will associate, and whose support they will seek, in their quest for political success. The Party's attempt to broaden the base of public participation in and support for its activities is conduct undeniably central to the exercise of the right of association. As we have said, the freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who constitute the association." *Democratic Party of*

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United States v. Wisconsin ex rel. LaFollette, 450 U.S. 107, 122, 101 S.Ct. 1010, 1019, 67 L.Ed.2d 82 (1981).

A major state political party necessarily includes individuals playing a broad spectrum of roles in the organization's activities. Some of the Party's members devote substantial portions of their lives to furthering its political and organizational goals, others provide substantial financial support, while still others limit their participation to casting their votes for some or all of the Party's candidates. Considered from the standpoint of the Party itself, the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most important.[5]

Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, " '[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.' " *Democratic Party, supra,* at 122, 101 S.Ct., at 1019 (quoting *Sweezy v. New Hampshire,* 354 U.S. 234, 250, 77 S.Ct. 1203, 1212, 1 L.Ed.2d 1311 (1957)).[6] The statute here places limits upon the group of

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registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. *Kusper v. Pontikes, supra,* 414

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U.S., at 58, 94 S.Ct., at 308. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.[7]

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It is, of course, fundamental to appellant's defense of the State's statute that this impingement upon the associational rights of the Party and its members occurs at the ballot box, for the Constitution grants to the States a broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens. The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote, see *Wesberry v. Sanders*, 376 U.S. 1, 6-7, 84 S.Ct. 526, 529-530, 11 L.Ed.2d 481 (1964), or, as here, the freedom of political association. We turn then to an examination of the interests which appellant asserts to justify the burden cast by the statute upon the associational rights of the Party and its members.

III

Appellant contends that § 9-431 is a narrowly tailored regulation which advances the State's compelling interests by ensuring the administrability of the primary system, preventing raiding, avoiding voter confusion, and protecting the responsibility of party government.

A.

Although it was not presented to the Court of Appeals as a basis for the defense of the statute, appellant argues here that the administrative burden imposed by the Party rule is a sufficient ground on which to uphold the constitutionality of

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§ 9-431.[8] Appellant contends that the Party's rule would require the purchase of additional voting machines, the training of additional poll workers, and potentially the printing of additional ballot materials specifically intended for independents voting in the Republican primary. In essence, appellant claims that the administration of the system contemplated by the Party rule would simply cost the State too much.

Even assuming the factual accuracy of these contentions, which have not been subjected to any scrutiny by the District Court, the possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major-party should come into existence in Connecticut, thus requiring the State to fund a third major party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford. Cf. *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983); *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968). While the State is of course entitled to take administrative and financial considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party.

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B

Appellant argues that § 9-431 is justified as a measure to prevent raiding, a practice "whereby

voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Rosario v. Rockefeller*, 410 U.S. 752, 760, 93 S.Ct. 1245, 1251, 36 L.Ed.2d 1 (1973). While we have recognized that "a State may have a legitimate interest in seeking to curtail 'raiding,' since that practice may affect the integrity of the electoral process," *Kusper v. Pontikes*, 414 U.S., at 59-60, 94 S.Ct., at 308-309; *Rosario v. Rockefeller, supra*, 410 U.S., at 761, 93 S.Ct., at 1251; that interest is not implicated here.[9] The statute as applied to the Party's rule prevents independents, who otherwise cannot vote in any primary, from participating in the Republican primary. Yet a raid on the Republican Party primary by independent voters, a curious concept only distantly related to the type of raiding discussed in *Kusper* and *Rosario*, is not impeded by § 9-431; the independent raiders need only register as Republicans and vote in the primary. Indeed, under Conn.Gen.Stat. § 9-56 (1985), which permits an independent to affiliate with the Party as late as noon on the business day preceding the primary, see n. 7, *supra*, the State's election statutes actually *assist* a "raid" by independents, which could be organized and implemented at the 11th hour. The State's asserted interest in the prevention of raiding provides no justification for the statute challenged here.

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C

Appellant's next argument in support of § 9-431 is that the closed primary system avoids voter confusion. Appellant contends that "[t]he legislature could properly find that it would be difficult for the general public to understand what a candidate stood for who was nominated in part by an unknown amorphous body outside the party, while nevertheless using the party name." Brief for Appellant 59. Appellees respond that the State is attempting to act as the ideological guarantor of the Republican Party's candidates, ensuring that voters are not misled by a "Republican" candidate who professes something other than what the State regards as true Republican principles. Brief for Appellees 28.

As we have said, "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." *Anderson v. Celebrezze*, 460 U.S., at 796, 103 S.Ct., at 1574. To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "misled" by party labels. But "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." *Id.*, at 797, 103 S.Ct., at 1574. Moreover, appellant's concern that candidates selected under the Party rule will be the nominees of an "amorphous" group using the Party's name is inconsistent with the facts. The Party is not proposing that independents be allowed to choose the Party's nominee without Party participation; on the contrary, to be listed on the Party's primary ballot continues to require, under a statute not challenged here, that the primary candidate have obtained at least 20% of the vote at a Party convention, which only Party

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members may attend. Conn.Gen.Stat. § 9-400 (1985). If no such candidate seeks to challenge the convention's nominee in a primary, then no primary is held, and the convention nominee becomes the Party's nominee in the general election without any intervention by independent voters.[10] Even assuming, however, that putative candidates defeated at the Party convention will have an increased incentive under the Party's rule to make primary challenges, hoping to attract more substantial support from independents than from Party delegates, the requirement that such challengers garner substantial minority support at the convention greatly attenuates the State's concern that the ultimate nominee will be wedded

to the Party in nothing more than a marriage of convenience.

In arguing that the Party rule interferes with educated decisions by voters, appellant also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to Connecticut Republicans in selecting candidates for public office is how can the Party most effectively appeal to the independent voter? By inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. "A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." *Anderson v. Celebrezze, supra,* at 798, 103 S.Ct., at 1575. The State's legitimate interests in preventing voter confusion

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and providing for educated and responsible voter decisions in no respect "make it necessary to burden the [Party's] rights." 460 U.S., at 789, 103 S.Ct., at 1570.

D

Finally, appellant contends that § 9-431 furthers the State's compelling interest in protecting the integrity of the two-party system and the responsibility of party government. Appellant argues vigorously and at length that the closed primary system chosen by the state legislature promotes responsiveness by elected officials and strengthens the effectiveness of the political parties.

The relative merits of closed and open primaries have been the subject of substantial debate since the beginning of this century, and no consensus has as yet emerged.[11] Appellant

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invokes a long and distinguished line of political scientists and public officials who have been supporters of the closed primary. But our role is not to decide whether the state legislature was acting wisely in enacting the closed primary system in 1955, or whether the Republican Party makes a mistake in seeking to depart from the practice of the past 30 years.[12]

We have previously recognized the danger that "splintered parties and unrestrained factionalism may do significant damage to the fabric of government." *Storer v. Brown,* 415 U.S., at 736, 94 S.Ct., at 1282. We upheld a California statute which denied access to the ballot to any independent candidate who had voted in a party primary or been registered as a member of a political party within one year prior to the immediately preceding primary election. We said:

"[T]he one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late

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rather than an early decision to seek independent ballot status." *Ibid.*

The statute in *Storer* was designed to protect the parties and the party system against the disorganizing effect of independent candidacies launched by unsuccessful putative party nominees. This protection, like that accorded to parties threatened by raiding in *Rosario v. Rockefeller,* 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973), is undertaken to prevent the disruption of the political parties from without, and not, as in this case, to prevent the

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parties from taking internal steps affecting their own process for the selection of candidates. The forms of regulation upheld in *Storer* and *Rosario* imposed certain burdens upon the protected First and Fourteenth Amendment interests of some individuals, both voters and potential candidates, in order to protect the interests of others. In the present case, the state statute is defended on the ground that it protects the integrity of the Party against the Party itself.

Under these circumstances, the views of the State, which to some extent represent the views of the one political party transiently enjoying majority power, as to the optimum methods for preserving party integrity lose much of their force. The State argues that its statute is well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." *Democratic Party of United States v. Wisconsin ex rel. LaFollette,* 450 U.S., at 123-124, 101 S.Ct., at 1019-1020 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." *Id.,* at 124, 101 S.Ct., at 1020.[13]

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We conclude that the State's enforcement, under these circumstances, of its closed primary system burdens the First Amendment rights of the Party. The interests which the appellant adduces in support of the statute are insubstantial, and accordingly the statute, as applied to the Party in this case, is unconstitutional.

IV

Appellant argues here, as in the courts below, that implementation of the Party rule would violate the Qualifications Clause of the Constitution, Art. I, § 2, cl. 1, and the Seventeenth Amendment because it would establish qualifications for voting in congressional elections which differ from the voting qualifications in elections for the more numerous house of the state legislature.[14] The Party rule as adopted permits independent voters to vote in Party primaries for the offices of United States Senator and Member of the House of Representatives, and for statewide offices, but is silent as re-

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gards primaries held to contest nominations for seats in the state legislature. See *supra,* at 212. Appellant contends that the Qualifications Clause and the Seventeenth Amendment require an absolute symmetry of qualifications to vote in elections for Congress and the lower house of the state legislature, and that the Party rule, if implemented according to its terms, would require lesser qualifications for voting in Party primaries for federal office than for state legislative office.

The Court of Appeals rejected appellant's argument, holding that the Qualifications Clause and the parallel provision of the Seventeenth Amendment do not apply to primary elections. 770 F.2d, at 274. The concurring opinion took a different view, reaching the conclusion that these provisions require only that "anyone who is permitted to vote for the most numerous branch of the state legislature has to be permitted to vote" in federal legislative elections. *Id.,* at 286 (Oakes, J., concurring). We agree.

We recognize that the Federal Convention, in adopting the Qualifications Clause of Article I, § 2, was not contemplating the effects of that provision upon the modern system of party primaries. As we have said:

"We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated

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the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." *United States v. Classic,* 313 U.S. 299, 315-316, 61 S.Ct. 1031, 1037-1038, 85 L.Ed. 1368 (1941).

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The fundamental purpose underlying Article I, § 2, cl. 1, that "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several States," like the parallel provision of the Seventeenth Amendment, applies to the entire process by which federal legislators are chosen. "Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice," the requirements of Article I, § 2, cl. 1, and the Seventeenth Amendment apply to primaries as well as to general elections. *United States v. Classic, supra,* at 318, 61 S.Ct., at 1039; see *Smith v. Allwright,* 321 U.S. 649, 659-660, 64 S.Ct. 757, 762-763, 88 L.Ed. 987 (1944). The constitutional goal of assuring that the Members of Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process. If primaries were not subject to the requirements of the Qualifications Clauses contained in Article I, § 2 and the Seventeenth Amendment, the fundamental principle of free electoral choice would be subject to the sort of erosion these prior decisions were intended to prevent.

Accordingly, we hold that the Qualifications Clauses of Article I, § 2, and the Seventeenth Amendment are applicable to primary elections in precisely the same fashion that they apply to general congressional elections. Our task is then to discover whether, as appellant contends, those provisions require that voter qualifications, such as party membership, in primaries for federal office must be absolutely symmetrical with those pertaining to primaries for state legislative office.

Our inquiry begins with an examination of the Framers' purpose in enacting the first Qualifications Clause. It is clear that the Clause was intended to avoid the consequences of declaring a single standard for exercise of the franchise in federal elections. The state governments represented at the Convention had established varying voter qualifications, and substantial concern was expressed by delegates as to the likely effects of a federal voting qualification which disenfranchised voters eligible to vote in the States. James

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Wilson argued that "[i]t would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State Legislature, and to be excluded from a vote for those in the National Legislature." J. Madison, Journal of the Federal Convention 467 (E. Scott ed. 1893) (hereinafter Madison's Journal). Oliver Ellsworth predicted that "[t]he people will not readily subscribe to a National Constitution, if it should subject them to be disfranchised." *Id.,* at 468. Benjamin Franklin argued, in the same vein, that "[t]he sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description." *Id.,* at 471. James Madison later defended the resulting provision on similar grounds:

"To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States, as it would have been difficult to the Convention. The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p. 354 (J. Cooke ed. 1961).

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In adopting the language of Article I, § 2, cl. 1, the Convention rejected the suggestion that a property qualification was necessary to restrict the availability of the federal franchise. See Madison's Journal 468-473; 2 M. Farrand, The Records of the Federal Convention of 1787, pp. 200-216 (1966). Far from being a device to limit the federal suffrage, the Qualifications Clause was intended by the Framers to prevent the mischief which would arise if state voters found themselves disqualified from participation in federal elections. The achievement of this goal does not require that qualifications for exercise of the federal franchise be at all

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times precisely equivalent to the prevailing qualifications for the exercise of the franchise in a given State. The fundamental purpose of the Qualifications Clauses contained in Article I, § 2, and the Seventeenth Amendment is satisfied if all those qualified to participate in the selection of members of the more numerous branch of the state legislature are also qualified to participate in the election of Senators and Members of the House of Representatives.

Our conclusion that these provisions do not require a perfect symmetry of voter qualifications in state and federal legislative elections takes additional support from the fact that we have not previously required such absolute symmetry when the federal franchise has been expanded. In *Oregon v. Mitchell,* 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970), five Justices agreed that the Voting Rights Act Amendments of 1970 could constitutionally establish a minimum age of 18 for voters in federal elections, while a majority of the Court also concluded that Congress was without power to set such a minimum age in state and local elections. See *id.,* at 117-118, 91 S.Ct., at 261-262 (Black, J., announcing the judgments of the Court). Appellant's reading of the Qualifications Clause, which would require identical voter qualifications in state and federal legislative elections, is plainly inconsistent with these holdings. We hold that the implementation of the Party rule does not violate the Qualifications Clause or the Seventeenth Amendment because it does not disenfranchise any voter in a federal election who is qualified to vote in a primary or general election for the more numerous house of the state legislature.

V

We conclude that § 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. The interests asserted by appellant in defense of the statute are insubstantial. The judgment of the Court of Appeals is

Affirmed.

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Justice STEVENS, with whom Justice SCALIA joins, dissenting.

The threshold issue presented by this case is whether, consistently with the Constitution, a State may permit a voter to participate in elections to the Congress while preventing that same person from voting for candidates to the most numerous branch of the state legislature. If we respect the plain language of Article I, § 2, cl. 1, of the Constitution and the Seventeenth Amendment, the intent of the Framers, and the reasoning of the opinions in *Oregon v. Mitchell,* 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970), we must answer that question in the negative.

Every person who votes in a federal election for a Member of the House of Representatives or for a United States Senator must be qualified to vote for candidates to the most numerous branch of the state legislature. The Constitution has imposed this condition of voter eligibility on congressional elections since 1789 [1] and on senatorial elections since the Seventeenth Amendment was ratified in 1913.[2]

As the Court recognizes, *ante,* at 227, a primary election is part of the process by which Members of the House and Senate are "chosen . . . by the People." U.S. Const., Art. I, § 2, cl. 1. Cf.

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United States v. Classic, 313 U.S. 299, 315, 61 S.Ct. 1031, 1037, 85 L.Ed. 1368 (1941). In Connecticut one of the qualifications for voters in Republican Party primary elections for the lower house of the state legislature is that the person be "on the last-completed enrolment list of such party in the municipality or voting district. . . ." Conn.Gen.Stat. § 9-431 (1985). Thus, only enrolled Republicans may vote in the Republican primary for the state legislature.

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The Court today holds, however, that pursuant to the Republican Party of Connecticut's rules, the State must permit independent, as well as enrolled Republican, electors to vote in the Republican primary for the House of Representatives and the Senate of the United States. This facial disparity between the qualifications for electors of House and Senate candidates and the more stringent qualifications for electors to the state legislature violates both Qualifications Clauses.

The Court does not dispute the fact that the plain language of the Constitution requires that voters in congressional and senatorial elections "shall have" the qualifications of voters in elections to the state legislature. The Court nevertheless separates the federal voter qualifications from their state counterparts, inexplicably treating the mandatory "shall have" language of the Clauses as though it means only that the federal voters "may but need not have" the qualifications of state voters. In support of this freewheeling interpretation of the Constitution, the Court relies on what it describes as the Framers' purpose in enacting the first Qualification Clause and on the judgment in *Oregon v. Mitchell, supra.* Neither of these arguments withstands scrutiny.

The excerpts from the debate among the Framers quoted by the Court, *ante,* at 227-229, related to a motion made by Gouverneur Morris to amend a draft of proposed Art. I, § 1, that had been prepared by the Committee on Detail. To understand the full significance of that debate it is necessary first to consider the provision that Gouverneur Morris wanted to change and then to consider the nature of his proposed amendment.

Justice Stewart accurately summarized that background in his opinion in *Oregon v. Mitchell, supra:*

"An early draft of the Constitution provided that the States should fix the qualifications of voters in congressional elections subject to the proviso that these qualifications might 'at any Time be altered and superseded by the Legislature of the United States.' The records of

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the Committee on Detail show that it was decided to strike the provision granting to Congress the authority to set voting qualifications and to add in its stead a clause making the qualifications 'the same from Time to Time as those of the Electors, in the several States, of the most numerous Branch of their own Legislatures.' The proposed draft reported by the Committee on Detail to the Convention included the following:

" 'The qualifications of the electors *shall be the same,* from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.' Art. IV, § 1." 400 U.S., at 289, 91 S.Ct. at 347 (concurring in part and dissenting in part) (footnotes omitted; emphasis added).

Thus, the draft that the Federal Convention of 1787 was considering when Gouverneur Morris made his motion was abundantly clear—the qualifications of the federal electors "shall be the same" as the electors of the legislatures of the several States. J. Madison, Journal of the Federal Convention 449-450 (E. Scott ed. 1893). This provision would ensure uniformity of electors' qualifications within each State, but would not impose a uniform nationwide standard.[3]

It was this clause that Gouverneur Morris proposed to strike in order to substitute a clause permitting Congress to prescribe the electoral

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qualifications or to adopt a provision "which would restrain the right of suffrage to freeholders." *Id.*, at 467. Not surprisingly, his proposal was defeated by a vote of 7 to 1 because it would have disenfranchised a large number of voters in States that did not impose a property qualification on the right to vote. *Id.*, at 467, 468, 471-472. Despite the Court's reliance on the concerns that led the

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Framers to reject the Morris proposal, they shed absolutely no light on the reasons why the Committee on Detail had previously decided that the voters' qualifications in state and federal elections "shall be the same."

The Court's reliance on the holding in *Oregon v. Mitchell* is equally misguided. That case tested the constitutionality of certain parts of the Voting Rights Act Amendments of 1970, 84 Stat. 314, including the section that lowered the minimum age of voters in both state and federal elections from 21 to 18. Four Members of the Court concluded that Congress had no such power; [4] four other Members of the Court concluded that the entire statute was valid.[5] Thus, the conclusions of all eight of those Justices were consistent with the proposition that the Constitution requires the same qualifications for state and federal elections.[6] Only Justice Black concluded that the statute was invalid insofar as it applied to state elections but valid insofar as it applied to federal elections. 400 U.S., at 125-130, 91 S.Ct., at 265-268.

Even Justice Black's reasoning, however, supports a literal reading of the Qualifications Clause in the absence of a federal statute prescribing a different rule for federal elections. For he relied entirely on the provision in Art. I, § 4, that empowers Congress to alter a State's regulations concerning the times, places, and manner of holding elections for Senators and Representatives. 400 U.S., at 119-124, 91 S.Ct., at 262-265. In Justice

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Black's opinion, the qualifications that the States prescribed for their own voters for state offices "were adopted for federal offices unless Congress directs otherwise under Art. I, § 4." *Id.*, at 125, 91 S.Ct., at 265.

In this case there is no federal statute that purports to authorize the State of Connecticut to prescribe different qualifications for state and federal elections. Thus, there is no authority whatsoever for the Court's refusal to honor the plain language of the Qualifications Clauses. An interpretation of that language linking federal voters' qualifications in each State to the States' existing qualifications exactly matches James Madison's understanding:

"The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is comformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p. 354 (J. Cooke ed. 1961).

I respectfully dissent.

Justice SCALIA, with whom THE CHIEF JUSTICE and Justice O'CONNOR join, dissenting.

Both the right of free political association and the State's authority to establish arrangements that assure fair and effective party participation in the election process are essential to democratic government. Our cases make it clear that the accommodation of these two vital interests does not lend itself to bright-line rules but requires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case. See *Anderson v. Celebrezze*, 460 U.S. 780, 788-790, 103 S.Ct. 1564, 1569-1571, 75 L.Ed.2d 547 (1983); *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 1279, 39 L.Ed.2d 714 (1974). Even so, the conclusion reached on the individuated facts of one case sheds some measure of light upon the conclusion that will be reached on the individuated facts of the next. Since this is an

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area, moreover, in which the predictability of decisions is impor-

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tant, I think it worth noting that for me today's decision already exceeds the permissible limit of First Amendment restrictions upon the States' ordering of elections.

In my view, the Court's opinion exaggerates the importance of the associational interest at issue, if indeed it does not see one where none exists. There is no question here of restricting the Republican Party's ability to recruit and enroll Party members by offering them the ability to select Party candidates; Conn.Gen.Stat. § 9-56 (1985) permits an independent voter to join the Party as late as the day before the primary. Cf. *Kusper v. Pontikes,* 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973). Nor is there any question of restricting the ability of the Party's members to select whatever candidate they desire. Appellees' only complaint is that the Party cannot leave the selection of its candidate to persons who are *not* members of the Party, and are unwilling to become members. It seems to me fanciful to refer to this as an interest in freedom of association between the members of the Republican Party and the putative independent voters. The Connecticut voter who, while steadfastly refusing to register as a Republican, casts a vote in the Republican primary, forms no more meaningful an "association" with the Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster. If the concept of freedom of association is extended to such casual contacts, it ceases to be of any analytic use. See *Democratic Party of United States v. Wisconsin ex rel. La Follette,* 450 U.S. 107, 130-131, 101 S.Ct. 1010, 1023-1024, 67 L.Ed.2d 82 (1981) (POWELL, J., dissenting) ("[Not] every conflict between state law and party rules concerning participation in the nomination process creates a burden on associational rights"; one must "look closely at the nature of the intrusion, in light of the nature of the association involved, to see whether we are presented with a real limitation on First Amendment freedoms").

The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably

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implicates an associational freedom—but it can hardly be thought that that freedom is unconstitutionally impaired here. The Party is entirely free to put forward, if it wishes, that candidate who has the highest degree of support among Party members and independents combined. The State is under no obligation, however, to let its party primary be used, instead of a party-funded opinion poll, as the means by which the party identifies the relative popularity of its potential candidates among independents. Nor is there any reason apparent to me why the State cannot insist that this decision to support what might be called the independents' choice be taken *by the party membership in a democratic fashion,* rather than through a process that permits the members' votes to be diluted—and perhaps even absolutely outnumbered—by the votes of outsiders.

The Court's opinion characterizes this, disparagingly, as an attempt to "protec[t] the integrity of the Party against the Party itself." *Ante,* at 224. There are two problems with this characterization. The first, and less important, is that it is not true. We have no way of knowing that a majority of the Party's members is in favor of allowing ultimate selection of its candidates for federal and statewide office to be determined by persons outside the Party. That decision was not made by democratic ballot, but by the Party's state convention—which, for all we know, may have been dominated by officeholders and office seekers whose evaluation of the merits of assuring election of the Party's candidates, vis-a-vis the merits of proposing candidates faithful to the Party's political philosophy, diverged significantly from the views of the Party's rank and file. I had always thought it was a major purpose of state-imposed party primary requirements to protect the general party membership against this sort of minority control. See *Nader v. Schaffer,* 417 F.Supp. 837, 843 (Conn.), summarily aff'd, 429

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U.S. 989, 97 S.Ct. 516, 50 L.Ed.2d 602 (1976). Second and more important, however, *even if* it were the fact that the majority of the Party's members wanted its candidates to be

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determined by outsiders, there is no reason why the State is bound to honor that desire—any more than it would be bound to honor a party's democratically expressed desire that its candidates henceforth be selected by convention rather than by primary, or by the party's executive committee in a smoke-filled room. In other words, the validity of the state-imposed primary requirement itself, which we have hitherto considered "too plain for argument," *American Party of Texas v. White,* 415 U.S. 767, 781, 94 S.Ct. 1296, 1306, 39 L.Ed.2d 744 (1974), presupposes that the State *has* the right "to protect the Party against the Party itself." Connecticut may lawfully require that significant elements of the democratic election process be democratic—whether the Party wants that or not. It is beyond my understanding why the Republican Party's delegation of its democratic choice to a Republican Convention can be proscribed, but its delegation of that choice to nonmembers of the Party cannot.

In the case before us, Connecticut has said no more than this: Just as the republican Party may, if it wishes, nominate the candidate recommended by the Party's executive committee, so long as its members select that candidate by name in a democratic vote; so also it may nominate the independents' choice, so long as its members select him by name in a democratic vote. That seems to me plainly and entirely constitutional.

I respectfully dissent.

1. The statute provides in pertinent part: "No person shall be permitted to vote at a primary of a party unless he is on the last-completed enrollment list of such party in the municipality or voting district. . . ."

2. A "major party" is defined as "a political party or organization whose candidate for governor at the last-preceding election for governor received . . . at least twenty per cent of the whole number of votes cast for all candidates for governor." Conn.Gen.Stat. § 9-372(5)(B) (1985). The Democratic and Republican parties are the only major parties in the State under this definition.

3. The record shows that in October 1983 there were 659,268 registered Democrats, 425,695 registered Republicans, and 532,723 registered and unaffiliated voters in Connecticut. 2 App. to Juris.Statement 244.

4. In the November 1984 elections, the Republicans acquired a majority of seats in both houses of the state legislature, and an amendment to § 9-431 was passed, but was vetoed by the Democratic Governor.

5. Indeed, acts of public affiliation may subject the members of political organizations to public hostility or discrimination; under those circumstances an association has a constitutional right to protect the privacy of its membership rolls. *Bates v. Little Rock,* 361 U.S. 516, 523-524, 80 S.Ct. 412, 416-417, 4 L.Ed.2d 480 (1960); *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 462, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488 (1958).

6. It is this element of potential interference with the rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications. See *Rosario v. Rockefeller,* 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973); *Nader v. Schaffer,* 417 F.Supp. 837 (Conn.), summarily aff'd, 429 U.S. 989, 97 S.Ct. 516, 50 L.Ed.2d 602 (1976). Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules.

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See *Democratic Party of United States v. Wisconsin ex rel. LaFollette,* 450 U.S. 107, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981); *Cousins v. Wigoda,* 419 U.S. 477, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975). These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L.J. 117 (1984).

7. Appellant contends that any infringement of the associational right of the Party or its members is *de minimis,* because Connecticut law, as amended during the pendency of this litigation, provides that any previously unaffiliated voter may become eligible to vote in the Party's primary by enrolling as a Party member as late as noon on the last business day preceding the primary. Conn.Gen.Stat. § 9-56 (1985). Thus, appellant contends, any independent voter wishing to participate in any Party primary may do so.

This is not a satisfactory response to the Party's contentions for two reasons. First, as the Court of Appeals noted, the formal affiliation process is one which individual voters may employ in order to associate with the Party, but it provides no means by which the members of the Party may choose to broaden opportunities for joining the association by their own act, without any intervening action by potential voters. 770 F.2d, at 281, n. 24. Second, and more importantly, the requirement of public affiliation with the Party in order to vote in the primary conditions the exercise of the associational right upon the making of a public statement of adherence to the Party which the State requires regardless of the actual beliefs of the individual voter. Cf. *Wooley v. Maynard,* 430 U.S. 705, 714-715, 97 S.Ct. 1428, 1435-1436, 51 L.Ed.2d 752 (1977); *West Virginia Board of Education v. Barnette,* 319 U.S. 624, 633-634, 63 S.Ct. 1178-1183, 87 L.Ed. 1628 (1943). As counsel for appellees conceded at oral argument, a requirement that independent voters merely notify state authorities of their intention to vote in the Party primary would be acceptable as an administrative measure, but "[t]he problem is that the State is insisting on a public act of affiliation . . . joining the Republican Party as a condition of this association." Tr. of Oral Arg. 40.

8. The District Court entered no findings of fact as to the potential administrative changes necessary to implement the Party rule. As appellant conceded at oral argument, the only evidence in the record before the District Court relating to the administration of the rule was a statement by the State's election attorney in testimony before the legislature that the system would be "workable." *Id.,* at 20. Appellant relies here upon affidavits concerning potential administrative burden which were submitted to the Court of Appeals in support of appellant's request for a stay, entered after this Court noted probable jurisdiction.

9. As we have previously noted, a study commission established by the national Democratic Party concluded that " 'the existence of "raiding" has never been conclusively proven by survey research.' " *Democratic Party of United States v. Wisconsin ex rel. LaFollette,* 450 U.S., at 122-123, n. 23, 101 S.Ct., at 1019-1020, n. 23 (quoting Openness, Participation and Party Building: Reforms for a Stronger Democratic Party 68 (Feb. 17, 1978)). In view of our conclusion that § 9-431 is irrelevant to the question of raiding, we express no opinion as to whether the continuing difficulty of proving that raiding is possible attenuates the asserted state interest in preventing the practice.

10. The record does not disclose the proportion of Connecticut Republican Party nominations that are the result of primary contests.

11. At the present time, 21 States provide for "closed" primaries of the classic sort, in which the primary voter must be registered as a member of the party for some period of time prior to the holding of the primary election. See Ariz.Rev.Stat.Ann. § 16-467 (1984); Cal.Elec.Code Ann. § 501 (West Supp.1986); Colo.Rev.Stat. § 1-2-203 (Supp.1986); Conn.Gen.Stat. § 9-431 (1985); Del.Code Ann., Tit. 15, § 3161 (1981); Fla.Stat. § 101.021 (1985); Kan.Stat.Ann. § 25-

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3301 (1981); Ky.Rev.Stat. §§ 116.045, 116.055 (1982); Me.Rev.Stat.Ann., Tit. 21-A, § 141 *et seq.* (Supp.1986-1987); Md.Ann.Code, Art. 33, § 3-8 *et seq.* (1985); Neb.Rev.Stat. § 32-530 (1984); Nev.Rev.Stat. § 293.287 (1985); N.M.Stat.Ann. § 1-4-16 (1985); N.Y.Elec.Law § 1-104.9 (McKinney 1978); N.C.Gen.Stat. § 163.74 (1982 and Supp.1985); Okla.Stat., Tit. 26, § 1-104 (1976); Ore.Rev.Stat. § 247.201 (1985); Pa.Stat.Ann., Tit. 25, § 2832 (Purdon 1963); S.D. Codified Laws § 12-4-15 (1982); W.Va.Code § 3-1-35 (1979); Wyo.Stat. § 22-5-212 (1977). Sixteen States allow a voter previously unaffiliated with any party to vote in a party primary if he affiliates with the party at the time of, or for the purpose of, voting in the primary. See Ala.Code § 17-16-14(b) (1985); Ark.Stat.Ann. § 3-126 (1976); Ga.Code Ann. § 21-2-235 (1982); Ill.Rev.Stat., ch. 46, ¶ 7-43(a) (1986); Ind.Code § 3-10-1-6 (Supp.1986); Iowa Code §§ 43.41, 43.42 (1985); Mass.Gen.Laws § 53:37 (1984); Miss.Code Ann. § 23-15-575 (1986 pamphlet); Mo.Rev.Stat. § 115.397 (1978); N.H.Rev.Stat.Ann. § 654:34II (1986); N.J.Stat.Ann. § 19:23-45 (West Supp.1986); Ohio Rev.Code Ann. § 3513.19 (Supp.1985); R.I.Gen.Laws § 17-9-26(c) (1981); S.C.Code §§ 7-5-120, 7-9-20 (1976 and Supp.1985); Tenn.Code Ann. § 2-7-115(b)(2) (1985); Tex.Elec.Code Ann. § 162.003 (1986). Four States provide for nonpartisan primaries in which all registered voters may participate, Alaska Stat.Ann. §§ 15.05.010, 15.25.090 (1982); La.Rev.Stat.Ann. §§ 18:401B, 18:521B (West 1979 and Supp.1986); Va.Code § 24.1-182 (1985); Wash.Rev.Code § 29.18.200 (1965), while nine States have adopted classical "open" primaries, in which all registered voters may choose in which party primary to vote. Haw.Rev.Stat. § 12-31 (Supp.1984); Idaho Code §§ 34-402, 34-404, 34-904 (Supp.1986); Mich.Comp.Laws §§ 168.575, 168.576 (1967 and Supp.1986); Minn.Stat. § 204D.08(4) (1985); Mont.Code Ann. § 13-10-301(2) (1985); N.D.Cent.Code § 16.1-11-22 (Supp.1985); Utah Code Ann. § 20-3-19(2) (Supp.1986); Vt.Stat.Ann., Tit. 17, § 2363 (1982); Wis.Stat. §§ 5.37, 6.80 (1983-1984).

12. We note that appellant's direst predictions about destruction of the integrity of the election process and decay of responsible party government are not borne out by the experience of the 29 States which have chosen to permit more substantial openness in their primary systems than Connecticut has permitted heretofore.

13. Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in *Storer v. Brown*, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974), and *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act," a policy decision which is not involved in the present case. See *Anderson v. Celebrezze*, 460 U.S. 780, 802, n. 29, 103 S.Ct. 1564, 1577, n. 29, 75 L.Ed.2d 547 (1983); *Storer v. Brown, supra*, 415 U.S., at 743, 94 S.Ct., at 1285. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.' " *Anderson v. Celebrezze, supra*, 460 U.S., at 789-790, 103 S.Ct., at 1570-1571 (quoting *Storer v. Brown, supra*, 415 U.S., at 730, 94 S.Ct., at 1279).

14. Article I, § 2, cl. 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." The Seventeenth Amendment, which provides for the direct election of United States Senators, states in pertinent part that "[t]he electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

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[1.] Article I, § 2, cl. 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

[2.] "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

[3.] James Wilson referred to this part of the Report of the Committee on Detail as "well considered," and "he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications, for all the States." J. Madison, Journal of the Federal Convention 467 (E. Scott ed. 1893).

[4.] See opinion of Justice Harlan, 400 U.S., at 152, 212-213, 91 S.Ct., at 279, 308-309 (concurring in part and dissenting in part), and opinion of Justice Stewart, *id.*, at 281, 287-289, 91 S.Ct. at 343, 345-347 (joined by Burger, C.J., and BLACKMUN, J.).

[5.] See opinion of Justice Douglas, *id.*, at 135, 141-144, 91 S.Ct., at 270, 273-275, and the joint opinion, *id.*, at 229, 280-281 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.).

[6.] This was certainly the view of Justice Harlan, see *id.*, at 210-211, 91 S.Ct., at 308, and of Justice Stewart and the two Justices who joined his opinion, see *id.*, at 287-290, 91 S.Ct., at 345-347. As Justice Stewart observed: "The Constitution thus adopts as the federal standard the standard which each State has chosen for itself." *Id.*, at 288, 91 S.Ct., at 346. The opinions of Justice Douglas and Justice BRENNAN are silent on the issue.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PEOPLES PARTY OF FLORIDA; ELISE MYSELS; CAROLYN WOLFE; VICTOR NIETO	)	No. **Not Assigned**
Plaintiffs,	)	
v.	)	Judge Not Assigned
FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS; CORD BYRD, FLORIDA SECRETARY OF STATE; BRIAN CORLEY, PASCO COUNTY SUPERVISOR OF ELECTIONS in their Official Capacities;	)	Magistrate Judge Not Assigned
Defendants.	)	

PLAINTIFFS' APPENDIX Vol. II

(Including Table of Authorities and Case Law) in Support of their-

EMERGENCY[1] MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER

Respectfully submitted:

By: /s/Christopher Kruger, atty no. 6281923
Attorney for Plaintiffs (Special Admission Pending)

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[1]Local Rule 3.01(e), requires counsel to designate a motion as "Emergency" or "Time Sensitive" when circumstances so dictate; as the Qualifying Period for candidates to file under state law expires at Noon, June 17, 2022, plaintiffs' counsel has chosen to designate this motion as an "Emergency."

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALAN P. WOODRUFF, DANIEL FENTON, LIBERTARIAN PARTY OF NEW MEXICO, GREEN PARTY OF NEW MEXICO, and DONALD HILLIS,

Plaintiffs,

vs.

MARY HERRERA, in her official capacity as New Mexico Secretary of State,

Defendant.

Civ. No. 09-449 JH/KBM
consolidated with
Civ. No. 10-123 JH/KBM
Civ. No. 10-124 JH/KBM

MEMORANDUM OPINION AND ORDER

In this series of lawsuits, the Plaintiffs seek declarations that portions of the New Mexico Elections Code are unconstitutional, as well as injunctive relief directing the Secretary of State to qualify the Plaintiff political parties as "major" parties and to place the Plaintiff candidates on the general election ballot. The Plaintiffs filed their first lawsuit, *Alan P. Woodruff, Daniel Fenton, Libertarian Party of New Mexico, Green Party of New Mexico, and Donald Hillis v. Mary Herrera*, Civ. No. 09-449 JH/KBM (hereafter, *Woodruff I*), on May 7, 2009. The complaint in *Woodruff I* asserts fifteen separate causes of action, some meritorious, others bordering on frivolous. Early in that case, Plaintiffs moved for and were granted leave to amend their complaint. They failed to do so, however, instead choosing to file numerous and lengthy motions for summary judgment on all their claims, as well as respond to the Defendant's motion to dismiss, all the while pressing the Court to expedite its rulings. This Court did so, investing considerable time and Court resources and placing the case ahead of older cases on the Court's docket. But just days before the Court issued its detailed rulings on most of the Plaintiffs' motions, the Plaintiffs again moved to amend their

complaint to add and alter claims, as well as to add parties. The motion contained no explanation for Plaintiffs' failure to amend when granted leave to do so months earlier, nor did Plaintiffs explain why they filed their many motions for summary judgment and urged the Court to expedite its rulings on those motions, all while planning to amend their complaint in its entirety. As set forth more fully in its February 1, 2010 Memorandum Opinion and Order [Doc. No. 124], the Court denied Plaintiffs' motion for leave to amend on grounds of both undue delay and unfair prejudice to the Defendant.

On February 11, 2010, in an apparent end-around the Court's denial of their motion for leave to amend, Plaintiffs filed two new lawsuits. In *Alan P. Woodruff and Green Party v. Mary Herrera*, Civ. No. 10-123 JH/KBM (hereafter, 10cv123), two of the Plaintiffs from *Woodruff I* filed their complaint asserting the amended claims that they had been denied leave to file in *Woodruff I*. In *Reform Party of New Mexico, La Raza Unida, and New Mexico Libertarian Party v. Herrera*, Civ. No. 10-124 JH/KBM (hereafter, 10cv124), Plaintiffs filed a third lawsuit. The complaint is identical to that in 10cv123, except the Plaintiffs are those parties that the Plaintiffs in *Woodruff I* sought (and were denied) leave to add.[1] Many of the clams in 10cv123 and 10cv124 are identical or very similar to those in *Woodruff I*, although unfortunately the Plaintiffs have chosen a different numbering system, such that the claims in the cases do no correspond by number. Both cases have been

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[1] Plaintiff Alan Woodruff represents both himself and the Green Party in *Woodruff I*, with Michael Keefe representing the remaining parties, including The Libertarian Party of New Mexico. On the other hand, Alan Woodruff is sole counsel for all plaintiffs in 10cv123 and 10cv124, including New Mexico Libertarian Party. On December 27, 2010, counsel for The Libertarian Party of New Mexico filed a notice informing the Court that the entity which is a plaintiff in 10cv124, New Mexico Libertarian Party, is a limited liability company formed by Alan Woodruff and is in no way affiliated with the National Libertarian Party. Counsel further informed the Court that a New Mexico state district court has enjoined Woodruff from representing himself as a candidate of The Libertarian Party of New Mexico.

consolidated into *Woodruff I*. Again, there has been significant motion practice, with Defendants moving to dismiss 10cv123 and 10cv124 on grounds of, *inter alia*, res judicata. Similarly, Plaintiffs have once again filed numerous motions for summary judgment on their claims. Overall, it appears to the Court that Plaintiffs' tactic in this litigation has been to attempt to overwhelm the Secretary of State with claims and motions, with almost total disregard for efficiency or conservation of judicial resources.

DISCUSSION

I. PLAINTIFF'S RENEWED MOTION FOR SUMMARY JUDGMENT ON COUNTS V AND VI OF CASE 1:09-CV-449 (Doc. No. 132) and PLAINTIFFS' MOTION FOR LEAVE TO FILE EXCESS PAGES (Doc. No. 134)

Plaintiffs have filed an 81-page motion for summary judgment on Counts V and VI of their complaint in *Woodruff I*, which correspond to Counts IV and V in 10cv123 and 10cv124. In the same motion, Plaintiffs also request summary judgment on Counts I-A and VIII in 10cv123 and 10cv124. The Local Rules provide that motions with supporting memoranda must be no longer than 27 pages in length, and thus Plaintiffs' motion is three times that limit. Plaintiffs also filed a motion for leave to exceed the page limit contemporaneously with their motion for summary judgment. The Secretary of State did not file a response in opposition to the motion to exceed page limit, though that creates no obligation for the Court to grant the motion, as the Court has discretion regarding when to permit extensions of page limits.

When the circumstances warrant, the Court is generous with requests for extensions of page limits. However, the present request is extraordinary—never before has any party asked this Court for permission to file a motion for summary judgment of such length, particularly where, as here, there are almost no facts in dispute. This suggests that there may not be a true need for such a large extension of the page limits. A brief review of the motion itself [Doc. No. 132] bears out this

conclusion. According to the Table of Contents, the first 32 pages of the motion are "summary," "introduction to the law of ballot access," and "general considerations regarding New Mexico's ballot access schema." Only then do Plaintiffs finally begin to address any specific cause of action for which they are moving for summary judgment. The Court questions how much of this copious introductory material is actually essential to Plaintiffs' motion. Furthermore, the motion is rife with lengthy footnotes typed in print that is significantly smaller than the 12-point font required by our Local Rules. In addition, Plaintiffs' motion is not double-spaced, as required by the Local Rules, but is perhaps 1.5 spaced.[2] This is evident by the number of lines of text that Plaintiffs are able to squeeze onto a page, as compared to the Court and the Secretary of State, both of whom have used double spaced text in their documents. These violations of the Local Rules indicate that if the Plaintiffs' motion were in compliance, it would be substantially longer than 81 pages–perhaps even more than 100 pages in length.

In accordance with the foregoing, Plaintiffs' motion for extension of page limit [Doc. No. 134] will be denied. As a result, the Court will consider only the first 27 pages of the motion, which contain no argument or request for relief. Therefore, Plaintiffs' motion for summary judgment [Doc. No. 132] will be denied as well, as the first 27 pages of the motion do not assert sufficient grounds for any relief. However, the Court grants Plaintiffs leave to refile their motion for summary judgment as to Count V in *Woodruff I* only[3], provided that it meets <u>all</u> formatting requirements of

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[2] The Court has noticed Plaintiffs' violations of the Local Rules governing font size and line spacing throughout this litigation. Preferring to address the issues on their merits, until this point the Court has chosen to overlook those violations. However, in consideration of the Plaintiffs' attempt to file such an egregiously long motion, the Court declines to overlook those violations any longer.

[3] Plaintiffs may not include in their revised motion for summary judgment any argument regarding Count VI in *Woodruff I* because the Court has already dismissed Count VI with

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the Local Rules and provided the motion is no longer than 35 pages in length.

II. DEFENDANT'S FIRST MOTION TO DISMISS (filed as Doc. No. 6 in Civ. No. 10-124 JH/KBM)

In this motion, Defendant Mary Herrera[4] has filed a motion to dismiss the Complaint in *Reform Party of New Mexico, La Raza Unida, and New Mexico Libertarian Party v. Herrera*, Civ. No. 10-124 JH/KBM (hereafter, "10cv124"). Defendant's motion, filed as Doc. No. 6 in 10cv124, is based on the premise that all of the Plaintiffs' claims have already been raised and ruled upon by the Court in *Woodruff I*. While the Secretary of State acknowledges that the doctrine of *res judicata* does not apply, as the plaintiffs in 10cv124 are entirely different than those in *Woodruff I*, she contends that the Court has already addressed the legal claims contained in the Complaint and therefore need not do so again. The Secretary of State's motion to dismiss is grounded entirely on the theory that the Plaintiffs' claims, which are purely legal claims regarding the constitutionality of both the Election Code and the Secretary of State's actions, have already been adjudicated by this Court and need not be rehashed; she does not make any new legal arguments in her motion.

The Secretary of State's motion will be granted in part and denied in part. The Court agrees that Counts II-B and II-C in 10cv124 are essentially the same as Counts III-B and III-C in *Woodruff I*, which the Court dismissed with prejudice in a Memorandum Opinion and Order entered

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prejudice. *See* Doc. No. 103. Plaintiffs may not include any argument regarding Count VIII in 10cv123 and 10cv124 because in Part VI of this Memorandum Opinion and Order, *infra*, the Court has denied Plaintiffs' motion for summary judgment on Count VIII. Finally, Plaintiffs may not include argument regarding Count I-A in 10cv123 and 10cv124 because that claim is identical to Count II-C in *Woodruff I*, a claim that has been fully briefed and dismissed with prejudice in that case.

[4] As of January 1, 2011, Mary Herrera is no longer the Secretary of State. Dianna J. Duran now holds that office.

December 8, 2009. *See* Doc. No. 103. For the same reasons set forth in that Memorandum Opinion and Order, the Court concludes that Counts II-B and II-C in 10cv124 should be dismissed with prejudice as well. Furthermore, the Court has previously dismissed with prejudice Count VI in *Woodruff I*. Plaintiffs in 10cv124 have reasserted that claim as Count V, though their basis for the claim is narrower. However, the same grounds upon which the Court previously dismissed that claim still apply, and therefore, based upon the reasoning set forth in its December 8, 2009 Memorandum Opinion and Order, the Court also will dismiss with prejudice Count V in 10cv124.

The Court will deny the Secretary of State's motion to dismiss in all other respects. Specifically, Counts VII and VIII in *Woodruff I*, which correspond to Counts VI and VII in 10cv124, were dismissed without prejudice. The Court will not, at least at this stage, dismiss these newly asserted claims based solely upon its previous rulings.[5]

In accordance with the foregoing, the Secretary of State's motion to dismiss with be granted in part, to wit: Counts II-B, II-C, and V in 10cv124 are dismissed with prejudice. The remainder of the motion to dismiss is denied.

III. DEFENDANTS' MOTION TO DISMISS CASE 10cv123 ON RES JUDICATA GROUNDS (Doc. No. 135)

Pursuant to the doctrine of res judicata "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Wilkes v. Wyo. Dep't of Employment Div. of Labor Standards*, 314 F.3d 501, 503-04 (10th Cir. 2002) (quotation omitted). "Under Tenth Circuit law, claim preclusion applies when three

[5] However, the Court rules upon Plaintiffs' Motion for Summary Judgment on Count VII (Doc. No. 161) in Part XI, *infra*.

elements exist: (1) a final judgment on the merits in an earlier action; (2) identity of parties or privies in the two suits; and (3) identity of the cause of action in both suits." *MACTEC Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005).

Plaintiff argues, and the Court agrees, that the elements of res judicata are not satisfied because there has not yet been a final judgment entered in *Woodruff I*. Indeed, as discussed in Part I, supra, of this Memorandum Opinion and Order, Count V of *Woodruff I* remains pending. Accordingly, Defendant's motion to dismiss will be denied.

IV. PLAINTIFFS' MOTION FOR EX PARTE PRELIMINARY INJUNCTION RE: COUNT II-E IN CIV. NO. 10-123 JH/KBM (Doc. No. 130) and in CIV. NO. 10-124 JH/KBM (Doc. No. 8)

Plaintiffs have moved for an *ex parte* preliminary injunction on Count II-E of their Complaint in 10cv123. Plaintiffs also filed their motion as Doc. No. 130 in *Woodruff I*, as well as Doc. No. 8 in 10cv124. After reviewing the Complaints in 10cv123 and 10cv124, the Plaintiffs' motion, and the authorities filed by counsel, the Court concludes that the motion should be denied.

In Count II-E of their Complaint in 10cv123, Plaintiffs allege that the New Mexico Legislature has failed to set forth in the Election Code a specific deadline for minor parties to file qualifying petitions.[6] They assert that the Secretary of State has no authority to impose a filing deadline not found in the statute, and that requiring parties to file their petitions on the date established by NMSA 1978, § 1-7-4 for filing party rules and regulations violates the Elections Clause found at Article 1, Section 4 of the United States Constitution. The Complaint in 10cv123 asks the Court to declare the Secretary of State's actions unconstitutional and to enjoin the Secretary

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[6] While Plaintiffs also dispute the requirement that they file qualifying petitions, for purposes of this motion they challenge only the filing deadline for such petitions.

from requiring the Green Party to file any qualifying petition whatsoever. In their motion, Plaintiffs ask the Court to order the Secretary of State to recognize the Green Party as a qualified party in New Mexico.

This Court has previously set forth the legal standard for preliminary injunctions (*see* Doc. No. 204), and therefore incorporates that discussion herein. As with Plaintiffs' previous motion for preliminary injunction, they seek a traditionally disfavored form of injunctive relief—specifically, relief that changes the status quo and that is mandatory in nature. Accordingly, in order to prevail the Plaintiffs must meet the heavier burden described in *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975-76 (10th Cir. 2004) (en banc). The Court concludes that the Plaintiffs cannot meet that burden.

In a Memorandum Opinion and Order entered on March 31, 2010, the Court stated that the Secretary of State must accept minor party petition signatures with either the signatory's residential address or his address as printed on his voter registration, but that otherwise Plaintiffs must satisfy all other petition requirements. On October 12, 2010, the Tenth Circuit upheld that ruling. *See Woodruff v. Herrera*, 623 F.3d 1103 (10th Cir. 2010). Thus, Plaintiffs' argument that they could not file petitions because they had no idea how to fill out the petition forms is without merit. Further, Plaintiffs' motion fails because their requested relief—that the Court simply order the Secretary of State to place the Green Party on the ballot—is adverse to the public interest as it directly undermines the remaining ballot access procedures set forth by the Legislature and that are applicable to other parties.

Finally, for the same reasons set forth in this Court's prior Memorandum Opinions and Orders, it rejects Plaintiff's contention that the Secretary's decision to impose a filing deadline violates the Elections Clause. Indeed, the Legislature has in fact set forth in the Election Code the

time, place and manner of federal elections as required by the Constitution. In the face of the lack of an express deadline for filing minor party petitions in the Election Code, the Secretary of State has supplied such a deadline. As before, the Court concludes that this does not usurp the constitutional authority of the Legislature to set the time, place and manner of federal elections. Thus, the Court will deny Plaintiffs' motion for the additional reason that they have failed to demonstrate a substantial likelihood of success on the merits.

V. PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION RE: COUNTS II-A AND III (Doc. No. 131)

In Count II-A, Plaintiffs allege that the Election Code's provision requiring minor party candidates to file petitions in order to be included on the general election ballot, Section 1-8-2, violates the Elections Clause of the United States Constitution. Specifically, they allege that (1) the Secretary of State's petition form for minor party candidates, which is to be signed by "eligible electors" is inconsistent with the Election Code, which states that such petitions may only be signed by "voters"; (2) the Secretary of State's minor party candidate nominating petition form, which requires the candidate's party affiliation, is inconsistent with the statute, which imposes no such requirement; (3) the Secretary of State refuses to accept candidate petition signatures on a form identifying the candidate as the candidate of a party other than the party whose nomination he receives; (4) the Secretary of State's form requires signers of candidate nominating petitions to state their address on their voter registration form, a requirement not in the Election Code; and (5) the Secretary of State requires candidates to use her form, even though it is not consistent with the statute.

In Count III, which is extremely similar to Count II-A, Plaintiffs allege that the petition

requirements for both minor parties and minor party candidates are unconstitutionally vague. Specifically, they allege that (1) while Section 1-7-2(A) requires that signers of minor party qualifying petitions must be "voters," the Secretary of State's petition form for minor parties requires signatures of "eligible electors;" (2) the Secretary of State requires candidates to use her form, even though it is not consistent with the statute; (3) the Secretary of State's candidate petition form requires signers to state their address on their voter registration form, a requirement not found in Section 1-8-2(B) of the Election Code.

In their motion[7] for preliminary injunction on Counts II-A and III, Plaintiffs Woodruff and the Green Party of New Mexico ask the Court to enjoin the Secretary of State from enforcing the minor party and minor party candidate qualifying petition requirements in Sections 1-7-2(A) and 1-8-2(B), respectively.[8] Plaintiffs' motion will be granted in part.

First, this Court has already entered summary judgment, including declaratory and injunctive relief, in favor of Plaintiff Green Party as to the inconsistent provisions of the Election Code regarding the addresses of voters who sign minor party qualifying petitions, and that decision has been upheld on appeal. *See* Doc. Nos. 106, 151, 154, 186 and 212. To the extent that Plaintiffs ask

[7] In addition to the formatting violations already discussed earlier in this Memorandum Opinion and Order, Plaintiffs' reply brief (Doc. No. 177) violates the Local Rules by being over the 12-page limit for replies. Plaintiffs did not file a motion for extension of the page limit. Accordingly, the Court has considered only the first twelve pages of Plaintiffs' reply brief.

[8] In their motion, Plaintiffs ask the Court to enter preliminary injunction on the grounds that Section 1-8-2(E) unconstitutionally limits voters to signing only one petition for any candidate for a single office in the same election, and that the Secretary of State's candidate petition form impermissibly requires signers to represent that they have not and will not sign the petition of any other candidate for the same office in the same election. The Court has scoured Counts II-A and III of Plaintiffs' Complaint and cannot find any hint of this claim. Once again, the Court is left with no choice but to deny Plaintiffs' request for relief on a claim that they have not pled.

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for that same relief again, their motion is moot. However, the Election Code contains the same inconsistent provisions regarding the addresses of voters who sign minor party *candidate* nominating petitions, and therefore those provisions pose the same problems in terms of vagueness of the statute. The Court's current Amended Partial Final Judgment does not address the issue of candidate nominating petitions. However, in her response brief, the Secretary of State seems to assume that the issue already has been decided formally as to the candidate petitions, and that is the only opposition she raises on this issue. Thus, the Court concludes that it should amend its partial final judgment in favor of Plaintiffs to expressly state that the Secretary of State must accept signatures on minor party *candidate* petition forms that are accompanied by the signer's address as registered or his residential address.[9]

Second, the Election Code provides that persons signing the nominating petitions required for minor parties and minor party candidates declare that they are "voters of New Mexico." *See* NMSA 1978, § 1-7-2(A) (emphasis added). Similarly, Section 1-8-2(B) of the Election Code provides that minor party candidates must file "a petition containing a list of signatures and addresses of voters. . ." (emphasis added). However, the Secretary of State requires minor parties and minor party candidates to use a form of petition in which signatories must verify that they are "qualified electors" of a particular New Mexico county, and thus varies from the language of Section 1-7-2(A). The terms "voter" and "qualified elector" are both defined in the Election Code. A "qualified elector" is "any person who is qualified to vote under the provisions of the constitution

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[9] One typically would not enter partial final judgment as a form of relief on a motion for preliminary injunction. However, because the legal issue is identical to one that has already been decided conclusively, and because the Secretary of State herself is treating it as such, the Court concludes that modifying its Partial Final Judgment is appropriate under the circumstances.

of New Mexico and the constitution of the United States," NMSA 1978 § 1-1-4, while as previously stated above, a "voter" is "any qualified elector who is registered under the provisions of the Election Code." *Id.* at § 1-1-5. Thus, one may be a qualified elector without being a voter. Further complicating matters is Section 1-4-2, which provides that "Any person who *will be* a qualified elector at the date of the next ensuing election shall be permitted . . . to register and become a voter." (emphasis added). Thus, one may be a qualified elector without being a "voter," and one may register to vote without yet becoming a qualified elector, but in order to be a "voter" as defined by the Election Code, one must be both a qualified elector and registered to vote.

The Court agrees with the Plaintiffs that the Election Code draws a distinction between voters and qualified electors, and that it clearly provides that only voters may sign qualifying petitions for minor political parties and nominating petitions for their candidates. The Court also agrees with Plaintiffs that by stating they must be signed by qualified electors, not voters, the Secretary of State's petition forms for minor parties and their candidates are at odds with the Election Code. It is undisputed that the Secretary of State has no authority to promulgate petition forms that are at odds with the statute or that, despite this, she requires minor parties and their candidates to use only her forms of petition. Thus, the Court agrees that Plaintiffs have shown a likelihood of success on the merits, one of the requirements for a preliminary injunction.[10]

However, the Court does not believe Plaintiffs have demonstrated that they will suffer irreparable harm if a preliminary injunction does not issue. Plaintiffs argue that minor parties and their candidates run the risk of obtaining signatures from qualified electors who are not voters, as

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[10] The Secretary of State has not argued two of the elements for preliminary injunction, that an injunction would be adverse to the public interest or that the threatened injury to the Plaintiffs is not outweighed by the damage to the Secretary of State. Therefore, the Court does not discuss those elements here.

those terms are defined in the statute, and therefore having those signatures vulnerable to a court challenge that could undermine the validity of their petitions. But as the Secretary of State correctly pointed out, Plaintiffs can easily avoid this risk by ensuring that those who sign their petitions are voters under the statute—that is, that they are qualified electors who are registered to vote in New Mexico. Plaintiffs are clearly aware that this is what the Election Code demands, and such signatures would be beyond challenge by either the Secretary of State or any third party. The fact that the Secretary of State's form would ostensibly and improperly enlarge the pool of persons eligible to sign Plaintiffs' petitions does not cause them irreparable harm, when they are aware of that fact and it is easily within their power to comply with the statute. The injunctive relief that Plaintiffs request–that their names be placed on the ballot–is also inappropriate. Thus, the Plaintiffs' motion for preliminary injunction regarding the Secretary of State's requirement that petitions be signed by qualified electors rather than voters will be denied. The merits of the claim, however, and Plaintiffs' request for declaratory relief remain pending.

Plaintiffs' motion is therefore denied in part and granted in part.

VI. PLAINTIFFS' MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION RE: COUNT VIII IN 10cv123 (DOC. NO. 138) AND PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT VIII (DOC. NO. 162)

In Count VIII of the Complaint in 10cv123, Plaintiffs Alan Woodruff and the Green Party of New Mexico allege that NMSA 1978, § 1-8-45 requires that, in order to run as an independent candidate, the candidate's voter registration must not contain a designation of party affiliation, and that this provision denies candidates the right to engage in political speech by declaring their support for the positions and philosophies of the parties they identify on their voter registration. Plaintiffs further allege that the State of New Mexico has no interest in denying ballot access to candidates

who identify on their voter registration a preference for a political party that has no organizational structure in New Mexico, or which has otherwise failed to qualify as a political party under the Election Code. They contend that the State of New Mexico has no interest in denying candidates whose parties do not qualify for ballot access the right to instead run as independent candidates. In terms of relief, Plaintiffs ask the Court to declare that § 1-8-45 unconstitutionally impairs the rights of all candidates having a voter registration affiliation with a party that does not qualify for ballot access.

There are two pending motions regarding Count VIII of the Complaint in 10cv123.[11] The first is a motion for preliminary and permanent injunction (Doc. No. 138) brought by both Alan Woodruff and the Green Party of New Mexico to bar the Secretary of State from enforcing NMSA 1978, § 1-8-2(D) and § 1-8-18(A) of the Election Code because they are unconstitutional. Plaintiffs' motion does not mention § 1-8-45, which is the only section of the Election Code discussed in Count VIII and the only provision that Plaintiffs ask the Court to declare unconstitutional in Count VIII. Thus, there is a complete disconnect between the motion and Count VIII of the Complaint, and certainly Count VIII gave the Secretary of State no notice that Plaintiffs would be seeking injunctive relief regarding § 1-8-2(D) and § 1-8-18(A). Accordingly, the motion (Doc. No. 138) will be denied.

The second motion regarding Count VIII is a motion for summary judgment by Alan Woodruff only (Doc. No. 162). He asks the Court to enter declaratory judgment that together § 1-8-

[11] The Plaintiffs have forced the Court to infer that their motions refer to Count VIII in 10cv123, and not one of the other consolidated cases. In making that inference, the Court has relied upon the fact that the captions on both motions are identical to that on the Complaint in 10cv123, and Plaintiffs put that case number as the leading number on the captions of their motions. Furthermore, with regard to their motion for preliminary and permanent injunction, on the docket text Plaintiffs described the motion as relating to 10cv123.

2(D) and § 1-8-45 unconstitutionally impair his right of access to the ballot and to order the Secretary of State to include Woodruff on the ballot as a candidate for the U.S. House of Representatives. In his motion and reply brief, Woodruff argues that under §§ 1-8-2(D) and 1-8-18(A), in order to be the nominee of either a minor or major party, a candidate must demonstrate by his voter registration that he is affiliated with that party on the date of the Governor's proclamation. Furthermore, a candidate cannot be the nominee of any party unless that party has independently qualified for ballot access by satisfying the petition signature requirements of § 1-7-2(A) of the Election Code, and the qualifying petitions for minor parties are due on the first Tuesday of April. Woodruff's argument therefore boils down to this:

> The filing date for minor party "qualifying" petitions is more than two months after the date a candidate must be registered as a member of the party whose nomination he seeks. But if the party with which the candidate is registered on the date of the Governor's proclamation does not "qualify," he cannot be a candidate ***at all*** because he is barred, by NMSA § 1-8-45(A), from being an "Independent" candidate. Therefore, candidates must decide, before the date of the Governor's proclamation, whether to register to vote ***with no party affiliation***, and be an Independent candidate, or register ***as a voter of a minor party***, and risk being denied any opportunity to be a candidate if his party does not "qualify" for ballot access. This requirement imposes an unjustifiable burden on candidates.

Doc. No. 162 at 2 (emphasis in original). In Woodruff's case, he states that on the date of the Governor's proclamation, he was registered to vote as a member of the Green Party, which had been disqualified after the last election and did not meet the petition requirements of § 1-7-2(A) for qualifying as a minor political party for the November 2010 election. Therefore, Woodruff cannot appear on the general election ballot as a candidate of the Green Party, nor can he be an independent candidate. Consequently, Woodruff suggests that the Court should order the Secretary of State to place his name on the ballot for U.S. Representative.

The Court disagrees with Woodruff for two alternate reasons. The first reason is substantive. As this Court has held on prior occasions, the Election Code's procedures for qualification of parties and for ballot access for individual candidates, including petition signature requirements, are not unconstitutional (beyond the voter registration requirement for candidates or the vague requirements regarding a petition signer's address), nor do they violate due process by imposing undue burdens upon minor parties. Woodruff's claim in Count VIII should be analyzed through the balancing test set forth in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). *Anderson* dealt with a due process claim, and there is widespread recognition that the *Anderson* test is appropriate for both First and Fourteenth Amendment challenges to state election laws. *See, e.g., Crawford v. Marion County Election Board*, 553 U.S. 181, 128 S. Ct. 1610, 1616 (2008). Specifically, a court

> must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it must also consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Id.

The burden that Woodruff identifies here is the choice that a candidate must make before the date of the Governor's proclamation, if that candidate is a member[12] of a party that is not qualified.[13]

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[12] The Court has held that the Secretary of State may not require a candidate to be registered to vote or to prove party affiliation through voter registration. Thus, it is not clear to the Court at this time the manner or the extent to which §§ 1-8-2(D) and 1-8-18(A) will be enforced in the future. However, that question is not currently before the Court.

[13] Under § 1-7-2, a candidate will know very shortly after the last general election whether or not his party has retained its qualified status based upon its candidates' performance in that election.

The candidate may continue to be a member of that party, but if so, he risks being barred from the ballot if his party fails to obtain the required petition signatures to become a qualified political party. On the other hand, he can disassociate himself from all political parties and run as an independent candidate instead. Woodruff argues that this choice imposes an unfair burden on candidates who are not members of major parties, in that they cannot possibly know in January, at the date of the proclamation, whether their parties will obtain the required petition signatures by the April deadline. Woodruff contends that this impairs his right to ballot access. The Court acknowledges that this does impose some burden on candidates who are affiliated with minor parties that are not qualified as of the date of the Governor's proclamation, as they must decide at that point whether to risk running as a member of that party (and perhaps being denied access to the ballot if their party does not qualify at a later time), or to abandon party affiliation and simply run as an independent.

Weighed against this, the Secretary of State argues that in order to ensure orderly elections, the State has an interest in preventing candidates from having two separate opportunities to get on the general election ballot. For example, major party candidates who lose in the primary election cannot then become independents in order to get their names on the general election ballot. Similarly, candidates of minor parties who fail to secure their party's nomination cannot then become independents in order to run in the general election. In the same vein, candidates who are members of non-qualified minor parties who choose to pursue candidacy as members of those parties cannot later become independents when their first attempt to get on the ballot fails as a result of their party's failure to achieve qualified status. To that extent, this is a burden that all candidates must bear: that their initial attempt to gain access to the general election ballot as a representative of a party may not bear fruit. The Court concludes that this burden is necessary to avoid the confusion that would arise if candidates that were initially identified with a political party at the

primary stage were suddenly allowed to reenter the race as independents. Thus the plaintiff's motion should be denied.

The Court will deny Plaintiffs' motion for summary judgment on alternative, procedural grounds. As the Secretary of State has correctly pointed out, Woodruff argues and moves for summary judgment on different grounds than those he pled in Count VIII of his Complaint in 10cv123. In that claim, Plaintiffs did not plead the contention set forth in Woodruff's motion that the interplay of Sections 1-8-2(D) and 1-8-45 of the Election Code unfairly forces a candidate to choose, before the Governor's proclamation, whether to run as a member of a minor party or to run as an independent candidate. Instead, Plaintiffs pled a similar, but slightly different cause of action based upon Section 1-8-45 alone. As pled, Plaintiffs' claim is that Section 1-8-45, standing alone, is unconstitutional because a candidate whose party fails to qualify for an election cycle cannot gain access to the ballot as an independent candidate. It would be improper to grant summary judgment to Woodruff on a claim that he has not pled, and of which the Secretary of State received no prior notice. For this additional reason, the Court will deny Woodruff's motion.

Accordingly, Plaintiffs' motion for summary judgment on Count VIII (Doc. No. 162) will be denied.

VII. PLAINTIFFS' EMERGENCY MOTION FOR EX PARTE INJUNCTION AND SUMMARY JUDGMENT ON COUNT VI (Doc. No. 160)

In Count VI of their Complaints in 10cv123 and 10cv124, Plaintiffs allege that Section 1-8-2(B) of the Election Code is unconstitutional. That section provides that minor parties must provide the names of their candidates, along with those candidates' nominating petition signatures, "on the twenty-first day following the primary election in the year of the general election." According to

Plaintiffs, the requirement that minor parties and candidates file their papers on one day only is unconstitutional, although Plaintiffs do not allege what constitutional right (due process, equal protection, free speech, freedom of association, etc.) it allegedly violates. Plaintiffs asserted this same claim in *Woodruff I*, where it was labeled Count VII. In a Memorandum Opinion and Order entered December 8, 2009, the Court dismissed the claim without prejudice, noting that Plaintiffs had failed to plead it adequately, thereby making it impossible to analyze the constitutional arguments Plaintiffs were making. Now, Plaintiffs have attempted to revive the claim. Despite the fact that they still have not identified the constitutional right that they believe Section 1-8-2(B) violates, they now ask the Court to enter either a temporary or permanent injunction ordering th e Secretary of State to place their names on the general election ballot as a remedy . (This, despite the fact that there is no indication that Plaintiffs would be unable to file their papers on the date imposed by statute.) Alternatively, they request entry of summary judgment in their favor, including not only the foregoing injunctive relief, but also declaratory relief holding Section 1-8-2(B) to be unconstitutional. The Court will deny the motion in its entirety.

Plaintiffs have failed to show that they are entitled to injunctive relief. As the Court has previously observed, a mandatory preliminary injunction—one which requires the nonmoving party to take affirmative action—is "an extraordinary remedy" and is generally disfavored. *Little v Jones*, 607 F.3d 1245, 1251 (10th Cir. 2009). Accordingly, in order to prevail "the movant must make a heightened showing of the four factors." *Id.* For our purposes here, two of those factors are particularly relevant: 1) a likelihood of success on the merits; and (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief. With regard to the latter, Plaintiffs have utterly failed to show irreparable harm. They contend that it is unreasonable to designate only one day for minor parties and their candidates to file papers, because certain events—a natural

disaster, an accident, or a special declaration of a holiday that closes the Secretary of State's office on that day—might prevent such filings. As Plaintiffs have failed to come forward with any evidence that any of this is likely to happen, it is purely speculative and therefore does not satisfy Plaintiffs' burden to prove irreparable harm. *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009). Plaintiffs also claim that their legal challenges to the Election Code have created uncertainty regarding their filing obligations under the statute, thereby making it impossible for them to file papers on the required date and subjecting them to irreparable harm. This Court disagrees—there mere fact that a party has raised a constitutional challenge to the Election Code does not mean that the Code's provisions and requirements do not apply to that party while the challenge is pending. And, as the Tenth Circuit pointed out, this Court's rulings on Plaintiffs' claims neither relieved Plaintiffs from their obligations under the Election Code nor rendered those obligations uncertain. *Woodruff v. Herrera*, 623 F.3d 1103 (10th Cir. 2010).

In addition, Plaintiffs have failed to demonstrate that they are entitled to prevail on the merits of their claim—a fact that requires denial of their request for both preliminary injunctive relief and final summary judgment. Aside from their failure to properly plead the claim, as discussed above, Plaintiffs have also failed to come forward with any authority whatsoever in support of their claim that requiring minor parties and their candidates to file papers on one specific day imposes an unconstitutional burden upon them.[14] On the record currently before the Court, in which Plaintiffs have asserted only a speculative harm and have come forward with no authority in support of their argument that the one day filing period burdens their Constitution rights, Plaintiffs are not entitled

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[14] Indeed, the Court wonders what minimum period of time allotted for filing papers Plaintiffs would consider sufficient under the Constitution. Plaintiffs do not address this question.

to summary judgment. Accordingly, the Court will deny the motion in its entirety.

VIII. PLAINTIFF DANIEL FENTON'S MOTION TO COMPEL COMPLIANCE WITH COURT ORDER AND FOR SANCTIONS (Doc. No. 194) and DEFENDANT'S MOTION FOR LEAVE TO FILE SURREPLY (Doc. No. 197)

Plaintiff Daniel Fenton has moved this Court to enter an order compelling the Secretary of State to accept his filings as a candidate for U.S. Representative from New Mexico's Congressional District 2. It is undisputed that while Fenton attempted, through his attorney Alan Woodruff, to file a "Declaration of Independent Candidacy" with the Secretary of State, he also did not file any signed nominating petitions in support of his candidacy.

In a Memorandum Opinion and Order entered on March 31, 2010 [Doc. No. 151], this Court addressed Fenton's request that it order the Secretary of State to place his name on the ballot as a candidate for U.S. Representative, regardless of whether he had met any of the other requirements for candidates set forth in the Election Code. In denying Fenton's request, the Court held that while the Secretary of State could not require Fenton to prove, through voter registration, his membership in any party or his status as an independent, that fact did not preclude her from requiring Fenton to satisfy all other candidate requirements described in the Election Code, such as filing a Declaration of Candidacy form and nominating petitions with the requisite number of signatures. After this Court certified its ruling for interlocutory appeal under Rule 54(b) [*see* Doc. No. 185], the Tenth Circuit affirmed the Court's order, refused to relieve Fenton of the other requirements of the Election Code, and declined to order the Secretary of State to place Fenton on the ballot. *Woodruff v. Herrera*, 623 F.3d 1103, 1110-11 (10th Cir. 2010).

Now, in his present Motion to Compel Compliance with Court Order and for Sanctions (Doc. No. 194), Fenton asks the Court to compel the Secretary of State to place him on the ballot despite

his failure to file nominating petitions. His motion was rendered moot by the Tenth Circuit's ruling, and therefore will be denied.

Similarly, Defendant's motion for leave to file a surreply (Doc. No. 197) to Fenton's motion is similarly moot and will be denied as such.

IX. PLAINTIFF'S EMERGENCY MOTION FOR PERMANENT INJUNCTION (Doc. No. 137)

In this motion, Plaintiffs ask the Court for entry of final judgment on Counts II-A, II-B, and IV of their Complaint in Woodruff I. However, the motion is moot because the Court has already entered final judgment on these claims. See Doc. Nos. 151, 154, and 185. Furthermore, on appeal the Tenth Circuit Court of Appeals has upheld the declaration and injunction issued by this Court. *Woodruff v. Herrera*, 623 F.3d 1103 (10th Cir. 2010). Accordingly, the relief requested by Plaintiffs in the motion has already been granted in part and denied in part. The motion is denied as moot.

X. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT II-D (Doc. No. 159)

In this motion, Plaintiffs ask yet again for summary judgment on their claim in Count II-D (corresponding to Count III-D in *Woodruff I*) that permitting straight party voting for major party candidates, but not minor party candidates, violates minor parties' constitutional rights to equal protection as well as the Elections Clause. They further allege that identifying major party candidates on the ballot by party affiliation is unconstitutional, when neither independent candidates nor members of unqualified minor parties are similarly identified. This is the same claim that Plaintiffs raised in *Woodruff I*, and Plaintiffs make the same arguments in favor of summary

judgment here. Similarly, the Court will deny Plaintiffs' motion for the same reasons the Court denied their motion in *Woodruff I*. The Court will not repeat its analysis here. Rather, the Court's reasoning can be found in the Court's Memorandum Opinions and Orders entered December 11, 2009 (Doc. No. 106), February 1, 2010 (Doc. No. 124), and September 22, 2010 (Doc. No. 202). Plaintiffs' motion will be denied.

XI. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT VII (Doc. No. 161)

In Count VII of their Complaint in 10cv123 and 10cv124, Plaintiffs allege that Sections 1-8-18(A) and 1-8-2(D) of the Election Code on the grounds that they impair the rights of minor political parties and minor party candidates.[15] Section 1-8-18(A) provides:

> No person shall become a candidate for nomination by a political party or have his name printed on the primary election ballot unless his record of voter registration shows: (1) his affiliation with that political party on the date of the governor's proclamation for the primary election; and (2) his residence in the district of the office for which he is a candidate on the date of the governor's proclamation for the primary election or in the case of a person seeking the office of . . . United States representative, his residence within New Mexico on the date of the governor's proclamation or the primary election.

Similarly, Section 1-8-2(D) provides that "Persons certified as nominees shall be members of that party before the day the governor issues the primary election proclamation." The governor's proclamation occurs in late January, while primary elections take place in early June. *See* NMSA 1978, Sections 1-8-11 and 1-8-12.

Plaintiffs allege, and the Secretary of State admits, that these sections preclude a person who is a non-resident of New Mexico, or a resident who is a non-voter, at the time of the proclamation

[15] Plaintiffs alleged this same claim as Count VIII in *Woodruff I*, where it was dismissed without prejudice. *See* Doc. No. 103.

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from being the nominee of a political party for the office of U.S. representative. Similarly, these provisions preclude political parties from nominating otherwise qualified candidates who are not registered voters, a practice already held by this Court to be invalid. Finally, these portions of the Election Code require political parties to nominate only candidates who are identified on their voter registration as members of that party.

The Court concludes that the motion for summary judgment should be granted. As written, Section 1-8-18(A) requires that one must be registered to vote in New Mexico in order to be nominated as a candidate of a political party or to have one's name printed on the primary election ballot–it provides for no other mechanism for demonstrating one's party affiliation or residency. Thus, as the Court has previously explained, under Tenth Circuit law such provisions violate the Qualifications Clause by effectively making voter registration a requirement for candidacy. *Campbell v. Davidson*, 233 F.3d 1229 (10th Cir. 2000). *See* Doc. No. 106.

Together, Sections 1-8-18(A) and 1-8-2(D) also violate the First Amendment rights of parties to free association by restricting their right to nominate as candidates persons of their choosing. Instead, under these provisions, political parties may only nominate individuals who are registered members of the party. The Supreme Court has indicated that this is unconstitutional. In *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986), a Connecticut statute required voters in any political party primary to be registered members of that party. However, the Republican Party of Connecticut adopted a rule that permitted independent voters to vote in Republican primaries for federal and statewide offices. In addition, the Party brought an action in Federal District Court challenging the constitutionality of the Connecticut statute on the ground that it deprived the Party of its right under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. The Supreme Court agreed, concluding that by forcing parties to

exclude non-members from their primaries, the Connecticut statute impermissibly burdened the free association rights, including the right to partisan political organization, of the Party and its members. Although the issue in *Tashjian* was a party's right to allow non-members to vote in its primary, the Supreme Court had this to say about a party's right to nominate a non-member to represent it in an election:

> Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals.

Id. at 215. Thus, the Supreme Court was unequivocal in stating that states may not prevent parties from nominating non-members for public office. Similarly, in *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223-24 (1989), the Supreme Court struck down a California statute prohibiting political parties from endorsing and opposing candidates in the primaries. The Court reasoned that by preventing a party's governing body from stating whether a candidate adheres to the party's tenets or whether party officials believe that the candidate is qualified for the position sought, the ban directly hampered the party's ability to spread its message and hamstrung voters seeking to inform themselves about the candidates and issues. As a result, it burdened the core right to free political speech of the party and its members. The ban also infringed upon a party's protected freedom of association rights to identify the people who constitute the association and to select a standard-bearer who best represents the party's ideology and preferences, by preventing the party from promoting candidates at the crucial primary election juncture. Finally, the Supreme Court concluded that the ban did not serve a compelling governmental interest.

In light of *Tashjian* and *Eu*, the Court concludes that Sections 1-8-18(A) and 1-8-2(D)

violate the qualifications clause as well as the First Amendment right of free association. The Secretary state not only has failed to distinguish these authorities, but she also has failed to come forward with a compelling state interest to justify the burden that these provisions impose on the free association rights of political parties. Accordingly, Plaintiffs' motion for summary judgment on Count VII should be granted and declaratory judgment entered in their favor.

XII. DEFENDANTS' MOTION TO CONSOLIDATE (Doc. No. 199 in 09cv449 and Doc. No. 3 in 10cv686)

On June 30, 2010, Plaintiffs Alan Woodruff, Terry Mulcahy, Craig Harris, Donald Hillis, Michal Mudd, and the Green Party of New Mexico filed a complaint in Second Judicial District Court, Bernalillo County, New Mexico against three Defendants: Secretary of State Mary Herrera, Director of the Bureau of Elections Don Francisco Trujillo, and Attorney General Gary King. Plaintiffs allege two causes of action. In Count I, they contend that on June 22, 2010, Defendants Herrera and Trujillo refused to accept Plaintiffs Woodruff's and Mulcahy's qualifying papers as Green Party candidates for office (U.S. Representative and Secretary of State, respectively) in the 2010 general election on the grounds that the Green Party is not a qualified party under the New Mexico Election Code. They further allege that the Defendants refused to accept petitions that would have qualified the Green Party. Plaintiffs allege that Herrera and Trujillo should have accepted their qualifying papers because the Election Code does not authorize the Secretary of State to refuse to accept such papers, that Trujillo acted outside the scope of duties of his office, and that both he and Herrera acted maliciously and with intent to advance the personal political objectives of Herrera and the Democratic Party. They claim that these actions violated their constitutional rights and entitle them to money damages. In Count II, which they style as a class action, Plaintiffs

allege that Herrera has conspired with King and other counsel in the Attorney General's office to "avoid judicial determinations of the constitutionality of provisions of the Election Code and the Green Party's right of ballot access," and to misapply the New Mexico Election Code to frustrate ballot access for minor parties and their candidates. They further claim that Defendants have employed unspecified "procedural tactics to prevent the courts from ever considering constitutional challenges to the ballot access provisions of the Election Code." Plaintiffs also assert a litany of alleged misdeeds committed by Herrera with regard to the Election Code and New Mexico campaign finance laws. These actions, they claim, have injured all registered voters in the State, of whom they allege Plaintiffs Hillis, Harris, and Mudd are representative for purposes of a class action.

On July 20, 2010, the Defendants removed the case to this United States District Court. The case was assigned to United States District Judge James Browning and given the number Civ. No. 10-686. The Defendants then filed a motion in 10cv686 (Doc. No. 3) to consolidate that case with *Woodruff I* and the other member cases. Defendants also filed the same motion to consolidate in *Woodruff I* (Doc. No. 199). On September 8, 2010, Judge Browning entered an Order in 10cv686, in which he granted the motion in part, transferring that case to the undersigned United States District Judge based on her familiarity with *Woodruff I* and its member cases. The issue of whether to consolidate 10cv686 into *Woodruff I* remains pending before this Court.

In considering a motion to consolidate actions, a court should initially consider whether the two cases involve a common question of law or fact. *See Servants of the Paraclete v. Great Am. Ins. Co.*, 866 F. Supp.1560, 1572 (D.N.M. 1994) (Burciaga, J.). If there is a common question, Judge Burciaga held, the court should weigh the interests of judicial convenience in consolidating the cases against the delay, confusion, and prejudice that consolidation might cause. *See id. See also Huene*

v. United States, 743 F.2d 703, 704 (9th Cir. 1984)(a court considering consolidation "weighs the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that it would cause."); *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1285 (2nd Cir. 1990) (stating that some factors to consider include whether the specific risks of prejudice and possible confusion are overcome by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses, and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense of all concerned of the single-trial, multiple-trial alternatives).

In this case, the Court concludes that the motions to consolidate should be denied. First, while portions of 10cv686 may be rendered moot by the outcome of *Woodruff I* and its member cases, by and large the two cases do not involve common questions of law and fact. *Woodruff I* involves, for the most part, purely legal challenges to the constitutionality of select portions of the Election Code; there are very few facts in dispute, and the Plaintiffs have asked for injunctive and declaratory relief ordering the Secretary of State to place them on the ballot. In contrast, in 10cv686, the Plaintiffs are challenging not the constitutionality of the Election Code, but rather the actions taken by the Defendants. This raises a plethora of factual questions. Additionally, the Plaintiffs in 10cv686 are requesting money damages. Second, the differences in the parties involved in the cases highlights the fundamental differences between them. Whereas in *Woodruff I* and all its member cases, Plaintiffs sued the Secretary of State in her official capacity, in 10cv686 Plaintiffs are suing the Defendants in both their individual and official capacities. Thus, while Mary Herrera is no longer a party to *Woodruff I*, she is a Defendant in 10cv686 in her individual capacity, alongside current Secretary of State Dianna Duran in her official capacity. Furthermore, to the extent it was necessary, discovery has been completed in *Woodruff I*, while discovery into the fact issues raised

in 10cv686 has yet to be conducted. Thus, consolidation would delay final resolution of *Woodruff I*. In short, the Court concludes that consolidation is not appropriate in this case, and accordingly both motions (Doc. No. 199 in 09cv449 and Doc. No. 3 in 10cv686) will be denied.

XIII. DEFENDANT'S MOTION TO SUSPEND BRIEFING AND FOR SANCTIONS (Doc. No. 142)

The Secretary of State has moved the Court to enter an order suspending all further briefing in the consolidated cases with the exception of Plaintiffs' revised motion for summary judgment on Count V in *Woodruff I*. As grounds for the motion, the Secretary of State points to the procedural history of this litigation, the copious filings by Plaintiffs, and the resulting waste of judicial resources. The Secretary of State further requests that the Court enjoin the Plaintiffs from filing any further lawsuits, claims, or motions without first seeking leave of court.

The Court will grant the motion in part. With the exception of Plaintiffs' motion for summary judgment on Count V in *Woodruff I*, all briefing and motion practice in that case and its member cases is hereby stayed until further notice from the Court.

IT IS THEREFORE ORDERED that:

(1) Plaintiff's Renewed Motion for Summary Judgment on Counts V and VI of Case 1:09-CV-449 (Doc. No. 132) and Plaintiffs' Motion for Leave to File Excess Pages (Doc. No. 134) are both **DENIED**, but the Court grants Plaintiffs leave to refile their motion for summary judgment on Count V provided that they adhere to the limitations set forth herein;

(2) Defendant's First Motion to Dismiss (filed as Doc. No. 6 in Civ. No. 10-124 JH/KBM) is **GRANTED IN PART** as to Counts II-B, II-C, and V in 10cv124 , which are **DISMISSED**

WITH PREJUDICE; the remainder of the motion is **DENIED**;

(3) Defendants' Motion to Dismiss Case 10cv123 on Res Judicata Grounds (Doc. No. 135) is **DENIED**;

(4) Plaintiffs' Motions for Ex Parte Preliminary Injunction Re: Count II-E in CIV. NO. 10-123 JH/KBM (Doc. No. 130) and in CIV. NO. 10-124 JH/KBM (Doc. No. 8) are **DENIED**;

(5) Plaintiffs' Motion for Preliminary Injunction Re: Counts II-A and III (Doc. No. 131) is **GRANTED IN PART and DENIED IN PART**, and the Court will amend its Partial Final Judgment to state that the Secretary must accept either the address as registered or the residential address on all minor party candidate nominating petitions;

(6) Plaintiffs' Motion for Preliminary and Permanent Injunction Re: Count VIII in 10cv123 (Doc. No. 138) and Plaintiffs' Motion for Summary Judgment on Count VIII (Doc. No. 162) are **DENIED**;

(7) Plaintiffs' Emergency Motion for ex Parte Injunction and Summary Judgment on Count VI (Doc. No. 160) is **DENIED**;

(8) Plaintiff Daniel Fenton's Motion to Compel Compliance with Court Order and for Sanctions (Doc. No. 194) and Defendant's Motion for Leave to File Surreply (Doc. No. 197) are **DENIED;**

(9) Plaintiff's Emergency Motion for Permanent Injunction (Doc. No. 137) is **DENIED AS MOOT**;

(10) Plaintiffs' Motion for Summary Judgment on Count II-D (Doc. No. 159) is **DENIED**;

(11) Plaintiffs' Motion for Summary Judgment on Count VII (Doc. No. 161) is **GRANTED**, and declaratory judgment will be entered in their favor;

(12) Defendants' Motion to Consolidate (Doc. No. 199 in 09cv449 and Doc. No. 3 in 10cv686)

is **DENIED**;

(13) Defendant's Motion to Suspend Briefing and for Sanctions (Doc. No. 142) is **GRANTED IN PART** as described herein.

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PEOPLES PARTY OF FLORIDA; ELISE MYSELS; CAROLYN WOLFE; VICTOR NIETO	)	No. **Not Assigned**
Plaintiffs,	)	
v.	)	Judge Not Assigned
FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS; CORD BYRD, FLORIDA SECRETARY OF STATE; BRIAN CORLEY, PASCO COUNTY SUPERVISOR OF ELECTIONS in their Official Capacities;	)	Magistrate Judge Not Assigned
Defendants.	)	

PLAINTIFFS' APPENDIX Vol. III

(Including Table of Authorities and Case Law) in Support of their-

EMERGENCY[1] MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER

Respectfully submitted:

By: /s/Christopher Kruger, atty no. 6281923
Attorney for Plaintiffs (Special Admission Pending)

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[1]Local Rule 3.01(e), requires counsel to designate a motion as "Emergency" or "Time Sensitive" when circumstances so dictate; as the Qualifying Period for candidates to file under state law expires at Noon, June 17, 2022, plaintiffs' counsel has chosen to designate this motion as an "Emergency."

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233 F.3d 1229 (10th Cir. 2000)
DOUGLAS CAMPBELL, KEVIN WILKERSON, RICHARD ADAMS, JOSEPH M. BUERSMEYER, KAREN ROBERTS, AND NORMA-JEAN NICOLE LINGEN, Plaintiffs-Appellees,
v.
DONNETTA DAVIDSON, in her official capacity as Secretary of State for the State of Colorado, Defendant-Appellant.
No. 99-1257
UNITED STATES COURT OF APPEALS TENTH CIRCUIT
November 30, 2000

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO. (D.C. NO. 98-M-1929)

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Elizabeth A. Weishaupl (Ken Salazar, Attorney General, with her on the briefs), First Assistant Attorney General for the State of Colorado, Denver, Colorado, for the Appellant.

Paul Grant, Englewood, Colorado, for the Appellees.

Before HENRY, and BRISCOE, Circuit Judges, and ALLEY, District Judge.[*]

HENRY, Circuit Judge.

The Secretary of State for the State of Colorado ("State") appeals the district court's grant of summary judgment which

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held that the State's imposition of additional qualifications on a person seeking federal office violated Article I, 2, cl. 2 of the United States Constitution. We have jurisdiction under 28 U.S.C. 1291 and, for the reasons set forth below, we affirm.

I. BACKGROUND

The State denied Douglas Campbell's nomination by petition as a candidate for election to the United States House of Representatives for the November 3, 1998 election. Mr. Campbell sought a preliminary injunction against the State in the court below, which was denied. The State then moved to dismiss, and the district court transformed the pleadings into cross-motions for summary judgment under Fed. R. Civ. P. 56(c).

The material facts are not in dispute: In July 1998, Mr. Campbell, sought access to the ballot as an unaffiliated candidate for the United States House of Representatives for the Second Congressional District of Colorado through nomination by petition. Under Colorado law, "[n]o person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of this state on or before the date the term of that office begins." Colo. Rev. Stat. Ann. 1-4-501(1).

Mr. Campbell was a resident of Arvada, Colorado, and at the time he submitted his nominating petition to the State, he was not a registered voter. In August 1998, the State informed Mr. Campbell that his name would not appear on the November 1998 ballot because he was not registered to vote in Colorado as required under Colo. Rev. Stat. Ann. 1-4-802(1)(g). Specifically, 1-4-802(1)(g) states:

No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed.

The district court found that this provision violated the Qualifications Clause of the United States Constitution, which provides:

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the

United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

U.S. Const., art. I, 2 cl. 2.[1] Specifically, the district court stated that the provision

imposes three restrictions on persons seeking election to the House of Representatives that are not found in the United States Constitution. Each is a contradiction of the constitutional language. First, the nominees must reside in the particular district in which they seek election; the Constitution permits residence anywhere in the state of election. Second, voter registration in Colorado requires residency in the state for at least thirty days. The Constitution requires state residency only "when elected." Third, Colorado prohibits voter registration by convicted felons serving sentences or on parole. See C.R.S. 1-2-103(4). The Constitution contains no such restriction on election to Congress.

App. at 115-16. The district court entered summary judgment in favor of Mr. Campbell. This appeal timely followed.

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II. DISCUSSION

A. The Registration Requirement

The State emphasizes that the statute's registration requirement is a valid exercise of the State's power because it serves an important regulatory interest. Specifically, the State (1) likens 1-4-802(1)(g) to the California statute at issue in Storer v. Brown, 415 U.S. 724 (1974); (2) distinguishes 1-4-802(1)(g) from an impermissible substantive qualification; (3) characterizes the statute's requirement to register as procedural in nature; (4) suggests the statute serves to inform the electorate at large; and (5) claims the statute encourages a representative democracy. We shall consider each contention in turn.

1. The Elections Clause

The State contends that 1-4-802(1)(g) is not an additional qualification but rather an enhancement to the State's authority to regulate its ballot under the Elections Clause of the United States Constitution. The Elections Clause provides that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." U.S. Const. art. I, 4, cl.1. That the States maintain a "discretionary power over elections," a power restricted to the procedural regulation of the times, places and manner of elections, is not in dispute. The Federalist No. 59; see also The Federalist No. 60 (examining the potential "danger" of "confiding the ultimate right of regulating its own elections to the Union itself"). See, e.g., Libertarian Party of Illinois v. Rednour, 108 F.3d 768, 777 (7th Cir. 1997) (holding that Illinois ballot access petitioning requirements were "entirely procedural").

The Supreme Court has recognized that "States have a legitimate interest in regulating the number of candidates on the ballot." Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184-85 (1979). "The Elections Clause gives States authority to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved," without "the abridgment of fundamental rights." U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 834 (1995) (striking down Arkansas term limits for election to Congress) (internal quotation marks and citations omitted).

The State suggests that the district court should have applied a more flexible approach, weighing the "'character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments . . .' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule.'" Burdick v. Takushi, 504 U.S. 428, 434 (1992) (quoting Anderson v. Celebrezze, 460 U.S. 780, 789 (1983)). Under Burdick, because Mr. Campbell does not allege that 1-4-802(1)(g) is discriminatory, the State need only show an

important regulatory interest. See id. The State purports that regulation of the ballot satisfies this interest.

a. Regulatory Interest

In support of its regulatory interest, the State relies heavily on Storer v. Brown, 415 U.S. 724 (1974), in which the Supreme Court upheld California's "sore loser" ballot restriction. That provision limited independent candidate access to those candidates who were not affiliated at any time in the preceding one year with a qualified political party, thus prohibiting a candidate from losing a party primary and running as an independent. The Court stated that the "non-affiliation requirement no more establishes an additional requirement for the office of Representative than the requirement that the candidate win the primary to secure a place on the general

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ballot or otherwise demonstrate substantial community support." Id. at 746 n.16. The State contends that Storer's disaffiliation requirement is analogous to Colorado's requirement of registration as a disaffiliated candidate and should therefore be upheld. Mr. Campbell distinguishes Storer's non-affiliation requirement as a "general state policy aimed at maintaining the integrity of the various routes to the ballot." Id. at 733.

Applying the flexible standard of Burdickweighing the character and magnitude of the asserted injury against the State's proffered regulatory interestswe agree that the regulation involved in Storer is distinguishable from the registration requirement in the case at hand. In Storer, the Court recognized that the non-affiliation requirement served to prevent a losing candidate "from continuing the struggle and to limit the names on the ballot to those who have won the primaries and those independents who have properly qualified." Id. at 735. It required the candidate to demonstrate a significant amount of public support before she gained access to the ballot, thereby "winnow[ing] out and finally reject[ing] all but the chosen candidates." Id. It also "further[ed] the State's interests in the stability of its political system," id. at 736, without discriminating against independents. See id. at 733. The "sore loser" disaffiliation requirement was therefore a valid exercise of California's power under Article 1, 4. See id. at 736.

In contrast, here, Colorado's registration requirement does little to "winnow out" chosen candidates, but rather completely excludes those who have not registered. In Storer, disaffiliation did not require a candidate to register, but only to "be clear of political party affiliations for a year before the primary." Id. at 733. In fact, "the [independent] party candidate must not have been registered with another party for a year before he files his declaration." Id. at 733-34 (emphasis supplied). The Colorado registration requirement does not advance ballot housekeeping by limiting access to the ballot based on electoral support; instead, it limits access based on other exclusionary measures. The State's reliance upon the Elections Clause is misplaced. See Thornton, 514 U.S. at 822 (stating that "[p]ermitting individual States to formulate diverse qualification for their representatives" far exceeds "the national character that the Framers envisioned and sought to ensure") (emphasis supplied); see also The Federalist No. 57 ("No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgment or disappoint the inclination of the people."). We do not see the State's important regulatory interest in this provision.

2. Impermissible Qualifications

Rather than analyze the registration requirement as a regulatory interest of the State, the district court focused on the requirement's violation of the Qualifications Clause. The evenhanded procedural regulations permissible under the Elections Clause are not at odds with the purposes of the Qualifications Clause. The Qualifications Clause reinforces the "the true principle of a republic that the people should choose whom they please to govern them." 2

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Debates on the Federal Constitution (J. Elliot ed., 1876), quoted in Powell v. McCormack, 395 U.S. 486, 540-41 (1969); see also Thornton, 514 U.S. at 820-21 (recognizing that "the right to choose representatives belongs not to the States, but to the people"). Consequently, the qualifications provision "is not alterable by the State governments." The Federalist No. 52. Article I provides "reasonable limitations," that allow "the door of this part of the federal government [to be] open to merit of every description, whether native or adoptive, whether young or

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old, and without regard to poverty or wealth, or to any particular profession or religious faith." Id.; see also Thornton, 514 U.S. at 832-33 (stating the purpose of the Elections Clause is to create "procedural regulations," not to give the States "license to exclude classes of candidates from federal office"); Powell, 395 U.S. at 550 (holding that attempted unseating of Congressman Powell, who had been convicted of mishandling congressional funds, was an impermissible imposition of additional qualifications).

The State argues that the district court erred in concluding that 1-4-802(1)(g) is an impermissible qualification. The State proffers the Supreme Court's decision in Thornton as evidence of 1-4-802(1)(g)'s "'evenhanded restrictions'" meant only to "'protect the integrity and reliability of the electoral process'" pursuant to the Elections Clause. Thornton, 514 U.S. at 834 (quoting Anderson, 460 U.S. at 788, n. 9).

The State cites the following language from Thornton for support:

The provisions at issue in Storer and our other Elections Clause cases were thus constitutional because they regulated election procedures and did not even arguably impose any substantive qualification rendering a class of potential candidates ineligible for ballot position. . . . Our cases upholding state regulations of election procedures thus provide little support for the contention that a state-imposed ballot access restriction is constitutional when it is undertaken for the twin goals of disadvantaging a particular class of candidates and evading the dictates of the Qualifications Clauses.

514 U.S. at 835 (emphasis supplied). But, unlike the California statute before the Storer Court, 1-4-802(1)(g) fosters the twin goals discouraged in Thornton: It disadvantages a particular class of candidates and evades the dictates of the Qualifications Clause. First, by preventing those who are ineligible to register to vote (e.g., persons serving criminal sentences or on parole, see Colo. Rev. Stat. 1-2-103(4), and non-residents, see id. 1-2-101(1)(b)), from becoming a candidate under the guise of ballot regulation, and second by precluding all non-registering persons from candidacy.

Tellingly, additional language from Thornton supports the district court's conclusion that 1-4-802(1)(g) imposes an impermissible qualification:

[The provisions at issue in Storer] served the state interest in protecting the integrity and regularity of the election process, an interest independent of any attempt to evade the constitutional prohibition against the imposition of additional qualifications for service in Congress. And they did not involve measures that exclude candidates from the ballot without reference to the candidates' support in the electoral process.

Thornton, 514 U.S. at 835 (emphasis supplied). The State has not demonstrated that 1-4-802(1)(g) protects the integrity or regularity of the election process and, as demonstrated above, the statute does involve measures that unjustly exclude various segments of the population from the ballot. We hold that the statute imposes additional qualifications to the exclusive qualifications set forth in the Constitution, and hence is impermissible.

3. Procedural Requirement

The State, relying heavily on voter registration cases, also attempts to characterize

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voter registration as a simple procedure, or mechanical adjunct, that is authorized under Thornton. Id. at 832 ("The Framers intended the Elections Clause to grant States authority to create procedural regulations. . . . "). In Colorado Project-Common Cause v. Anderson, 495 P.2d 220, 222 (Colo. 1972) (en banc), the Colorado Supreme Court held that the act of registration is "not a qualification but a mechanical adjunct to the elective process" for the

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elector. See also Duprey v. Anderson, 518 P.2d 807, 808 (Colo. 1974) (en banc) ("Registering to vote does not come within the ambit of a constitutional qualification to vote."). The State then concludes that if a voter's registration is a "mechanical adjunct" then a candidate's act of registration is also a "mechanical adjunct."

Mr. Campbell relies upon Dillon v. Fiorina, 340 F. Supp. 729 (D.N.M. 1972) (per curiam) to counter the State's argument. In Dillon, the district court struck down a New Mexico statute that prevented any person from becoming a candidate for United States Senator "unless he ha[d] been affiliated with that party for at least one year prior to the filing date for the primary election." Id. at 730. The court determined that, because the statute in effect required residency for two years within New Mexico, it added an "impermissible requirement" to the qualifications for candidacy. Id. at 731; see also State ex rel. Chavez v. Evans, 446 P.2d 445, 448 (N.M. 1968) (holding that provision requiring candidate to be a resident and qualified elector "unconstitutionally adds additional qualifications"); Hellmann v. Collier, 141 A.2d 908, 912 (Md. 1958) (per curiam) (invalidating requirement that a congressional representative must reside in the district from which he is elected); see also Application of Ferguson, 294 N.Y.S.2d 174, 175-76 (1968) (holding that state may not exclude convicted felon as a candidate for the United States Senate); Danielson v. Fitzsimmons, 44 N.W.2d 484, 486 (Minn. 1950) (holding that state cannot render person convicted of conspiracy to overthrow the government ineligible for Congress).[2]

We agree with Mr. Campbell's assertions. We recognize that an administrative process designed to facilitate participation in the election process does not impinge on the qualifications of a voter, but we agree with the district court that the registration process for a candidate adds to a candidate's qualifications.

As the district court highlighted, an electoral requirement presupposes residency and, in turn, excludes groups from participating in the candidacy process. The authority to "create procedural regulations" as derived from the Elections Clause did "not . . . provide States with license to exclude classes of candidates from federal office." Thornton, 514 U.S. at 832-33. We agree with the district court that the requirement of registration is a substantive requirement that impermissibly imposes qualifications upon would-be candidates.

4. Registration as a Tool to Educate the Electorate

The State also suggests that the registration process under 1-4-802(1)(g) is merely an education process for the voters and election officials to conclude that the candidate meets the requirements of Article I, 2, cl. 2, that is, having attained twenty-five years in age, having been a United States citizen for seven years and being an inhabitant of the State when elected. Mr. Campbell proposes utilizing an affidavit to achieve the same ends. The State's argument is not persuasive. There is no question that the State can insure that its candidates meet the minimum requirements of the Qualifications Clause and in turn represent this fact

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to its electors through affidavits or a variety of other means.

5. Encouragement of a Representative Democracy

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Finally, the State suggests that the simple registration requirement advances the State's interest in maintaining an active representative democracy, one that encourages participation in the electoral process: "A person who, for one reason or another, chooses not to be a part of th[e] electorate [by failing to register] cannot logically represent the whole [i.e. be a candidate]." Aplt's Br. at 17-18. We hold that, even if the State is correct in arguing that a candidate who is registered to vote is somehow "better qualified" than a candidate who is not, this goal cannot be advanced by imposing unconstitutional requirements upon its candidates.

III. CONCLUSION

Thus we AFFIRM the district court's order granting summary judgment in favor of Mr. Campbell and its decision that Colo. Rev. Stat. Ann. 1-4-802(1)(g) blocks the opening of "the door of this part of the federal government" by unconstitutionally restricting access to federal ballots. The Federalist No. 52. The Framers' plan, as noted earlier, allowed voters to pick among a variety of candidates for national offices. The Colorado provision fails, unconstitutionally, to give vent to their choice.

NOTES:

*. The Honorable Wayne E. Alley, Senior District Judge, United States District Court for the Western District of Oklahoma sitting by designation.

1. Other sections of the Constitution place limitations upon members of Congress. See U.S. Const. Art. I, 6, cl. 2 (prohibition against members of Congress from holding other federal office); Amend. XIV, 3 (disqualification from congressional office of persons who, having previously sworn to support the Constitution, subsequently engaged in insurrection, rebellion, or aid to the enemy).

2. Although the Constitution, perhaps recognizing that States run the election process, implicitly authorizes states to preclude felons from voting in federal (or state) elections, see U.S. Const. amend. XIV, which allows States to deny the right to vote to those who have "participat[ed] in rebellion or other crime", the Qualifications Clause prohibits this limitation from restricting ballot access to federal office. See Libertarian Party of Illinois, 108 F.3d at 777 (noting that ballot access petition requirements were "procedural in nature and d[id] not add substantive qualifications, [and did] not violate the Qualifications Clause.") Perhaps some of the Framers remembered troubles they or their friends had with the law when under British sovereignty and preferred that the voters rather than one's former status decide federal officeholding.

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1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Civil Action No. 88CV7646, Courtroom 6

3 ---

4 REPORTER'S TRANSCRIPT

RECEIVED ... 5 1988

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6 COLORADO DEMOCRATIC PARTY and BUIE SEAWELL, State Chair of the Colorado Democratic Party,

7 Petitioners,

8 v.

9 NATALIE MEYER, SECRETARY OF STATE OF COLORADO,

10 Respondent.

11 ---

12

13 The hearing in this matter commenced on Monday,

14 May 2, 1988, before the HONORABLE CLIFTON A. FLOWERS,

15 Chief Judge of the District Court.

16 This transcript contains the ruling of the Court

17 in this matter.

18

19 FOR THE PETITIONERS: Richard W. Daily, Esq.
L. Richard Freese, Jr., Esq.
Elizabeth J. Lentini, Esq.
Pamela R. Mackey, Esq.

20

21 FOR THE RESPONDENT: No appearance

22

23

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1 * * * * *

2 THE COURT: The Court is prepared to rule.
3 This matter is before the Court pursuant to the
4 provisions of C.R.S., 1-1-112, of the Colorado Election
5 Code of 1980. The existence of a valid controversy
6 between the Petitioners and the Respondent within the
7 meaning and intent of C.R.S., 1-1-112, is alleged by
8 the Petitioners and conceded by the Respondent
9 Secretary of State. The Court, therefore, finds that
10 it has jurisdiction over the parties and the subject
11 matter of this controversy pursuant to C.R.S., 1-1-112.
12 The Court finds that on April 10, 1988, the
13 State Central Committee of the Colorado Democratic
14 Party amended their rules to provide that a person will
15 be eligible for designation by assembly as a candidate
16 for nomination at the primary election, or for
17 appointment to a vacancy in such designation, if that
18 person has been a registered Democrat for at least
19 twelve months immediately preceding the date of the
20 general election next following such primary election.
21 C.R.S., 1-1-104(1), defines the term "assembly".
22 The rule of the Colorado Democratic Party, as
23 amended, was made applicable to the 1988 Primary and
24 General Elections. The instant controversy has arisen
25 because of the conflict between the amended rule of the

1 Democratic Party and C.R.S., 1-4-601(4), which provides
2 in material part that no person shall be eligible for
3 designation by assembly as a candidate for nomination
4 at the primary election unless such person has been
5 affiliated with the political party holding the
6 assembly for at least twelve months immediately
7 preceding the date of the assembly.
8 And also, the controversy arises by virtue of
9 1-4-101(3), C.R.S., which provides, in substance, that
10 the Secretary of State shall not place the name of any
11 person on the general election ballot who does not meet
12 those qualifications as set forth in Section 601(4).
13 The issue before the Court is whether, in view of the
14 rule adopted by the Democratic Party, the statutes,
15 1-4-601(4) and 1-4-101(3), can be constitutionally
16 enforced against the Democratic Party by the Secretary
17 of State so as to deprive a person who meets the
18 requirements of their rule, but who does not meet the
19 requirements of the statutes, from a position on the
20 primary election ballot or the subsequent general
21 election ballot.
22 Several prior decisions of the Colorado
23 Supreme Court have upheld the constitutionality of the
24 Colorado statute, but none of those cases involved a
25 conflict with the rules of a major political party such

1 as is involved in the case at bar. Those prior
2 Colorado Supreme Court cases are -- and I don't know
3 that this is all of them, but these are the significant
4 cases in my opinion, those cases are Anderson v.
5 Kilmer, a 1956 Supreme Court case, appearing at 302
6 P.2d 185; Spain v. Fischahs, a 1960 case, appearing at
7 354 P.2d 502; Murphy v. Trott, a 1966 case, appearing
8 at 417 P.2d 234; Ray v. Michelson, a 1978 case,
9 appearing at 584 P.2d 1215; and In Re: Weber, a 1974
10 case, appearing at 525 P.2d 465.
11 And, indeed, I have had occasion over the
12 past several years to rule, in accordance with the
13 Colorado statutes cited, that a candidate who had not
14 been affiliated with either the Democratic or
15 Republican party for at least one year prior to the
16 assembly was not eligible for designation at that
17 assembly. But in none of those cases was the statute
18 in conflict with a rule of the party as is the case in
19 the matter now before the Court. And as I previously
20 mentioned, in none of the Colorado Supreme Court cases
21 that I cited was there a rule of one of the two major
22 political parties that was in conflict with the
23 provisions of the statute.
24 In view of the rule adopted by the Colorado
25 Democratic Party and in light of the decision of the

1 United States Supreme Court in the case of Tashjian v.
2 The Republican Party of Connecticut, I am of the
3 opinion that the Colorado statutes, C.R.S., 1-4-601(4)
4 and 1-4-101(3), cannot constitutionally be enforced as
5 against the Colorado Democratic Party or its members.
6 The Tashjian case was decided December 10, 1986, by the
7 U.S. Supreme Court and is reported at 107 S.Ct. 544 and
8 at 93 L.Ed.2d 415.
9 In that case the Supreme Court of the United
10 States held that a Connecticut statute that prohibited
11 independent voters from voting in party primary
12 elections violated the party's right to freedom of
13 association guaranteed under the First and Fourteenth
14 Amendments to the United States Constitution. The
15 Republican Party of Connecticut had adopted a rule
16 permitting unaffiliated or independent voters to vote
17 in that party's primary elections.
18 In the course of its opinion, the Supreme
19 Court in Tashjian said, "It is beyond debate that
20 freedom to engage in association for the advancement of
21 beliefs and ideas is an inseparable aspect of the
22 'liberty' assured by the due process clause of the
23 Fourteenth Amendment which embraces freedom of speech."
24 Further, "The freedom of association protected by the
25 First and Fourteenth Amendments includes partisan

1 political organizations and the right to associate with
2 the political party as one's choice is an integral part
3 of this basic constitutional freedom." Further, the
4 U.S. Supreme Court said "The freedom to join together
5 in furtherance of common political beliefs 'necessarily
6 presupposes the freedom to identify the people who
7 constitute the association.'"
8 And then the Supreme Court stated what I
9 believe to be probably the key to the controversy
10 presently before this Court. The U.S. Supreme Court
11 said, and this is on page 524 of 93 L.Ed.2d, "Were the
12 state to provide that only party members might be
13 selected as the party's chosen nominees for public
14 office, such a prohibition of potential association
15 with nonmembers would clearly infringe upon the rights
16 of the party's members under the First Amendment to
17 organize with like-minded citizens in support of common
18 political goals." I think that's probably the key to
19 this present controversy, that language.
20 The Court in Tashjian went on to say, and I
21 quote, "In the present case, the state statute is
22 defended on the ground that it protects the integrity
23 of the party against the party itself." I think what
24 the Supreme Court was indicating there, let the party
25 fend for itself. If the party wants to let in people

1 who haven't been affiliated with them for a year,
2 that's their prerogative. I thought that quote was
3 rather interesting.
4 I want to quote a few more excerpts from the
5 Tashjian case. It seems to be the only case that is
6 directly in point. The Court went on to say, among
7 other things, they were discussing the argument that
8 the state was trying to protect the Connecticut
9 Republican Party from its own fate, and the U.S.
10 Supreme Court said, "But on this point, even if the
11 state were correct, a state or a court may not
12 constitutionally substitute its own judgment for that
13 of the party. The party's determination of the
14 boundaries of its own association and of the structure
15 which best allows it to pursue its political goals is
16 protected by the Constitution."
17 The U.S. Supreme Court then concluded by
18 saying that, "We conclude that the state's enforcement
19 under these circumstances of its closed primary system
20 burdens the First Amendment rights of the party. The
21 interests which the Appellant" -- who was the
22 Secretary of State of Connecticut -- "The interests
23 which the Appellant adduces in support of the statute
24 are insubstantial and, accordingly, the statute as
25 applied to the Republican Party of Connecticut is

1 unconstitutional." The Court in Tashjian found, as I
2 quoted, "no compelling state interest that needed
3 protection."
4 And I would revert back to the Weber case,
5 In Re: Weber, which I previously cited, which is a 1974
6 Colorado Supreme Court case, which did involve Section
7 1-4-601(4) of the Colorado Election Code, and in that
8 case, the Weber case, the Supreme Court of Colorado
9 ruled that that statute was a "proper exercise of a
10 compelling state interest in the reasonable regulation
11 of political party primaries." Nevertheless, I'm
12 convinced that Weber would not be controlling in
13 Colorado at the present time for several reasons.
14 In Weber, there was no showing that the
15 Colorado Republican Party had a rule, such as the
16 Colorado Democratic Party has in the instant case,
17 which would have permitted Weber to be designated
18 according to the Republican Party rules. I think that
19 distinguishes Weber from the instant controversy. I
20 find Weber, further, to be no longer controlling in a
21 case such as this where the party, the Colorado
22 Democratic Party, has changed its rules so as to permit
23 a person to be designated at the assembly for
24 nomination at the party primary even though such person
25 has not been affiliated with the party for twelve

1 months.

2 And in light of the decision of the U.S.

3 Supreme Court in Tashjian, I believe that our Supreme

4 Court would also hold that Weber is no longer

5 controlling in a case such as that presently before

6 this Court. And it should be noted that in the instant

7 case the Colorado Democratic Party has amended its

8 rules so as to permit a person to be designated by

9 assembly as a candidate for nomination at the

10 forthcoming primary election so long as that person

11 will have been a registered Democrat for a period of at

12 least twelve months immediately preceding the November

13 1988 General Election.

14 And I should point out that the rule doesn't

15 refer to the 1988 election. I'm interpolating a little

16 bit there. The rule is a general rule which would

17 permit designation so long as the person has been

18 registered with the Colorado Democratic Party

19 immediately preceding a November general election.

20 The provisions of the two statutes here

21 involved, 1-4-601(4) and 1-4-101(3), are in conflict

22 with the amended rule of the Colorado Democratic Party

23 and, if enforced, will prohibit persons from being

24 designated at the upcoming Colorado Democratic Assembly

25 as a candidate for nomination at the primary election

1 for the office of, among other things, Congresswoman
2 for the Sixth Congressional District, and I don't think
3 it's any big secret that we're talking about Ms. Martha
4 Ezzard.
5 If the statutes are enforced against the
6 Colorado Democratic Party, Ms. Ezzard will not be able
7 to be designated at the Colorado Democratic Assembly as
8 a candidate for Congress in the Sixth Congressional
9 District. I think it should be kept in mind that this
10 is not a situation where Ms. Ezzard, for example, is
11 seeking to force her candidacy upon the Colorado
12 Democratic Party contrary to the party's desires, but
13 rather a situation where the party, the Colorado
14 Democratic Party, is welcoming Ms. Ezzard with open
15 arms and has amended its own rules to accommodate her
16 candidacy.
17 So I think this instant case is
18 distinguishable from some of the earlier cases in
19 Colorado, for example, where the political party had
20 not changed their rules and the candidate was simply
21 attempting to circumvent the statutory provisions.
22 It's a situation here, in other words, wherein Ms.
23 Ezzard has elected to join the ranks of the Colorado
24 Democratic Party and the Colorado Democratic Party has
25 elected to permit her to associate politically with

1 them. And I think under the First and Fourteenth
2 Amendments and in light of the Tashjian decision, she
3 has a right to do that and so does the Colorado
4 Democratic Party have the right to permit her to do
5 that.
6 The Court concludes, therefore, that for the
7 State of Colorado to enforce the provisions of
8 1-4-601(4) and 1-4-101(3) against the Petitioners
9 herein, the Colorado Democratic Party and Buie Seawell
10 as the State Chair of the Colorado Democratic Party,
11 would be to impermissibly burden the First Amendment
12 rights of association of the Colorado Democratic Party
13 and the due process rights of the party to freedom of
14 association under the Fourteenth Amendment and that,
15 accordingly, these two statutes as applied to the
16 Colorado Democratic Party are unconstitutional.
17 The Court further concludes that these two
18 statutes are not supported by any compelling state
19 interest as applied to the Petitioners in the instant
20 case. I think under the decision in Tashjian, only the
21 Colorado Democratic Party has the right to determine
22 who may be a candidate for public office under the
23 banner of the Colorado Democratic Party within certain
24 restrictions, of course. There are other statutory
25 requirements or qualifications for public office, but

1 short of that, simply on the issue of affiliation
2 alone, I think the Colorado Democratic Party has a
3 right to determine who may be affiliated with that
4 party.
5 For the reasons stated, it's therefore
6 ordered, adjudged and declared by the Court that the
7 provisions of C.R.S., 1-4-601(4) and 1-4-101(3), are
8 unconstitutional as applied to the Petitioners,
9 Colorado Democratic Party and Buie Seawell as its State
10 Chair, and the members of the Colorado Democratic
11 Party. It's further ordered by the Court that the
12 Respondent herein, Natalie Meyer, in her capacity as
13 Secretary of State of the State of Colorado, be and she
14 is hereby permanently enjoined and restrained from
15 enforcing the provisions of C.R.S., 1-4-601(4) and
16 1-4-101(3), as against the Petitioners herein, the
17 Colorado Democratic Party and Buie Seawell in His
18 Capacity as State Chair of the Colorado Democratic
19 Party, as to any person who qualifies to seek
20 nomination as a Democrat under the rule of the Colorado
21 Democratic Party and who otherwise meets the statutory
22 requirements for candidacy. It's further ordered that
23 the parties hereto shall bear their own court costs.
24 Anything else, Mr. Daily?
25 MR. DAILY: That seems to do it, Your Honor.

1 Thank you very much.

2 (Whereupon, the hearing was concluded.)

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15 REPORTER'S CERTIFICATE

16 The above and foregoing is a true and

17 complete transcription of my stenotype notes taken in

18 my capacity as Official Reporter of Courtroom 6,

19 District Court, City and County of Denver, Colorado, at

20 the time and place above set forth.

21 Dated at Denver, Colorado, May 3, 1988.

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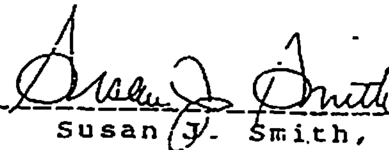
24 

25 Susan J. Smith, CSR

1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Civil Action No. 88CV7646, Courtroom 6

3 ---

4 REPORTER'S TRANSCRIPT

RECEIVED ... 5 1988

5 ---

6 COLORADO DEMOCRATIC PARTY and BUIE SEAWELL, State Chair of the Colorado Democratic Party,

7 Petitioners,

8 v.

9 NATALIE MEYER, SECRETARY OF STATE OF COLORADO,

10 Respondent.

11 ---

12

13 The hearing in this matter commenced on Monday,

14 May 2, 1988, before the HONORABLE CLIFTON A. FLOWERS,

15 Chief Judge of the District Court.

16 This transcript contains the ruling of the Court

17 in this matter.

18

19 FOR THE PETITIONERS: Richard W. Daily, Esq.
L. Richard Freese, Jr., Esq.
Elizabeth J. Lentini, Esq.
Pamela R. Mackey, Esq.

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21 FOR THE RESPONDENT: No appearance

22

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1 * * * * *

2 THE COURT: The Court is prepared to rule.
3 This matter is before the Court pursuant to the
4 provisions of C.R.S., 1-1-112, of the Colorado Election
5 Code of 1980. The existence of a valid controversy
6 between the Petitioners and the Respondent within the
7 meaning and intent of C.R.S., 1-1-112, is alleged by
8 the Petitioners and conceded by the Respondent
9 Secretary of State. The Court, therefore, finds that
10 it has jurisdiction over the parties and the subject
11 matter of this controversy pursuant to C.R.S., 1-1-112.
12 The Court finds that on April 10, 1988, the
13 State Central Committee of the Colorado Democratic
14 Party amended their rules to provide that a person will
15 be eligible for designation by assembly as a candidate
16 for nomination at the primary election, or for
17 appointment to a vacancy in such designation, if that
18 person has been a registered Democrat for at least
19 twelve months immediately preceding the date of the
20 general election next following such primary election.
21 C.R.S., 1-1-104(1), defines the term "assembly".
22 The rule of the Colorado Democratic Party, as
23 amended, was made applicable to the 1988 Primary and
24 General Elections. The instant controversy has arisen
25 because of the conflict between the amended rule of the

1 Democratic Party and C.R.S., 1-4-601(4), which provides
2 in material part that no person shall be eligible for
3 designation by assembly as a candidate for nomination
4 at the primary election unless such person has been
5 affiliated with the political party holding the
6 assembly for at least twelve months immediately
7 preceding the date of the assembly.
8 And also, the controversy arises by virtue of
9 1-4-101(3), C.R.S., which provides, in substance, that
10 the Secretary of State shall not place the name of any
11 person on the general election ballot who does not meet
12 those qualifications as set forth in Section 601(4).
13 The issue before the Court is whether, in view of the
14 rule adopted by the Democratic Party, the statutes,
15 1-4-601(4) and 1-4-101(3), can be constitutionally
16 enforced against the Democratic Party by the Secretary
17 of State so as to deprive a person who meets the
18 requirements of their rule, but who does not meet the
19 requirements of the statutes, from a position on the
20 primary election ballot or the subsequent general
21 election ballot.
22 Several prior decisions of the Colorado
23 Supreme Court have upheld the constitutionality of the
24 Colorado statute, but none of those cases involved a
25 conflict with the rules of a major political party such

1 as is involved in the case at bar. Those prior
2 Colorado Supreme Court cases are -- and I don't know
3 that this is all of them, but these are the significant
4 cases in my opinion, those cases are Anderson v.
5 Kilmer, a 1956 Supreme Court case, appearing at 302
6 P.2d 185; Spain v. Fischahs, a 1960 case, appearing at
7 354 P.2d 502; Murphy v. Trott, a 1966 case, appearing
8 at 417 P.2d 234; Ray v. Michelson, a 1978 case,
9 appearing at 584 P.2d 1215; and In Re: Weber, a 1974
10 case, appearing at 525 P.2d 465.
11 And, indeed, I have had occasion over the
12 past several years to rule, in accordance with the
13 Colorado statutes cited, that a candidate who had not
14 been affiliated with either the Democratic or
15 Republican party for at least one year prior to the
16 assembly was not eligible for designation at that
17 assembly. But in none of those cases was the statute
18 in conflict with a rule of the party as is the case in
19 the matter now before the Court. And as I previously
20 mentioned, in none of the Colorado Supreme Court cases
21 that I cited was there a rule of one of the two major
22 political parties that was in conflict with the
23 provisions of the statute.
24 In view of the rule adopted by the Colorado
25 Democratic Party and in light of the decision of the

1 United States Supreme Court in the case of _Tashjian v._
2 _The Republican Party of Connecticut_, I am of the
3 opinion that the Colorado statutes, C.R.S., 1-4-601(4)
4 and 1-4-101(3), cannot constitutionally be enforced as
5 against the Colorado Democratic Party or its members.
6 The _Tashjian_ case was decided December 10, 1986, by the
7 U.S. Supreme Court and is reported at 107 S.Ct. 544 and
8 at 93 L.Ed.2d 415.
9 In that case the Supreme Court of the United
10 States held that a Connecticut statute that prohibited
11 independent voters from voting in party primary
12 elections violated the party's right to freedom of
13 association guaranteed under the First and Fourteenth
14 Amendments to the United States Constitution. The
15 Republican Party of Connecticut had adopted a rule
16 permitting unaffiliated or independent voters to vote
17 in that party's primary elections.
18 In the course of its opinion, the Supreme
19 Court in _Tashjian_ said, "It is beyond debate that
20 freedom to engage in association for the advancement of
21 beliefs and ideas is an inseparable aspect of the
22 'liberty' assured by the due process clause of the
23 Fourteenth Amendment which embraces freedom of speech."
24 Further, "The freedom of association protected by the
25 First and Fourteenth Amendments includes partisan

1 political organizations and the right to associate with
2 the political party as one's choice is an integral part
3 of this basic constitutional freedom." Further, the
4 U.S. Supreme Court said "The freedom to join together
5 in furtherance of common political beliefs 'necessarily
6 presupposes the freedom to identify the people who
7 constitute the association.'"
8 And then the Supreme Court stated what I
9 believe to be probably the key to the controversy
10 presently before this Court. The U.S. Supreme Court
11 said, and this is on page 524 of 93 L.Ed.2d, "Were the
12 state to provide that only party members might be
13 selected as the party's chosen nominees for public
14 office, such a prohibition of potential association
15 with nonmembers would clearly infringe upon the rights
16 of the party's members under the First Amendment to
17 organize with like-minded citizens in support of common
18 political goals." I think that's probably the key to
19 this present controversy, that language.
20 The Court in Tashjian went on to say, and I
21 quote, "In the present case, the state statute is
22 defended on the ground that it protects the integrity
23 of the party against the party itself." I think what
24 the Supreme Court was indicating there, let the party
25 fend for itself. If the party wants to let in people

1 who haven't been affiliated with them for a year,
2 that's their prerogative. I thought that quote was
3 rather interesting.
4 I want to quote a few more excerpts from the
5 Tashjian case. It seems to be the only case that is
6 directly in point. The Court went on to say, among
7 other things, they were discussing the argument that
8 the state was trying to protect the Connecticut
9 Republican Party from its own fate, and the U.S.
10 Supreme Court said, "But on this point, even if the
11 state were correct, a state or a court may not
12 constitutionally substitute its own judgment for that
13 of the party. The party's determination of the
14 boundaries of its own association and of the structure
15 which best allows it to pursue its political goals is
16 protected by the Constitution."
17 The U.S. Supreme Court then concluded by
18 saying that, "We conclude that the state's enforcement
19 under these circumstances of its closed primary system
20 burdens the First Amendment rights of the party. The
21 interests which the Appellant" -- who was the
22 Secretary of State of Connecticut -- "The interests
23 which the Appellant adduces in support of the statute
24 are insubstantial and, accordingly, the statute as
25 applied to the Republican Party of Connecticut is

1 unconstitutional." The Court in *Tashjian* found, as I
2 quoted, "no compelling state interest that needed
3 protection."
4 And I would revert back to the *Weber* case,
5 *In Re: Weber*, which I previously cited, which is a 1974
6 Colorado Supreme Court case, which did involve Section
7 1-4-601(4) of the Colorado Election Code, and in that
8 case, the *Weber* case, the Supreme Court of Colorado
9 ruled that that statute was a "proper exercise of a
10 compelling state interest in the reasonable regulation
11 of political party primaries." Nevertheless, I'm
12 convinced that *Weber* would not be controlling in
13 Colorado at the present time for several reasons.
14 In *Weber*, there was no showing that the
15 Colorado Republican Party had a rule, such as the
16 Colorado Democratic Party has in the instant case,
17 which would have permitted Weber to be designated
18 according to the Republican Party rules. I think that
19 distinguishes *Weber* from the instant controversy. I
20 find *Weber*, further, to be no longer controlling in a
21 case such as this where the party, the Colorado
22 Democratic Party, has changed its rules so as to permit
23 a person to be designated at the assembly for
24 nomination at the party primary even though such person
25 has not been affiliated with the party for twelve

1 months.

2 And in light of the decision of the U.S.

3 Supreme Court in Tashjian, I believe that our Supreme

4 Court would also hold that Weber is no longer

5 controlling in a case such as that presently before

6 this Court. And it should be noted that in the instant

7 case the Colorado Democratic Party has amended its

8 rules so as to permit a person to be designated by

9 assembly as a candidate for nomination at the

10 forthcoming primary election so long as that person

11 will have been a registered Democrat for a period of at

12 least twelve months immediately preceding the November

13 1988 General Election.

14 And I should point out that the rule doesn't

15 refer to the 1988 election. I'm interpolating a little

16 bit there. The rule is a general rule which would

17 permit designation so long as the person has been

18 registered with the Colorado Democratic Party

19 immediately preceding a November general election.

20 The provisions of the two statutes here

21 involved, 1-4-601(4) and 1-4-101(3), are in conflict

22 with the amended rule of the Colorado Democratic Party

23 and, if enforced, will prohibit persons from being

24 designated at the upcoming Colorado Democratic Assembly

25 as a candidate for nomination at the primary election

1 for the office of, among other things, Congresswoman
2 for the Sixth Congressional District, and I don't think
3 it's any big secret that we're talking about Ms. Martha
4 Ezzard.
5 If the statutes are enforced against the
6 Colorado Democratic Party, Ms. Ezzard will not be able
7 to be designated at the Colorado Democratic Assembly as
8 a candidate for Congress in the Sixth Congressional
9 District. I think it should be kept in mind that this
10 is not a situation where Ms. Ezzard, for example, is
11 seeking to force her candidacy upon the Colorado
12 Democratic Party contrary to the party's desires, but
13 rather a situation where the party, the Colorado
14 Democratic Party, is welcoming Ms. Ezzard with open
15 arms and has amended its own rules to accommodate her
16 candidacy.
17 So I think this instant case is
18 distinguishable from some of the earlier cases in
19 Colorado, for example, where the political party had
20 not changed their rules and the candidate was simply
21 attempting to circumvent the statutory provisions.
22 It's a situation here, in other words, wherein Ms.
23 Ezzard has elected to join the ranks of the Colorado
24 Democratic Party and the Colorado Democratic Party has
25 elected to permit her to associate politically with

11

1 them. And I think under the First and Fourteenth
2 Amendments and in light of the Tashjian decision, she
3 has a right to do that and so does the Colorado
4 Democratic Party have the right to permit her to do
5 that.
6 The Court concludes, therefore, that for the
7 State of Colorado to enforce the provisions of
8 1-4-601(4) and 1-4-101(3) against the Petitioners
9 herein, the Colorado Democratic Party and Buie Seawell
10 as the State Chair of the Colorado Democratic Party,
11 would be to impermissibly burden the First Amendment
12 rights of association of the Colorado Democratic Party
13 and the due process rights of the party to freedom of
14 association under the Fourteenth Amendment and that,
15 accordingly, these two statutes as applied to the
16 Colorado Democratic Party are unconstitutional.
17 The Court further concludes that these two
18 statutes are not supported by any compelling state
19 interest as applied to the Petitioners in the instant
20 case. I think under the decision in Tashjian, only the
21 Colorado Democratic Party has the right to determine
22 who may be a candidate for public office under the
23 banner of the Colorado Democratic Party within certain
24 restrictions, of course. There are other statutory
25 requirements or qualifications for public office, but

1 short of that, simply on the issue of affiliation
2 alone, I think the Colorado Democratic Party has a
3 right to determine who may be affiliated with that
4 party.
5 For the reasons stated, it's therefore
6 ordered, adjudged and declared by the Court that the
7 provisions of C.R.S., 1-4-601(4) and 1-4-101(3), are
8 unconstitutional as applied to the Petitioners,
9 Colorado Democratic Party and Buie Seawell as its State
10 Chair, and the members of the Colorado Democratic
11 Party. It's further ordered by the Court that the
12 Respondent herein, Natalie Meyer, in her capacity as
13 Secretary of State of the State of Colorado, be and she
14 is hereby permanently enjoined and restrained from
15 enforcing the provisions of C.R.S., 1-4-601(4) and
16 1-4-101(3), as against the Petitioners herein, the
17 Colorado Democratic Party and Buie Seawell in His
18 Capacity as State Chair of the Colorado Democratic
19 Party, as to any person who qualifies to seek
20 nomination as a Democrat under the rule of the Colorado
21 Democratic Party and who otherwise meets the statutory
22 requirements for candidacy. It's further ordered that
23 the parties hereto shall bear their own court costs.
24 Anything else, Mr. Daily?
25 MR. DAILY: That seems to do it, Your Honor.

1 Thank you very much.

2 (Whereupon, the hearing was concluded.)

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15 REPORTER'S CERTIFICATE

16 The above and foregoing is a true and

17 complete transcription of my stenotype notes taken in

18 my capacity as Official Reporter of Courtroom 6,

19 District Court, City and County of Denver, Colorado, at

20 the time and place above set forth.

21 Dated at Denver, Colorado, May 3, 1988.

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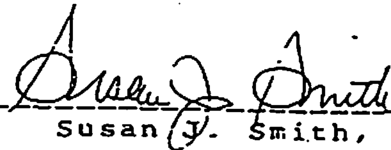

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25 Susan J. Smith, CSR

Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. *Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, email corrections@akcourts.us.*

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,	)	
	)	Supreme Court No. S-16875
Appellant,	)	
	)	Superior Court No. 1JU-17-00563 CI
v.	)	
	)	<u>OPINION</u>
ALASKA DEMOCRATIC PARTY,	)	
	)	No. 7279 – August 24, 2018
Appellee.	)	
	)	

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Philip M. Pallenberg, Judge.

Appearances: Laura Fox, Assistant Attorney General, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for Appellant. Jon Choate, Choate Law Firm LLC, Juneau, for Appellee.

Before: Stowers, Chief Justice, Winfree, Maassen, Bolger, and Carney, Justices.

WINFREE, Justice.

I. INTRODUCTION

The Alaska Democratic Party amended its bylaws to allow registered independent voters to run as candidates in its primary elections without having to become Democratic Party members, seeking to expand its field of candidates and thereby nominate general election candidates more acceptable to Alaska voters. But the Division

of Elections refused to allow independent voter candidates on the Democratic Party primary election ballot, taking the position that Alaska election law — specifically the "party affiliation rule" — prevented anyone not registered as a Democrat from being a candidate in the Democratic Party's primary elections. The Democratic Party sued for declaratory and injunctive relief preventing enforcement of the party affiliation rule, and the superior court ruled in its favor. The State appealed. Because the Alaska Constitution's free association guarantee protects a political party's choice to open its primary elections to independent voter candidates, and because in this specific context the State has no countervailing need to enforce the party affiliation rule, we affirm the superior court's decision.

II. FACTS AND PROCEEDINGS

A. Alaska's Election System

Alaska uses a mandatory primary election or petition process to decide who may appear as a candidate for statewide office on the general election ballot.[1] A candidate affiliated with a recognized state political party[2] may appear on the general election ballot by winning a primary election against other party candidates.[3] A

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[1] *See generally* AS 15.25.

[2] *See* AS 15.80.008 (defining recognized political party); AS 15.80.010 (defining political party); AS 15.07.050 (providing for voter registration affiliating with political party). Alaska also recognizes two types of unaffiliated voters: "nonpartisan" and "undeclared." AS 15.07.075. A nonpartisan voter affirmatively registers as nonpartisan. *Id.* An undeclared voter registers as undeclared, fails to declare an affiliation, or declares affiliation with an unrecognized political group or party. *Id.* We refer to both types of voters as "independents" or "independent voters."

[3] *See* AS 15.25.010 (providing for party primary election); AS 15.25.100 (providing that winner of party primary election has name placed on general election ballot).

candidate not representing a political party may appear on the general election ballot by submitting a petition with a sufficient number of qualified voters' signatures.[4] Aside from provisions for replacing candidates who withdraw,[5] the only other way a candidate may be on the general election ballot is by filing as a write-in candidate.[6]

Political party status is measured by each party's support statewide. "[A]n organized group of voters that represents a political program" qualifies as a political party if it nominated a candidate for governor who received at least three percent of the total votes cast for governor in the preceding general election or if it has registered voters in the state equal to at least three percent of the votes cast for governor in that election.[7] Party status has several benefits: political parties may make and receive larger political contributions, nominate members of election boards, appoint poll watchers, obtain seats

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[4] *See* AS 15.25.140 (providing for petition); AS 15.25.190 (providing successful petitioner has name placed on general election ballot); *see also* AS 15.25.160 (setting signature requirement for statewide office at one percent of number of voters in state in preceding general election); AS 15.25.170 (setting signature requirement for district-wide office at one percent of number of voters in district in preceding general election).

[5] *See* AS 15.25.110 ("If a candidate of a political party nominated at the primary election dies, withdraws, resigns, becomes disqualified . . . , or is certified as being incapacitated . . . , the vacancy may be filled by party petition.").

[6] *See* AS 15.25.105(a) ("If a candidate does not appear on the primary election ballot or is not successful in advancing to the general election and wishes to be a candidate in the general election, the candidate may file as a write-in candidate.").

[7] AS 15.80.010(27)(A). If the governorship was not on the ballot, the rule applies using the office of United States senator. AS 15.80.010(27)(B). If neither position was on the ballot, the rule applies using the office of United States representative. AS 15.80.010(27)(C).

on the Alaska Public Offices Commission, and, most importantly, gain automatic access to the general election ballot for its candidates through primary elections.[8]

Under Alaska Statutes any political party member may run in a party primary by filing a declaration of candidacy, statement of income sources and business interests, and filing fee.[9] The declaration of candidacy includes a statement under oath that the person meets Alaska's candidate eligibility requirements,[10] and eligibility is subject to verification by the director of elections.[11] The candidate eligibility requirements include restrictions on residency, citizenship, voter qualification, age, multiple candidacies, cross-filing, and party affiliation.[12] Under this last requirement — the party affiliation rule — primary election candidates must be "registered to vote as a member of the political party whose nomination is being sought."[13] A political party may not waive the party affiliation rule, but it may opt to have a single primary election ballot or a combined primary election ballot with one or more other parties.[14] Political

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[8] *See* AS 15.13.070 (contributions); AS 15.10.120 (election boards); AS 15.10.170 (poll watchers); AS 15.13.020(b) (Alaska Public Offices Commission); AS 15.25.100 (general election ballot access); *see also State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 981-82 (Alaska 2005) (explaining benefits recognized political parties receive).

[9] *See* AS 15.25.030(a) (declaration of candidacy); AS 15.25.030(b) (statement of income sources and business interests); AS 15.25.050 (filing fee).

[10] *See* AS 15.25.030(a).

[11] *See* AS 15.25.042.

[12] *See* AS 15.25.030(a)(6), (9), (10), (11), (14), (16).

[13] *See* AS 15.25.030(a)(16).

[14] *See State v. Green Party of Alaska* (*Green Party I*), 118 P.3d 1054, 1070 (continued...)

parties also may choose whether to allow independent voters or other parties' voters to participate in their primary elections.[15] By default, primary election ballots are designed to allow independent voters to participate in a political party's primary election but to exclude other political parties' voters from participating in that primary election.[16]

Alaskans may change their voting registration status at any time.[17]

B. The Democratic Party's Challenge

The Democratic Party is a recognized Alaska political party with over 75,000 members. The Democratic Party historically allowed only Democratic Party members to run as primary election candidates, but it recently became interested in allowing independents to run as candidates in its primary election. The Democratic Party first sought judicial approval for this course of action in 2016, but the superior court dismissed that case as unripe because the Democratic Party's bylaws did not then allow independent candidacies.

The Democratic Party later amended its bylaws to allow independent voters to participate as candidates in its primary elections. The Democratic Party petitioned the Division of Elections to allow these candidacies, but the Division denied the request because it conflicted with the party affiliation rule. The Democratic Party then brought the current lawsuit, once more challenging the party affiliation rule's constitutionality.

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[14] (...continued)
(Alaska 2005). The Democratic Party opted to have a combined ballot with other parties after our ruling in *Green Party I*.

[15] *See* AS 15.25.014(b).

[16] *See* AS 15.25.010.

[17] *See* AS 15.07.040 ("A person who is qualified . . . is entitled to register at any time . . . .").

The parties filed cross-motions for summary judgment, and the superior court granted the Democratic Party's and denied the State's. The court concluded that the Democratic Party had an associational right under the Alaska Constitution to allow independent candidates to run in its primary election and that the party affiliation rule severely burdened this right by infringing on the Democratic Party's internal decision-making. The court also concluded that the State's interest in requiring candidates and political parties to have demonstrable public support was not advanced by the party affiliation rule, that the fit between the State's interest in preventing voter confusion and the party affiliation rule was not close enough to justify the burden on the Democratic Party's associational right, and that the State had not demonstrated how its interest in political stability was advanced by the party affiliation rule.

The State appealed. We expedited consideration of the appeal and issued a brief order affirming the superior court's judgment.[18] We now explain our decision.[19]

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[18] *State v. Alaska Democratic Party*, No. S-16875 (Alaska Supreme Court Order, Apr. 4, 2018).

[19] "This court reviews a grant of summary judgment de novo and will affirm if, when the facts are viewed in the light most favorable to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Green Party I*, 118 P.3d at 1059 (citing *Sonneman v. State*, 969 P.2d 632, 635 (Alaska 1998)). "Constitutional claims . . . are questions of law and are reviewed de novo. In conducting de novo review, we will 'adopt the rule of law that is most persuasive in light of precedent, reason, and policy.' " *Id.* (footnote omitted) (first citing *Sonneman*, 969 P.2d at 635; then quoting *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979)).

III. DISCUSSION

The Alaska Constitution grants every person the right to "freely speak, write, and publish on all subjects, being responsible for the abuse of that right."[20] This inherently guarantees the rights of people, *and political parties*, to associate together to achieve their political goals.[21] When those associational rights conflict with another law, like the Alaska election code, it is our duty to decide whether the Constitution has been violated.[22]

Our constitutional inquiry is governed by *State v. Green Party of Alaska* (*Green Party I*):

> When an election law is challenged the court must first determine whether the claimant has in fact asserted a constitutionally protected right. If so we must then assess "the character and magnitude of the asserted injury to the rights." Next we weigh "the precise interests put forward by the State as justifications for the burden imposed by its rule." Finally, we judge the fit between the challenged legislation and the [S]tate's interests in order to determine "the extent to which those interests make it necessary to burden the plaintiff's rights." This is a flexible test: as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and the fit

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[20] Alaska Const. art. I, § 5.

[21] *See Green Party I*, 118 P.3d at 1064-65; *Vogler v. Miller* (*Vogler I*), 651 P.2d 1, 3 (Alaska 1982).

[22] "[O]ur duty to uphold the Alaska Constitution is paramount; it takes precedence over the politics of the day and our own personal preferences." *Planned Parenthood of the Great Nw. v. State*, 375 P.3d 1122, 1133 (Alaska 2016) (citing Alaska Const. art. XII, § 5 (requiring public officers to swear to "support and defend . . . the Constitution of the State of Alaska")); *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982) ("[T]he judicial branch . . . has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution . . . .").

> between the challenged legislation and the [S]tate's interest must be closer.[23]

Under this framework we conclude that the Democratic Party has an associational right to choose its general election nominees, that this right is substantially burdened by the party affiliation rule, and that the State's asserted interests do not have a sufficiently close fit to justify the burden. For these reasons — and based on the unique facts of this case, specifically the Democratic Party's bylaws allowing independent voters, *in addition to Democratic Party voters*, to be candidates in primary elections — we affirm the superior court's decision to enjoin the party affiliation rule as unconstitutional.

A. The Democratic Party Has An Associational Right To Choose General Election Nominees That Can Include Allowing Independent Voters To Run As Candidates In Its Primary Elections.

The first step in our analysis is to decide whether the Party "has in fact asserted a constitutionally protected right."[24] We conclude that the Party has asserted a constitutionally protected right — the right to choose its general election nominees.

We begin our analysis with the uncontroversial premise that political parties have a constitutional right to choose their general election nominees. This right is reflected throughout United States Supreme Court decisions interpreting the First Amendment, which we consider in our interpretation of the Alaska Constitution; the Court has struck down laws requiring binding open presidential preference primaries,[25]

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[23] *Green Party I*, 118 P.3d at 1061 (footnotes omitted) (quoting *O'Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996)).

[24] *See id.*

[25] *See Democratic Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 126 (1981).

laws requiring closed primaries,[26] laws preventing a party from endorsing primary candidates,[27] and laws requiring a blanket primary.[28] Even in cases that sustained challenged laws, the existence of this right has not been questioned.[29] There can be no doubt that, at least broadly speaking, the Democratic Party has the right to choose its general election nominees.

The more difficult question is whether this general right to choose election nominees can include allowing independents to be candidates in the Democratic Party's primary elections. We conclude that it can.

The United States Supreme Court suggested that such a right existed in *Tashjian v. Republican Party of Connecticut*, when it observed:

> Were the State to restrict by statute financial support of the Party's candidates to Party members, *or to provide that only Party members might be selected as the Party's chosen nominees for public office*, such a prohibition of potential association with nonmembers would *clearly infringe* upon the rights of the Party's members under the First Amendment to

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26 *See Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 225 (1986).

27 *See Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989).

28 *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 586 (2000).

29 *See, e.g.*, *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) ("[T]he New Party, and not someone else, has the right to select the New Party's 'standard bearer.' "); *Storer v. Brown*, 415 U.S. 724, 736-37 (1974) (upholding disaffiliation law because of important state interests, not failure to assert a right); *S.D. Libertarian Party v. Gant*, 60 F. Supp. 3d 1043, 1050 (D.S.D. 2014) (holding affiliation requirement "only minimally burdens [the political party's] *associational rights*" (emphasis added)).

> organize with like-minded citizens in support of common political goals.[30]

Though dicta, this language plainly contemplated that the First Amendment might protect the Democratic Party's asserted right to associate with independent candidates.

Our previous case law likewise suggests this result. In *Green Party I* the Green Party of Alaska and the Republican Moderate Party challenged a statute requiring "each political party to have its own primary ballot on which only candidates of that political party appear."[31] The two parties sought to present their respective candidates on a combined ballot and asserted the statute unconstitutionally burdened their associational rights.[32] We agreed, concluding that "political parties have a constitutionally protected associational interest in opening their ballots to voters who would otherwise vote in the primaries of their own political parties."[33] In reaching this conclusion, we favorably noted that in *Tashjian* "the political party itself wished to invite independent voters to participate in its primary election" and thus "there was 'no conflict between associational interests of members and nonmembers.' "[34] We also interpreted *California Democratic Party v. Jones* as "reaffirm[ing] the reasoning behind *Tashjian*," and we highlighted *Jones*'s language emphasizing the importance of selecting a

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[30] *Tashjian*, 479 U.S. at 215 (emphases added).

[31] *Green Party I*, 118 P.3d 1054, 1057 (Alaska 2005).

[32] *Id.*

[33] *Id.* at 1061.

[34] *Id.* at 1063 (quoting *Tashjian*, 479 U.S. at 215 n.6). In *Tashjian* the Connecticut Republican Party sought to allow independent voters to participate as voters in its primary election (an "open" primary). 479 U.S. at 212-13. The Court held that a state statute prohibiting open primaries unconstitutionally burdened the Connecticut Republican Party's associational rights. *Id.* at 225.

nominee.[35] In *Green Party I* we explicitly rejected the State's argument that *Tashjian* did not support the existence of a right because it limited its holding to independent voters; we instead embraced the "overarching principle[s]" of *Jones* and *Tashjian*, recognizing "[t]he right to determine who may participate in selecting [a party's] candidates — and, if the political party so desires, to seek the input and participation of a broad spectrum of voters — is of central importance to the right of political association."[36] We noted that "where a party invites a voter to participate in its primary and the voter seeks to do so, we should begin with the premise that there are significant associational interests at stake."[37]

By analogy to *Green Party I*, the Democratic Party's associational right to choose its general election nominees does not depend on party registration: "[W]here a party invites a [candidate] to participate in its primary and the [candidate] seeks to do so, we should begin with the premise that there are significant associational interests at stake."[38] We therefore conclude that the Democratic Party has an associational right to choose its general election nominees and that the right can include allowing independents to run in its primary elections.

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[35] *Green Party I*, 118 P.3d at 1064. In *Jones* the California Democratic Party sought to prevent voters of other political parties from participating in its primary election (a "closed" primary). 530 U.S. 567, 571 (2000). The Supreme Court held that a state statute mandating a blanket primary in which voters of one political party could vote in another political party's primary election unconstitutionally burdened the California Democratic Party's associational rights. *Id.* at 586.

[36] *Green Party I*, 118 P.3d at 1064.

[37] *Id.* at 1064 n.72 (quoting *Clingman v. Beaver*, 544 U.S. 581, 602 (2005) (O'Connor, J., concurring)).

[38] *See id.* (quoting *Clingman*, 544 U.S. at 602 (O'Connor, J., concurring)).

B. The Burden On The Democratic Party's Rights Is Substantial.

The next step in our analysis is evaluating the "character and magnitude of the asserted injury to the" Democratic Party's associational right to choose its general election nominees.[39] The extent of the burden determines how closely we will scrutinize the State's justifications for the law: substantial burdens require compelling interests narrowly tailored to minimally infringe on the right; modest or minimal burdens require only that the law is reasonable, non-discriminatory, and advances "important regulatory interests."[40]

We conclude that the party affiliation rule substantially burdens the Democratic Party's right to choose its general election nominees. We recognize there are federal cases holding that candidate eligibility restrictions like the party affiliation rule present only a modest burden.[41] Perhaps most relevant to this case, in *Clingman v. Beaver* a plurality of the United States Supreme Court reasoned that a party registration requirement does not severely burden parties' associational rights because "[t]o attract

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[39] *Id.* at 1061 (quoting *O'Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996)).

[40] *See O'Callaghan*, 914 P.2d at 1254; *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

[41] *See, e.g.*, *Clingman*, 544 U.S. at 590-91 (plurality opinion) (prohibiting other parties' voters from voting in Libertarian primary not severe burden); *id.* at 604 (O'Connor, J., concurring) (prohibiting other parties' voters from voting in Libertarian primary is modest burden); *Timmons*, 520 U.S. at 363-64 (holding anti-fusion law — preventing parties from nominating candidate already nominated by another party — not severe burden); *Libertarian Party of Mich. v. Johnson*, 714 F.3d 929, 932 (6th Cir. 2013) (affirming lower court's conclusion that sore loser statute — preventing parties from nominating candidate who ran and lost in another primary election — not severe burden); *S.C. Green Party v. S.C. State Election Comm'n*, 612 F.3d 752, 757 (4th Cir. 2010) (holding sore loser statute not severe burden); *S.D. Libertarian Party v. Gant*, 60 F. Supp. 3d 1043, 1050 (D.S.D. 2014) (holding party affiliation rule not severe burden).

members of other parties, the [party] need only persuade voters to make the minimal effort necessary to switch parties."[42] The State urges this same reasoning to us, arguing the Democratic Party "can nominate via its party primary any candidate that it can convince to run as a *party* candidate — i.e., to register with the party." (Emphasis in original.)

But the constitutional burden cannot be resolved by following these cases because the Alaska Constitution is more protective of political parties' associational interests than is the federal constitution.[43] In *Green Party I* we specifically rejected the *Clingman* reasoning that the ability to register with a party lessened the burden on associational rights, instead concluding that requiring voters to "fully affiliate themselves with a single political party or to forgo completely the opportunity to participate in that party's primary . . . place[d] a substantial restriction on the political party's associational rights."[44] As we explained: "The choice that the [S]tate forces a voter to make means that a political party cannot appeal to voters who are unwilling to limit their primary choices to the relatively narrow ideological agenda advanced by any single political party."[45] This choice changed "not just . . . which candidates the political party ultimately nominates, but also . . . the ideological cast of the nominated candidates."[46] This change in ideological cast is exactly what the Democratic Party now seeks by

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[42] 544 U.S. at 591 (plurality opinion); *see also id.* at 604 (O'Connor, J., concurring) ("The semiclosed primary law, standing alone, does not impose a significant obstacle to participation in the [party]'s primary . . . .").

[43] *See Vogler I*, 651 P.2d 1, 3 (Alaska 1982).

[44] 118 P.3d at 1065.

[45] *Id.*

[46] *Id.*

opening its primary to independent candidates. To the extent the combined-ballot ban in *Green Party I* substantially burdened the political parties' asserted rights in that case, so too does the party affiliation rule burden the Democratic Party's asserted rights in this case.[47] To conclude otherwise would be to reject the very interest that the Democratic Party seeks to recognize; the Democratic Party does not just want primary election candidates who happen to be independent voters, it wants candidates *because* they are independent voters. Even if federal law does not recognize this burden as substantial, it does not change the magnitude of the burden under the Alaska Constitution.[48]

C. The State Has Failed To Demonstrate A Compelling Interest Justifying The Burden On The Democratic Party.

Because the party affiliation rule substantially burdens the Democratic Party's associational rights, the State must justify the burden with sufficiently important state interests.[49] When weighing whether sufficiently important interests justify a burden

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[47] *See id.*

[48] We note further that none of the State's proffered cases presented the factual scenario we address here — a political party intentionally amending its bylaws to allow independent voters to run as candidates. In *Clingman* the party sought to affiliate with voters of different parties. 544 U.S. 581, 585 (2005). In *Timmons*, *South Carolina Green Party*, and *Johnson*, the political parties sought to nominate candidates who ran in a different party's primary. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 354 (1997); *S.C. Green Party v. S.C. State Election Comm'n*, 612 F.3d 752, 755 (4th Cir. 2010); *Libertarian Party of Mich. v. Johnson*, 714 F.3d 929, 930-31 (6th Cir. 2013). In *Storer* and *Van Susteren v. Jones*, the parties were not involved in the challenge. *See Storer v. Brown*, 415 U.S. 724, 726-27 (1974); *Van Susteren v. Jones*, 331 F.3d 1024, 1025 (9th Cir. 2003). And in *Gant* the nominee was a member of a different political party, not an independent. *See S.D. Libertarian Party v. Gant*, 60 F. Supp. 3d 1043, 1044 (D.S.D. 2014). The issue before us would seem to be a matter of first impression under federal law.

[49] We have described this analysis as two steps: whether the right is (continued...)

on associational rights, we evaluate "whether the challenged legislation actually advances those interests without unnecessarily restricting the political parties' right[s]."[50] " '[I]t is not sufficient for the [S]tate to assert theoretical possibilities, albeit undesirable ones, to justify incursions upon free speech rights protected by the Alaska Constitution.' Instead, the [S]tate must explain why the interests it claims are concretely at issue and how the challenged legislation advances those interests."[51] When reviewing "the adequacy of the [S]tate's explanation, a court must ask not 'in the abstract . . . whether fairness, privacy, etc., are highly significant values[ ] but rather . . . whether the *aspect* of fairness, privacy, etc., addressed by the law at issue is highly significant.' "[52]

If the challenged law advances the relevant aspect of a compelling state interest, we must weigh the fit between the law and that interest to ensure that the law is not overly restrictive of the protected rights.[53] Because election decisions necessarily involve judgment on matters of policy ill-suited to judicial second-guessing, we usually defer to the legislature's election decisions by reviewing the fit for reasonableness.[54]

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49 (...continued)
sufficiently important and whether it is narrowly tailored. But in this case the Democratic Party concedes, and we agree, that each of the State's asserted interests are compelling, so we analyze these steps together.

50 *Green Party I*, 118 P.3d at 1065.

51 *Id.* at 1066 (footnote omitted) (quoting *Vogler v. Miller* (*Vogler II*), 660 P.2d 1192, 1196 (Alaska 1983) (Rabinowitz, J., concurring)).

52 *Id.* (omissions, emphasis and second alteration in original) (quoting *Cal. Democratic Party v. Jones*, 530 U.S 567, 584 (2000)).

53 *See State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 980-81 (Alaska 2005).

54 *See id.* at 981.

Whether the challenged law is "in the mainstream of the practices of other states" is relevant, but not outcome determinative, in assessing reasonableness.[55]

The State claims compelling, narrowly tailored interests in ensuring sufficient public support for political parties and candidates, preventing voter confusion, and promoting political stability. We address each asserted interest in turn.

1. The party affiliation rule does not advance the State's interest in ensuring public support for the Democratic Party.

The State's first asserted interest is in ensuring public support for recognized political parties.[56] The State argues that it makes sense to confer benefits to recognized political parties only if they have significant public support. And because public support for a political party is measured by the strength of the candidates it nominates,[57] the State claims it can ensure that a political party has public support only if the party and candidate are linked through the party affiliation rule. We are

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[55] *See id.* (upholding three percent eligibility threshold "[i]n light of the deference we accord to the legislature on such issues, *and* because the three percent figure remains in the mainstream of the practices of other states" (emphasis added)); *Green Party of Alaska v. State* (*Green Party II*), 147 P.3d 728, 736 (Alaska 2006) ("[W]e concur with the superior court that Alaska's requirements are 'within the mid-range' of other states, *and* that the legislature acted reasonably in using this standard to determine party eligibility." (emphasis added)); *see also Vogler II*, 660 P.2d at 1196 (Rabinowitz, J., concurring) ("I do not join in the court's intimation that the [S]tate could meet its burden of justifying [its law] merely by citing the existence of arithmetically similar statutes in the other jurisdictions. Other states are different geographically from Alaska, have different voter populations, are governed by their own unique constitutional guarantees and have statutory patterns of election laws that may vary substantially from that in Alaska.").

[56] *See supra* p. 3.

[57] *See supra* note 7 and accompanying text.

unconvinced. The flaw in the State's argument is that the "link" between candidate and political party does not depend on party registration status.

The State claims that the party affiliation rule is necessary because "[w]hen a Democrat wins the Democratic primary, is listed on the general election ballot as a Democrat, and wins over voters as a Democrat, those votes reasonably — albeit roughly — approximate public support for the Democratic Party." But as the Democratic Party points out, inquiry into voter motivations is inherently speculative: "[T]he State cannot reasonably discern whether a vote for an individual candidate is motivated by support for the [Democratic] Party, support for the [Democratic] Party's policy platform, support for the candidate, in opposition to another candidate that the voter does not want to see elected, or some combination of the above." Because the State does not know the reasons underlying a vote in an open primary election, and even more so in a combined-ballot primary election, the claim that the party affiliation rule allows it to use candidate support as a proxy for party support is illusory. Rather, as the Democratic Party argues, "support for the candidate is imputed to the party because the party has associated with the candidate as its nominee." A candidate need not be a registered party member for this imputation to occur.

The State counters that, at least to some degree, registration with a political party means the candidate "identifies with the party and advocates its views" and that voters logically assume this to be true. But the State cannot show this to be true or even likely. As the United States Supreme Court has noted, "the act of formal enrollment or public affiliation with [a] [p]arty is merely one element in the continuum of participation in [p]arty affairs, and need not be in any sense the most important."[58] Given the ease of

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[58] *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 215 (1986).

registration and the lack of party vetting to run as a registered candidate in Alaska,[59] a candidate who does not support a party's principles or platform could run in a primary as a registered party candidate just as easily as a registered independent candidate. A registered independent candidate could be even more involved with the party and support more of the political party's principles and elements of its platform than a registered party candidate. The party affiliation rule does not "concretely" advance the State's interest.[60]

2. The party affiliation rule is not narrowly tailored to ensuring that candidates have sufficient public support.

The State's next asserted interest is in ensuring that candidates demonstrate public support before the State places their names on the general election ballot. The State argues that the party affiliation rule is "integral" to ensuring that candidates demonstrate a "significant modicum of support" because the State's recognition of an official political party allows it to impute party support to the candidate as a proxy for candidate support. The State argues that it "cannot infer support for the candidate" if the primary winner disavows the political party by refusing to register with it.

We do not find the party affiliation rule a reasonable method of ensuring candidate support. As a threshold matter, the State's interest in ensuring a "modicum of support" is not an important interest in and of itself. As we have explained, the interest in ensuring public support for candidates is grounded in "an interest 'in avoiding

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[59] *See* AS 15.25.030(16) (requiring declaration candidate is "registered to vote as a member of the political party whose nomination is being sought"); AS 15.07.050(c) (permitting supply of voter registration application indicating political party or group to voter affiliated with said political party or group); AS 15.07.070(c) (directing voter registration applications completed 30 days before election to be placed on official registration list).

[60] *See Green Party I*, 118 P.3d 1054, 1066 (Alaska 2005).

confusion, deception, and even frustration of the democratic process at the general election' " through frivolous or fraudulent candidates.[61] The State's asserted interest in ensuring a modicum of support thus is valid only so far as the party affiliation rule advances the underlying interests in avoiding confusion, deception, and frustration of the democratic process at general elections.

Properly grounded in these interests, the party affiliation rule is not narrowly tailored to the State's asserted interest. The party affiliation rule is simply unnecessary in most cases; there generally is no need to impute political party support in a contested primary election because candidate support is demonstrated by the voters' selection of the candidate as the political party's nominee. The State's interest comes into play only in an uncontested or low-turnout primary election, in preventing a rogue candidate from slipping onto the general election ballot as a political party candidate. But even if this edge-case scenario occurred with sufficient regularity to warrant concern, the State has taken no action to prevent it; under the current statutory scheme, an unaffiliated voter could just as easily register as a party member and win as a rogue candidate in an uncontested or low-turnout election.[62] The State's assertion that the party affiliation rule is necessary to stop this deception does not withstand reasonable scrutiny.

3. The party affiliation rule is not narrowly tailored to prevent voter confusion.

The State next argues that the party affiliation rule helps prevent voter confusion arising from independent candidates running under a political party's banner.

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[61] *See State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 980 (Alaska 2005) (quoting *Vogler II*, 660 P.2d 1192, 1195 (Alaska 1983)); *see also Jenness v. Fortson*, 403 U.S. 431, 442 (1971).

[62] *See* AS 15.07.040 ("A person who is qualified . . . is entitled to register at any time throughout the year . . . .").

The State first explains that the primary election ballot, which can include multiple parties,[63] is designed to include only each candidate's name and political party designation. The State thus concludes that voters will find it impossible to tell which primary election an independent is running in on a combined primary ballot. The State next explains that the general ballot, mandated by statute, lists each candidate by name and associated political party.[64] The State thus concludes that the general election ballot will either present independent candidates without indicating that a party nominated them, a deceptive bait-and-switch, or present candidates as both independent and political party nominees, which will be "linguistically confusing, deceptive, or both." We are not persuaded by either argument.

On the primary election ballot, the State could simply print next to each candidate's name the political party whose primary election the candidate is running in. On the general election ballot, the State could simply print the nominating party's name next to the candidate's name. The State appears to concede that the primary election ballot can be redesigned, but it is unsatisfied with the resulting general election ballot. The State argues that the possible descriptors for a candidate's party affiliation — such as "nonpartisan," "undeclared," "non-affiliated," or "independent" — are by definition inaccurate, and that whichever word is chosen will cause voter confusion or deception. But we believe the State's concerns underestimate the Division of Elections and Alaska voters' common sense.

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[63] *See Green Party I*, 118 P.3d at 1070 (holding that parties have right to combine ballots with each other).

[64] *See* AS 15.15.030(5) ("The names of the candidates and their party designations shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated. The party affiliation, if any, shall be designated after the name of the candidate.").

In *Green Party I* we expressed confidence in Alaska voters, reasoning that "given that Alaska's blanket primary system caused little apparent voter confusion, [there is] no basis for predicting that Alaska voters might be incapable of understanding combined ballots."[65] This case is no different. We are confident the Division of Elections will be able to design a ballot that voters can understand. And if the State remains convinced that the ballot design itself will be confusing, it has several other options to adequately inform the public. The ballot could include prominent disclaimers explaining that a candidate's party affiliation denotes only the candidate's voter registration and nothing more.[66] The candidate's party affiliation as distinct from nominating party could be explained in the candidate's statement in the general election pamphlet.[67] The political party could also promote or distance its platform, tenets, and philosophy from a candidate's through a paid advertisement in the pamphlet.[68] And the State could choose to educate the public about new ballots through advertising or explanatory materials, such as the general election pamphlet.[69] The State provides no basis for predicting that Alaska voters will be unable to understand a Democratic Party nominee who nonetheless is, for voter registration purposes, an independent voter. The

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[65] 118 P.3d at 1068.

[66] *See* AS 15.15.030 ("The director shall prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections.").

[67] *See* AS 15.58.030 (directing parameters of candidate's statement).

[68] *See* AS 15.58.040 (permitting political party to generally promote its candidates).

[69] *See* AS 15.58.020(a)(9) (designating information to be provided in general election pamphlet, including "additional information on voting procedures that the lieutenant governor considers necessary").

State's bare assertion of an abstract interest in deterring voter confusion and deception is therefore insufficient to support the party affiliation rule's substantial burden.[70]

4. The party affiliation rule either does not advance or is not narrowly tailored to promoting political stability interests.

The State's final interest is in "the stability of its political system." The State argues the party affiliation rule promotes political stability by "protecting the integrity of the State's two routes to the general election ballot, preserving party labels as meaningful sources of information for voters, and maintaining political parties as viable and coherent entities." We conclude that the party affiliation rule either does not advance these interests or is not narrowly tailored to advancing them.

First, the party affiliation rule does not advance the integrity of the two routes to the ballot. In *Green Party I* we held that the combined-ballot ban was not justified solely because the State had an interest in "nominating 'party candidates through a primary election rather than through direct party selection of candidates.' "[71] We reasoned that this interest, while "clearly legitimate," was "not concretely at issue"

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[70] *See Green Party I*, 118 P.3d at 1068. The State argues in passing that we should identify at least one ballot that could survive a pre-election challenge and not be unduly confusing. But designing ballots is committed to the Division of Elections, not to us. *See* AS 15.15.030(1). And to the extent the State is concerned it will not be able to complete pre-election litigation of the ballot design before November elections, this concern is unfounded. *See Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Lake & Peninsula Borough*, 262 P.3d 598, 601 n.19 (Winfree, J., dissenting) ("It is not uncommon for us to consider a case on an expedited basis and issue a summary dispositional order with an opinion to follow . . . ." (citing *Miller v. Treadwell*, 245 P.3d 867, 867, 874 (Alaska 2010) (ordering expedited briefing, holding oral argument, and issuing opinion within 12 days of superior court's contested election case decision); *Keller v. French*, 205 P.3d 299, 299, 301-02 (Alaska 2009) (ordering expedited briefing, holding oral argument, and issuing dispositive order within one week of appeal in high-profile political dispute, with full opinion following later))).

[71] 118 P.3d at 1066.

because a challenge to "the way the primary election is conducted" does not implicate the State's interest in holding primaries.[72] The same reasoning applies here. The State clearly has a legitimate interest in having primary elections for candidates associated with a political party and petitions for candidates not representing a political party. But, as explained above, an independent candidate associates with the Democratic Party simply by running in its primary. The two nomination methods' integrity is not under threat because the primary route to the general election ballot remains solely for candidates associated with a political party. In the State's words, there still remain "two distinct routes to the general election ballot — one for party candidates and one for non-party candidates."

Second, the party affiliation rule is not a reasonable way of maintaining political party labels' informational value for voters. The State asserts that an independent candidate chosen by independent voters cannot represent the Democratic Party message when the candidate runs under the Democratic Party's label. This is true to a point: "To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise."[73] But it is also somewhat beside the point. At the political party level, the State's desire to "protect[] the integrity of the Party against the Party itself" is not a legitimate motivation.[74] The State cannot force the Democratic Party to favor certain viewpoints for the sake of the State's political system. And at the general election level, political parties may already choose to nominate their candidates by

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[72] *Id.*

[73] *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 220 (1986).

[74] *See id.* at 224.

seeking the input of voters who are independent, or even from other parties.[75] We cannot say that requiring a candidate to adopt a political party label will do anything to make candidates more representative of the views the State believes that political party represents. The party affiliation rule is not a reasonable way of preserving the informational value of party labels.

Finally, the State has not met its burden of showing that the party affiliation rule is a reasonable and necessary way of preserving the viability of political parties. The State asserts that the party affiliation rule is necessary for executive branch candidates to represent the majority of the people and for legislative branch candidates to organize themselves into "coherent groups." The State asserts that losing the party affiliation rule will "erode the functioning of a democracy and undermine voters' faith in it." But the State does not explain why this outcome is likely to occur beyond the bare assertion that it will, and "it is not sufficient for the [S]tate to assert theoretical possibilities, albeit undesirable ones, to justify incursions upon free speech rights protected by the Alaska Constitution."[76] Absent further explanation, we see no basis for concluding that the party affiliation rule is what ensures the long-term stability of Alaska's political system. This interest cannot justify the substantial burden on the Democratic Party's associational rights.

V. CONCLUSION

For these reasons, we AFFIRM the superior court's judgment.

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[75] *See supra* p. 4.

[76] *See Green Party I*, 118 P.3d at 1066 (quoting *Vogler II*, 660 P.2d 1192, 1196 (Alaska 1983) (Rabinowitz, J., concurring)).

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James F. Sloan, Reno, for petitioners.

Robert List, Atty. Gen., Carson City, and Robert A. Groves and William S. Isaeff, Deputy Attys. Gen., Carson City, for respondents.

OPINION

PER CURIAM:

Jack Long and the Independent American Party sought mandamus in this court to compel the Secretary of State to accept and file Long's declaration of candidacy for the office of lieutenant governor. We ordered the issuance of a peremptory writ of mandamus, but, because of the exigencies presented, we reserved the filing of an opinion to a later date.

Long, a resident of Nevada for more than 5 years and a qualified Nevada elector, attempted to file his candidacy for the office of lieutenant governor in the Nevada general elections as a representative of the Independent American Party. Long was qualified to file for the office pursuant to NRS 224.010. [1] However, the Secretary of State refused to accept his candidacy on the ground that Long, who had been a Republican, had changed his party affiliation after September [91 Nev. 500] 1, 1973. NRS 293.176. [2] Since the Independent American Party had not become qualified as a political party in Nevada until June 25, 1974, we find the statute inapposite, and conclude that the Secretary of State erred in refusing to accept Long's candidacy for that reason.

Petitioners have suggested that, since Long was the only candidate filing for the office of lieutenant governor on the Independent American Party ticket, his name would not appear on the primary ballots, and he was therefore exempt from the proscriptions

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of NRS 293.176, which is directed to primary elections only. [3] However, by placing emphasis on the 'primary election' language of the statute, Respondent Secretary of State was faced with an impossible situation. For instance, had he accepted Long's filing on July 12, several days before the filings closed, he would have been in error. On the other hand, by not accepting Long's filing and had no one else filed, he was in error.

We believe, and so hold, that NRS 293.176 has no application at all to a new political party coming into existence after September 1 of the preceding year.

A qualified political party that has met standards for qualification should be afforded an opportunity to express its views at election time through its candidates.

NRS 293.127 provides:

'This Title (Title 24, Elections, of NRS) shall be liberally construed to the end that all electors shall have an opportunity [91 Nev. 501] to participate in elections and that the real will of the electors may not be defeated by an informality or by failure substantially to comply with the provisions of this Title with respect to the giving

of any notice or the conducting of an election or certifying the results thereof.'

The right of citizens to associate and organize for the advancement of their political beliefs, and the right of voters, regardless of their political persuasion, to cast their votes as they wish, are two of our most precious freedoms protected by the First and Fourteenth Amendments to the Constitution of the United States. See Williams v. Rhodes, 393 U.S. 23, 30, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968). NRS 293.176 has no application to one in the position of Petitioner Long. For these reasons, we heretofore entered the order granting peremptory writ of mandate compelling Respondent Secretary of State to accept and file the declaration of candidacy for the office of lieutenant governor of the State of Nevada.

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1 NRS 224.010:

'No person shall be eligible to the office of lieutenant governor unless:

'1. He shall have attained the age of 25 years at the time of such election; and

'2. He is a qualified elector and has been a citizen resident of this state for 2 years next preceding the election.'

2 NRS 293.176 provides:

'No person may be a candidate for a party nomination in any primary election if he has changed the designation of his political party affiliation on an official affidavit of registration in the State of Nevada or in any other state since September 1 prior to the closing filing date for such election.'

3 NRS 293.260 provides:

'1. Where there is no contest for nomination to a particular office, neither the title of the office nor the name or names of the candidates shall appear on the ballot.

'2. If only one political party has candidates for an office or offices, the candidates of such party who receive the highest number of votes at such primary, not to exceed twice the number to be elected to such office or offices at the general election, shall be declared the nominees for the office or offices.

'3. Where no more than the number of candidates to be elected have filed for nomination for any office, the names of such candidates shall be omitted from all (primary) election ballots.' (Emphasis added.)

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497 F. Supp. 646

Lynn CRUSSEL, a/k/a Dana Lynn Crussel, Plaintiff,
v.
The OKLAHOMA STATE ELECTION BOARD: Grace Hudlin, Chairman of the Okla. State Election Bd.; Drew Neville, Vice-Chairman of the Okla. State Election Bd.; and Lee Slater, Secretary of the Okla. State Election Bd., Defendants.

No. CIV-80-1090-W.

United States District Court, W. D. Oklahoma.

October 8, 1980.

[497 F. Supp. 647]

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James C. Linger, Tulsa, Okl., for plaintiff.

Jan Eric Cartwright, Atty. Gen. of Okl., Brent S. Haynie, Asst. Atty. Gen. of Okl., Oklahoma City, Okl., for defendants.

MEMORANDUM OPINION

LEE R. WEST, District Judge.

Plaintiff brought action for a writ of mandamus against the State Election Board of the State of Oklahoma and its members, such writ to compel the Board to reinstate the Plaintiff's name upon the ballot for the Oklahoma General Election, Oklahoma State Senate District No. 35, as a candidate of the Libertarian Party of Oklahoma. Plaintiff alleged as grounds for relief that Title 14, Okla. Statutes, §§ 80 and 108, as applied to Plaintiff, is unconstitutional in that it violates the First and Fourteenth Amendments of the U.S. Constitution, and Title 42, U.S.C. § 1983. Plaintiff also sought monetary damages in the amount of Four Hundred Fifty Dollars ($450.00).

The present action arose as a result of an administrative order of the Defendant State Election Board on July 15, 1980, striking the candidacy of Plaintiff from the ballot for election to the office of State Senator, District No. 35. The order of the State Election Board being final, Plaintiff petitioned the Oklahoma Supreme Court for a writ of mandamus ordering the Board to include her name on the ballot. The matter was briefed and argued before the court, en banc, on August 19, 1980. The Oklahoma Supreme Court issued a written order declining original jurisdiction over the matter (Case No. 55,630). Plaintiff then sought relief in the U.S. District Court for the Northern District of Oklahoma. That Court found venue to be improper in the District and ordered the case transferred to this Court on September 19, 1980.

A hearing on a Motion for Summary Judgment was held before this Court on September 25, 1980. That motion was denied by the Court. The parties agreed to expedite the matter by submitting the case on a stipulation of the facts, waiving further argument and submitting additional briefs and replies thereto.

The Court makes the following findings of fact and conclusions of law.

I. *Findings of Fact*

The facts of this case are not in dispute. The Libertarian Party became a political party recognized under the laws of the State of Oklahoma on June 13, 1980. On June 16, 1980, Plaintiff executed a voter registration form wherein she designated the Libertarian Party as her party affiliation. Prior to that transaction, Plaintiff was registered as an "Independent" voter which in Oklahoma, has the effect of no party registration. The filing period for elective office commenced on July 7, 1980, and terminated on July 9, 1980. On July 9, 1980, Plaintiff filed her declaration of candidacy with the State Election Board seeking nomination of the Libertarian Party for election to the office of State Senator, District No. 35.

On July 11, 1980, Warren Green, the incumbent candidate for the office, filed a contest of Plaintiff's candidacy for the reason that she had not been a registered

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member of the Libertarian Party for the six months immediately preceding the filing period. Title 14, O.S.Supp.1973, § 80, provides that a candidate seeking the nomination of a political party for the office of State Senator must have been a registered member of that party for the six months immediately preceding the filing period prescribed by law. Title 14, O.S.Supp.1973, § 108, provides the same requirement for the office of State Representative and Title 19, O.S.Supp.1973, § 131.1 provides the same requirement for any county office.

On July 15, 1980, the State Election Board conducted a hearing on the matter and as a result of the hearing, the State Election Board entered an order striking the candidacy of Plaintiff.

There is no six-month party registration requirement imposed upon candidates for the offices of Governor, Lieutenant Governor, Attorney General, State Auditor and Inspector, State Treasurer, Corporation Commissioner, President of the United States, U.S. Senator, or U.S. Representative. These latter candidates are subject to the registration requirement found in 26 O.S.Supp.1974, § 5-105, which provides only that a candidate must be a registered voter of a party from which he seeks nomination. The Libertarian Party will have candidates included on the ballot for some of these latter enumerated offices as well as for state legislative and county offices wherein the Libertarian candidates were not challenged before the State Election Board.

Prior to recognition of the Libertarian Party in Oklahoma on June 13, 1980, the party required its members to be registered as independents; and after June 13, 1980, the party required its members to register officially as Libertarians. The Libertarian Party of Oklahoma will not allow members to continue their affiliation with the party if they should run for office in Oklahoma in the 1980 election as Independents, Republicans, or Democrats.

II. *Conclusions of Law*

The Oklahoma State statutes challenged in this action involve the manner by which an individual may gain access to a position on the state ballot for election to state or county office. As such, the questions presented require no discussion of the state's basic authority to legislate in this area to promote good order (which authority is quite clear). Rather, the Plaintiff alleges that in this instance the State of Oklahoma has breached the limits that the U.S. Constitution places on its admittedly broad police power. Specifically, Plaintiff has alleged that the statutes impermissibly restrict the First Amendment right to political association and also violate the Fourteenth Amendment prohibition against unequal application of the law. The Plaintiff also seeks relief against the named individuals under the provisions of 42 U.S.C. § 1983.

Title 14, O.S.Supp.1973, § 80, requires that an individual desiring to run for State Senator, State Representative, or county office as a candidate of a particular political party must be a registered member of that party for six months immediately preceding the filing period for the election. This statute must be read in conjunction with 26 O.S.Supp.1976, § 4-112, which provides that a person may not register as a member of a party unless that party is recognized under Oklahoma law. The requirements for party recognition are not being challenged in this action. They are pertinent to this action, however, in that they provide that a party may be formed and recognized at any time except during the period between July 1 and November 15 of any even-numbered year. The combined effect of the two sections of the statutes is such that a person may register as a member of a party newly recognized within the six-month period prior to the filing period, and consequently, be unable to meet the six month registration requirement to run as a candidate of that political party for the offices of

State Senator, State Representative, or county official.

In contrast, candidates for state executive offices need be registered as a member of the party whose nomination to office they seek only at the time of filing, except that such candidates are limited by 26 O.S. Supp.1979, § 4-119, which prohibits the

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changing of political affiliation between July 1 and September 30 in any even-numbered year. In sum, a candidate for state executive office may register or change affiliation as late as July 1, whereas one seeking a state legislative or county office must have registered a change of affiliation by January 1 of the election year.

The Plaintiff has alleged three different rationales upon which this Court might issue the requested writ of mandamus: (1) That the legislature implied an exception to the six-month durational registration requirement when it enacted § 1-108 allowing new political parties to become recognized as late as June 30 of an election year; (2) That the six-month registration requirement impermissibly burdens the right of access to a position on the state ballot; and (3) That the six-month registration requirement constitutes a violation of the right to equal protection of the law in that it applies to county and legislative candidates but not executive candidates on the state ballot.

As regards the first argument, this Court declines to find an implied exception to the six-month durational registration requirement. Plaintiff has offered no real evidence of any legislative intent to make an exception. The statutes in question are not totally consistent, but neither are they patently inconsistent or contradictory. It is entirely possible that the legislature intended its Title 26, O.S.Supp.1974, § 1-108, rules on party registration to be subject to its previously enacted statutes applying the six-month rule to county and state legislative office candidates. The Court is unwilling to venture a guess in this regard and finds such implied exception unwarranted in fact or law and unnecessary to the resolution of this action.

Plaintiff's second argument is more substantial. The six-month party registration requirement does in fact place a restriction on access to the ballot. The decisional law does not establish as a matter of principle which standard of review (strict scrutiny, rational basis, or a middle standard) will be used to gauge a law that affects the right of access to the ballot. The Supreme Court has never held that the right to vote or the right of reasonable ballot access arise from the First Amendment. The Supreme Court has stated, however, that those two rights are so intertwined and essential to the First Amendment right of political association as to require a statute significantly burdening the exercise of those rights to be justified by *"more than a mere showing of legitimate state interest."* (emphasis added). *Lubin v. Panish*, 415 U.S. 709, 716, 94 S.Ct. 1315, 1320, 39 L.Ed.2d 702 (1974); *Kusper v. Pontikes*, 414 U.S. 51, 58, 94 S.Ct. 303, 308, 38 L.Ed.2d 260 (1973); *Williams v. Rhodes*, 393 U.S. 23, 31, 89 S.Ct. 5, 11, 21 L.Ed.2d 24 (1968). *See also, Wright v. Mahan*, 478 F.Supp. 468, 473 (E.D.Va.1979).

In this case, the voters are denied the ability to vote for county and state legislative candidates of a party that is officially recognized by the State of Oklahoma. The fact that the party has sufficient support from the electorate to have gained state recognition indicates that there will be voters expecting to find candidates with the subject party affiliation. A frustration of that voter expectation and collateral limitation of voting options constitutes a heavy burden on the right to vote. *Lubin v. Panish*, 415 U.S. at 717, 94 S.Ct. at 1320; *Williams v. Rhodes*, 393 U.S. at 31, 89 S.Ct. at 10. The imposed limitation on the right of voters is of sufficient and direct impact as to invoke a standard of review more rigorous than the "rational basis" test. *Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 855, 31 L.Ed.2d 92 (1972).

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The defendants have relied heavily upon cases which involved statutes aimed at preventing opportunistic "party swapping" and preserving the integrity of route to the ballot. *Storer v. Brown*, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974); *Lippitt v. Cipollone*, 337 F.Supp. 1405 (N.D.Ohio 1971). While it is granted that those interests are legitimate and compelling state interests, this Court fails to see that those interests are served by the six-month party registration requirement as it is applied to the

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Plaintiff.[1] The Plaintiff could not be accused of opportunistic party swapping nor could she be accused of having compromised the route to the ballot in Oklahoma. This Plaintiff merely moved from an unaffiliated status to affiliation with a new party. To the extent that the six-month rule prevents members of recognized parties from making opportunistic changes of affiliation, it does serve a compelling state interest. But the manner in which the law affects the Plaintiff here does not serve that state interest. The teachings of the Supreme Court access to ballot cases include that laws affecting such areas should be carefully constructed so as to avoid excluding persons from the ballot in a manner not consistent with the state interest which justifies the legislation. *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 185, 99 S.Ct. 983, 986, 59 L.Ed.2d 230 (1979); *Lubin v. Panish*, 415 U.S. at 716, 94 S.Ct. at 1320; *Bullock v. Carter*, 405 U.S. at 146, 92 S.Ct. at 857. Although these cases all involved measures more restrictive than those in the instant case, the principle that states should use the least restrictive means of pursuing legitimate interest is certainly valid in its application here. The state has failed to show that a compelling or otherwise legitimate state interest is served by preventing persons without party affiliation from joining recognized parties during the six-month period and then entering their nomination races. To the extent that the six-month rule has the above restrictive effect, it constitutes an unconstitutional burden on the right of political association and the related right to vote and right of reasonable access to the ballot.

As to the Plaintiff's third argument for relief, the Court will consider it in light of the Supreme Court decision in *Illinois Election Bd. v. Socialist Workers Party, supra* (hereafter *IEB*). In that case, the Illinois Election Code had the effect that an independent or new party candidate for city office in Chicago was required to collect substantially more signatures on a nominating petition than an independent or new party candidate for state office. The prospective candidates in that action argued that the equal protection clause was violated because of the difference in qualifications required of independent and new party candidates seeking statewide office and those independent and new party candidates seeking city office. *IEB*, 440 U.S. at 181, 99 S.Ct. at 989. The Court determined that the statute in question restricted access to the ballot and thereby burdened the fundamental right to political association and the right to vote. The Court then held that "when such vital individual rights are at stake, a state must establish that its classification is necessary to serve a compelling interest." *IEB*, 440 U.S. at 183, 99 S.Ct. at 991.

The Court recognized in *IEB* that the state had a legitimate interest in requiring that all candidates indicate that they had at least a modicum of support in order to avoid "laundry list" ballots and fraudulent or frivolous candidacies. The Court failed to find that there was a legitimate reason for making the requirements in that regard more demanding for city office candidates than those for state office candidates. Accordingly, the Court ruled the statute unconstitutional insofar as it required more of city office candidates than it did of candidates for statewide office. This holding was made on equal protection grounds.

In this case, the same vital and fundamental interests are involved as were in *IEB*. *See also, Fleak v. Allman*, 420 F.Supp. 822, 824 (W.D.Okl.1976); *Draper v. Phelps*, 351 F.Supp. at 681. Consequently, the state must establish that the classifications it uses are necessary to serve a compelling

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state interest. The classification in question is that between state legislative and county offices in contrast with state executive offices. The statutes reflect a determination by the legislature that those persons seeking state legislative and county offices must be affiliated with the party whose nomination they seek at least six months prior to the filing period. No such requirement is made of candidates for state executive office.

In supporting the above classification, the state has contended that county officials and legislative officers are in more direct contact with individuals and that their activities have a more direct and immediate impact on the local constituency. Further, the State contends that the legislative power is more insulated and absolute than the power of the executive offices. Therefore, the State argues that it is more important that county and state legislative offices be protected from candidates who may be "opportunistic party swappers" than it is to protect state executive offices from such persons. The state goes on to assert that statutory protection for county and legislative offices is more necessary than that for statewide office because campaigns for statewide elections tend to begin at an earlier time than those for county and legislative elections, and that the former tend to draw more attention from the print and broadcast media.

Under a rational basis analysis, the above reasons might arguably be sufficient to justify the distinction between state and executive and state legislative and county offices.[2] Following *IEB*, however, more than a rational basis is required to justify the classifications used in this area. This Court is not persuaded that the interest and reasons listed above are more than minimally reasonable bases and thus appear to be far short of compelling. It might be noted that the State has offered no decisional law to support its contention that the above reasons and interests are sufficient to support the classifications used. This Court therefore holds that insofar as the Oklahoma statutes require a six-month party affiliation of candidates for state legislative and county office but not for state executive office, it is unconstitutional on the basis of the Fourteenth Amendment guarantee of equal protection of the laws. As in *IEB*, the State has failed to prove that greater protection of county and state legislative offices is warranted by an interest so substantial as to justify the intrusion into the areas of right to vote, right of reasonable access to the ballot, and the right of political association.

In conclusion, this Court has declined to find that the state statutes contain an implied exception for members of newly formed parties to the six-month affiliation requirement for county and legislative office candidates; this Court does hold the six-month affiliation requirement is overly broad in that it not only prevents candidates from improperly changing parties, but also prevents unaffiliated potential candidates from moving from an unaffiliated status to party affiliation during the six-month period prior to the filing period; and this Court holds that the application of the six-month rule to state legislative and county office candidates but not to state executive candidates is violative of the Fourteenth Amendment Equal Protection Clause.

III. *Relief*

By Order of this Court, the defendant members of the Oklahoma State Election Board are hereby enjoined from removing the name of the Plaintiff from the November General Election Ballot and are enjoined from issuing same ballot without including the name of the Plaintiff as the candidate of the Libertarian Party of

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Oklahoma for election as Oklahoma State Senator from State Senate District No. 35. Plaintiff's request for money damages is denied because any such damages would ultimately come from the treasury of the State of Oklahoma and to hold otherwise would be violative of the immunity conferred on states by the Eleventh Amendment to the United States Constitution. *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). Plaintiff is awarded, however,

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reasonable costs of this action, including attorney's fees under 42 U.S.C. § 1983 as against the state officials. *Hutto v. Finney*, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978); *Battle v. Anderson*, 614 F.2d 251 (10th Cir. 1980).

Notes:

1 The only other state interest that the Defendant has advanced to support the six-month party registration requirement is that it helps to promote an informed electorate. While the Court notes that the promotion of an informed electorate is a substantial and legitimate state interest, the Defendant has failed to persuade the Court that this interest is even remotely enhanced by the six-month party registration requirement. The promotion of electorate knowledge of candidates is effectively served by the durational residency requirement as discussed in *Draper v. Phelps*, 351 F.Supp. 677 (W.D.Okl.1972).

2 The Court does recognize, as did the Supreme Court in *IEB*, 440 U.S. at 184, 99 S.Ct. at 990, that valid distinctions among some state offices and between some state and county offices could be made for other purposes such as setting durational residency requirements. See also, *Oklahoma State Election Board v. Coats*, 610 P.2d 776 (Okl.1980) (court upheld restriction preventing district attorney from running for office whose term would be at all concurrent with their present office).

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