

**IN THE SUPREME COURT OF FLORIDA**

**HECTOR ROOS,**

Petitioner,

v.

Case No.:

**CORD BYRD,** in his  
Official Capacity as Secretary of State  
of Florida,

Respondent.

\_\_\_\_\_ /

An original proceeding seeking an emergency writ of mandamus

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**EMERGENCY PETITION FOR WRIT OF MANDAMUS TO REQUIRE  
SECRETARY BYRD'S COMPLIANCE WITH STATE LAW PROVIDING  
FOR A LIBERTARIAN PRESIDENTIAL PREFERENCE PRIMARY**

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January 24, 2024

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Petitioner

## **A. NATURE OF RELIEF SOUGHT**

Petitioner respectfully requests this Court to issue an emergency writ of mandamus to direct the Respondent to perform their ministerial duties to place the list of candidates submitted by the Libertarian Party of Florida (Libertarian Party) on the ballot for the Florida Presidential Preference Primary (PPP) contest on March 19, 2024. Respondent rejected the Libertarian Party PPP request on the sole basis that the Libertarian Party is a “minor political party.” Respondent’s actions are a 1) abuse of discretion of a 2) unconstitutionally vague law contradicting a prior Secretary of State by 3) applying an unconstitutional legal standard set aside by voter-approved guaranteed ballot access in the Florida Constitution; and by Florida and U.S. Supreme Court decisions. Respondent denying the Libertarian Party PPP request and the Florida Democratic Party canceling its PPP have left voters to choose voting in the Republican Party of Florida PPP or not at all.

This vital presidential election year emphasizes the right to vote for the candidate of your choice. The U.S. Supreme Court is considering whether the State of Colorado has the authority to reject the Colorado Republican Party request to place the name of the presumptive Republican Party nominee on the ballot for that state’s Presidential Preference Primary.

## **B. BASIS FOR INVOKING THE JURISDICTION OF THE COURT**

Pursuant to Article V, Section 3(b)(8) of the Florida Constitution, this Court has original jurisdiction to hear this Emergency Petition for Writ of Mandamus involving state officers and state agencies. The Respondent is a “state officer” within the meaning of section 3(b)(8). See *Moreau v. Lewis*, 648 So. 2d 124 (Fla. 1995). Mandamus is a remedy that is used to enforce an established legal right by compelling a public officer to perform a duty required by law. See *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009).

The Court has accepted jurisdiction in original proceedings “where the functions of government would be adversely affected absent an immediate determination by this Court,” *Chiles v. Phelps*, 714 So. 2d 453 (Fla. 1998) (citations omitted), where there are no substantial disputes of fact, *Id.* at 457 n.6; *Whiley v. Scott*, 79 So. 3d at 708 (Fla. 2011), and where the constitutional issue would ultimately reach the Court, *Chiles*, 714 So.2d at 457 n.6.

Petitioner contends that the Libertarian Party has a clear legal right to apply for a PPP to the Secretary of State like any other political party and the people of the State of Florida have a clear legal right to cast a vote for whom they would prefer as the Libertarian Party Presidential Nominee. See *Smith v. Smathers*, 372 So. 2d 427 (Fla. 1979) (the

petitioner sought mandamus to compel the Secretary of State to place his name on the ballot as a write-in candidate); *Hoy v. Firestone*, 453 So. 2d 814 (Fla. 1984) (the petitioner sought a writ of mandamus to compel the Secretary of State to place his name on the ballot in a nonpartisan judicial election). Mandamus is the proper remedy in the present case.

There are no facts in dispute. The factual basis for the argument made in the petition is established entirely by communication between the Libertarian Party and the Respondent that are a matter of public record.

The immediacy of the problem is clear. The PPP is scheduled to take place on March 19, 2024.

For these reasons, the petitioner respectfully submits that this Court has discretionary jurisdiction to issue a writ of mandamus and that it should exercise its jurisdiction to decide the case on the merits.

## **C. STATEMENT OF CASE AND FACTS**

### **I. Timeline of Events**

On June 19, 2023, the Respondent received an email with an attached letter from the chair of the Libertarian Party requesting among other questions whether “a Presidential Preference Primary be held on our behalf as a minor party within the meaning of section 103.101(1).” The

letter further provided legal analysis containing many of the arguments mentioned below. No advisory opinion was issued and instead a phone call by legal counsel for the Department of State in August made to answer this question in the negative (briefly memorialized in other communication discussed further in this section). See attached copy of Libertarian Party Email and Letter as Exhibit A.

On November 30, 2023, the Respondent received a letter from the Libertarian Party requesting to place a list of candidates to the PPP ballot. See attached copy of Libertarian Party Letter as Exhibit B.

The Respondent through the Department of State staff mailed a letter dated December 1, 2023 stating in part: “Since the Libertarian Party of Florida is a registered minor political party in Florida, the names submitted will not appear on the 2024 Presidential Preference Primary ballot.” See attached copy of DOS Rejection Letter as Exhibit C.

On January 13, 2024, the Chair of the Libertarian Party of Florida, sent a follow-up email with a question “Could you please clarify under what authority your office has to reject our application?” explaining that the agency is only empowered to make a simple administrative determination and should accept the Libertarian Party PPP request. The Department of State legal counsel responded on January 19, 2024 stating in part, “Minor

political parties do not participate in the PPP.” See attached LPF-DOS January Email Communication as Exhibit D.

## II. Relevant Florida Law

Florida laws governing this case are as follows in their relevant part:

103.101 Presidential preference primary.—

(1) Each political party other than a minor political party shall, at the presidential preference primary, elect one person to be the party’s candidate for nomination for President of the United States or select delegates to the party’s national nominating convention, as provided by party rule. The presidential preference primary shall be held on the third Tuesday in March of each presidential election year. Any party rule directing the vote of delegates at a national nominating convention shall reasonably reflect the results of the presidential preference primary, if one is held.

(2) By November 30 of the year preceding the presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot. The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted not later than on the first Tuesday after the first Monday in December of the year preceding the presidential preference primary. The Department of State shall immediately notify each presidential candidate listed by the Secretary of State. Such notification shall be in writing, by registered mail, with return receipt requested.

Sections 103.101(1&2), Fla. Stat. (2023) (emphasis mine)

A “minor political party” is defined in two places in Florida law.

103.095 Minor political parties.—

(1) Any group of citizens organized for the general purposes of electing to office qualified persons and determining public issues under the democratic processes of the United States may become a minor political party of this state by filing with the department a certificate showing the name of the organization, the names and addresses of its current officers, including the members of its executive committee, accompanied by a completed uniform statewide voter registration application as specified in s. 97.052 for each of its current officers and members of its executive committee which reflect their affiliation with the proposed minor political party, and a copy of its constitution, bylaws, and rules and regulations.

Section 103.095(1), Fla. Stat. (2023) (emphasis mine)

The second place is in Chapter 97, Fla. Stat. titled “QUALIFICATION AND REGISTRATION OF ELECTORS” as follows:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

...

(20) “Minor political party” is any group as specified in s. 103.095 which on January 1 preceding a primary election does not have registered as members 5 percent of the total registered electors of the state.

Section 97.021(20), Fla. Stat. (2023) (emphasis mine)

“Minor political parties” are also regulated by the same laws as “political parties” generally unless stated otherwise as seen in section 103.091, Fla. Sta. et. seq.

Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the primary election in each year a presidential election is held.

Section 103.091(4), Fla. Stat. (2023) (emphasis mine)

The Florida Election Code which includes Chapters 97-106, Fla. Sta. (2023) applies to all political parties unless express language indicates otherwise. See Section 97.011, Fla. Sta. (2023).

Voters passed Revision 11 in 1998 to add guaranteed ballot access to minor political parties in the Florida Constitution creating a superior standard of review for how the Florida Election Code should be applied to minor political parties.

Regulation of elections.—All elections by the people shall be by direct and secret vote. General elections shall be determined by a plurality of votes cast. Registration and elections shall, and political party functions may, be regulated by law; however, the requirements for a candidate with no party affiliation or for a candidate of a minor party for placement of the candidate’s name on the ballot shall be no



greater than the requirements for a candidate of the party having the largest number of registered voters.

Article VI, Section 1, Fla. Const. (emphasis mine)

### **III. Responsibilities of the Secretary of State**

Responsibilities of the Secretary of State in this case are as follow:

Administration of certain laws.—The Department of State shall have general supervision and administration of the election laws, corporation laws and such other laws as are placed under it by the Legislature and shall keep records of same.

Section 15.13, Fla. Sta. (2023) (emphasis mine)

Additionally, an express list of responsibilities is in Chapter 97, Fla. Stat. but whose administration is limited outside of “chapters 97 through 102 and 105 of the Election Code”:

97.012 Secretary of State as chief election officer.—The Secretary of State is the chief election officer of the state, and it is his or her responsibility to:

(1) Obtain and maintain uniformity in the interpretation and implementation of the election laws. In order to obtain and maintain uniformity in the interpretation and implementation of the election laws, the Department of State may, pursuant to ss. 120.536(1) and 120.54, adopt by rule uniform standards for the proper and equitable interpretation and implementation of the requirements of chapters 97 through 102 and 105 of the Election Code.

Section 97.012(1), Fla. Stat. (2023) et seq. (emphasis mine)

Express language expanding the duties of the Secretary of State are throughout the Florida Election Code such as seen in Chapter 103, Fla. Stat. (2023) where the rulemaking authority here given to the Secretary of State is how to determine when political parties are “canceled”:

The Division of Elections shall adopt rules to prescribe the manner in which political parties, including minor political parties, may have their filings with the Department of State canceled.

Section 103.095(5), Fla. Stat. (2023)

The Attorney General has also opined that the PPP is not a primary election within the meaning of the Florida Election Code or the constitution, and therefore the Secretary of State has no role in administering it because candidates for federal office are generally beyond the reach of the Florida Election Code.

*I have also held, in AGO 072-310, that the Florida Presidential Preference Primary:*

*“. . . was not a primary election within the purview of the Florida Election Code generally, nor does it fall within the constitutional and statutory provisions of a general election to a particular public office.”*

*To the same effect see AGO 072-274, in which I concluded that “the Florida Presidential Preference Primary is not a primary election. . . .”*

Fla. Att’y Gen. Op. [74-23](#) (1974); Fla. Att’y Gen. Op. 072-310 (1972); Fla. Att’y Gen. Op. 072-274 (1972).

#### **IV. Secretary of State cannot impose additional requirements not expressly authorized in law**

Only express language in statute can authorize the Secretary of State to go beyond a simple administrative determination in fulfilling their duties. Otherwise, the Secretary of State's ministerial determination is limited to their charge "under the constitution and statute." See *State ex rel. Shevin v. Stone*, 279 So. 2d 17 (Fla. 1972)

The resign law is not Secretary Stone's to administer by such a determination, any more than the campaign spending law. His charge under the constitution and statute does not extend to the substance or correctness or enforcement of a sworn compliance with the law—with 'matters in pais', as it were. Once the candidate states his compliance, under oath, the Secretary's ministerial determination of Eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made, as here.

*Id.* at 22

In 2022, Florida's First District Court of Appeals held that a candidate's failure to meet the party affiliation requirement did not disqualify her from the ballot, because the statute did not expressly provide for such a consequence.

If this Court were to construe the party affiliation statement provision in section 99.021(1)(b) as having an *implied* disqualification mechanism, the

*express* Resign-to-Run disqualification language in section 99.012(6) would be meaningless. Consistent with longstanding principles, this Court presumes that the Legislature enacts laws with purpose, and we decline to construe statutes in a way that would render them meaningless. See, e.g., *Scherer v. Volusia Cnty. Dep't of Corr.*, 171 So. 3d 135, 139 (Fla. 1st DCA 2015) (“No part of a statute, not even a single word, should be ignored, read out of the text, or rendered meaningless, in construing the provision.”); *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198 (Fla. 2007) (“We are required to give effect to every word, phrase, sentence, and part of the statute, if possible, and words in a statute should not be construed as mere surplusage.” (internal quotations and citations omitted)). Just as the resignation language of the candidate's oath in section 99.021(1)(a)11. does not have an implied disqualification mechanism, neither does the party affiliation statement in 99.021(1)(b).

*Jones v. Schiller*, 345 So. 3d 406, 412 (Fla. Dist. Ct. App. 2022)

The Secretary of State has been required by this Court to consider how they construe their duties “under the constitution and statute” on whether any implied mechanism makes express language meaningless. See *State ex rel. Shevin v. Stone* at 22. In addition, the Secretary of State must also consider setting aside statutory requirements supplanted by constitutional changes in guiding their duties.

**V. Prior Secretary of State provided a Libertarian Party Primary Election despite statutory prohibition against “minor political parties” following passage of Revision 11 (1998) to Florida Constitution**

In 2016, the Secretary of State provided the Libertarian Party its first Primary Election for US Senate. Prior to this, it was clearly thought that minor political parties do not participate in primaries for a similar reason as the Respondent has stated to not provide a Libertarian Party PPP.

So how do these laws apply to minor political parties seeking to conduct a primary election—they do not.<sup>132</sup> The primary election method of nominating candidates is not available to minor political parties.<sup>133</sup>

...

132. See *State ex rel. Merrill v. Gerow*, 85 So. 144, 146 (Fla. 1920).

133. See generally *State ex rel. Barnett v. Gray*, 144 So. 349 (Fla. 1932); *Gerow*, 85 So. at 146 (stating that the rights and powers conferred and granted by the primary election laws are limited to those political parties that, at the general election for state or county officers preceding a primary, polled more than five percent of the entire vote cast in the state).

While the Florida Election Code provides that qualified candidates for nomination to an office are entitled to have their names printed on the official primary election ballots, this provision necessarily means the qualified candidates of the so-called major political parties because the primary election laws apparently apply only to such parties.

21 FLA. JUR. 2d Elections § 120 (2005).

Mitchell W. Berger & Gregory A. Haile, [The Constitutional Implications of Government Funding for Florida's Primary Voting Process: Is It Constitutionally Permissible to Publicly Fund the](#)

Two Major Parties' Primaries to the Exclusion of All Other Political Parties, 33 Nova L. Rev. 1, 15 (2008)

Due to the passage of Revision 11 (1998) to the Florida Constitution, the Secretary of State at the time extended the same ballot access treatment to the Libertarian Party as what the Republican and Democratic Parties receive.

**D. Standing**

“To be entitled to mandamus relief, ‘the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.’ *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000).” *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009). Petitioner, as a citizen, taxpayer and a voter, has a clear legal right to ask state officials and agencies to carry out their duties as to elections. *Id.*

The Secretary of State is the sole public officer and the Department of State is the sole agency mentioned under section 103.101, Fla. Stat. (2023). The Secretary of State under section 97.012, Fla. Stat. (2023), is the chief election officer in the state of Florida and has a duty to oversee state election laws, including ensuring county supervisors or any other election officials are complying with the law under section 97.012(14), Fla.

Stat. (2023). The head of the Department of State is the Secretary of State. See Section 20.10(1), Fla. Stat. (2023).

Petitioner as a registered voter who wants to vote in the Libertarian Party PPP also has a right to vote for the candidate of their choice. See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 535 (1964) (The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.); *Wesberry v. Sanders*, 376 U.S. 1 (1964) (No right is more precious in a free country than that of having a voice in the election of those who makes the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.); *Williams v. Rhodes*, 393 U.S. 23, 39 (1968) (A state has precious little leeway in making it difficult or impossible for citizens to vote for whomever they please.)

## **E. Arguments**

### **I. Respondent has a ministerial duty to provide the Libertarian Party PPP based on statutory interpretation**

“The interpretation of a constitutional provisions involves a question of law. In interpreting constitutional language, this Court follows principles parallel to those of statutory interpretation. First and foremost, this Court must examine the actual language used in the Constitution. If that language

is clear, unambiguous, and addresses the matter in issue, then our task is at an end.” *Advisory Opinion to Governor re Implementation of Amend. 4 , The Voting Restoration Amend.*, 288 So. 3d 1070 (Fla. 2020) (internal citations and quotations omitted). Therefore, this Court adheres to the “supremacy-of-text principle.” “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Id.* (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)).

The statutory language the Respondent relies upon is the mere distinction of “minor political party” in section 103.101(1), Fla. Stat. (2023) to deny the Libertarian Party PPP. The text clearly indicates a requirement is imposed on “political party” not the “minor political party” to “elect one person to be the party’s candidate...” or to “select delegates to the party’s national nominating convention...”

Each political party other than a minor political party shall, at the presidential preference primary, elect one person to be the party’s candidate for nomination for President of the United States or select delegates to the party’s national nominating convention, as provided by party rule. The presidential preference primary shall be held on the third Tuesday in March of each presidential election year. Any party rule directing the vote of delegates at a national nominating convention shall reasonably reflect the results of the presidential preference primary, if one is held.



Section 103.101(1), Fla. Stat. (2023) (emphasis mine)

Section 103.101(2), Fla. Stat. (2023) does not mention minor political parties as criteria for the Respondent to accept the list of candidates to be placed on the ballot or the furtherance of contacting candidates to inform them their name will be on the PPP ballot. The only requirement imposed on “each political party” is a deadline to submit the list of candidates to the Respondent. See Section 103.101(2), Fla. Stat. (2023).

By November 30 of the year preceding the presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot. The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted not later than on the first Tuesday after the first Monday in December of the year preceding the presidential preference primary. The Department of State shall immediately notify each presidential candidate listed by the Secretary of State. Such notification shall be in writing, by registered mail, with return receipt requested.

Section 103.101(2), Fla. Stat. (2023) (emphasis mine)

The use of the term “political party” mentioned elsewhere in Chapter 103, Fla. Stat. (2023) also applies to a “minor political party” unless express language indicates otherwise.

In plain terms, this language requires only that a political party submit a list of candidates to be placed on the PPP ballot to the Respondent. The text of the statute imposes no requirements beyond that. It does not require proof of whether the political party is also a minor political party, nor does it speak at all to the disqualification of a list of candidates. It provides no express authority to disqualify any list of candidates.

Although the Legislature could have included explicit enforcement language in this statute, it didn't. And the Respondent has not identified any other language in Florida's Election Code that would provide a statutory basis for denial under the circumstances. As a consequence, the Respondent had no discretion other than a simple administrative decision to provide for the Libertarian Party PPP.

II. Section 103.101 is unconstitutionally vague if the Respondent can apply the law differently than a prior Secretary of State.

There is no distinction with respect to ballot access for all political parties after the passage of Revision 11 (1998) to the Florida Constitution. In order to provide a Libertarian Party primary as in 2016 for the U.S. Senate, the Secretary of State must review section 100.061, Fla. Stat. (2023) ("In each year in which a general election is held, a primary election for nomination of candidates of political parties shall be held on the

Tuesday 11 weeks prior to the general election") which effects statewide and state legislative seats, federal offices, and Constitutional officers such as sheriffs, property appraisers, tax collectors, clerk of courts, and supervisors of elections (emphasis mine).

Because there is no distinction with respect to ballot access for “political parties” or “minor political parties” then the Respondent only has a ministerial duty remaining to provide for the Libertarian Party PPP as has been done for primary elections. However, if the Respondent is indeed allowed to apply a different interpretation than a prior Secretary of State, then section 101.101, Fla. Stat. (2023) should be determined by this Court as unconstitutionally vague and allowed arbitrary and capricious government action in violation of First and Fourteenth Amendment rights. See *Duke v. Smith*, 13 F.3d 388, 391 (11th Cir.), writ denied, 513 U.S. 867 (1994).

III. Prohibition of Libertarian Party PPP because of the 5% voter registration threshold is unconstitutionally difficult under Florida and United States Supreme Court precedent.

a. *Beller v. Adams* (Fla. 1970)

There are constitutional implications for state law defining the rights of a minor political party solely by the threshold requirement of “5 percent of the total registered electors of the state.” Section 97.021(20), Fla. Stat.

(2023) (in part). See *Beller v. Adams*, 235 So. 2d 502 (Fla. 1970); *Williams v. Rhodes*, 393 U.S. 23 (1968).

The *Beller* court found this same 5% voter registration threshold alone is unconstitutional in applying the *Williams v. Rhodes* decision, which prohibits states from excluding “virtually all but the two major parties.” *Williams*, 393 U.S. at 31 and suggested to the Florida legislature which was in session at the time on legislation that would meet constitutional muster. The court suggested that a petition of registered qualified electors of 5% or more of the total of the state’s registered voters, rather than registered elector members of the party numbering more than 5% of the total state registration, should be the principal criterion for printed ballot position. *Id* at 504. By extension, the current state law defining minor political parties, that has not been updated since the *Beller* decision, continues to not meet constitutional muster with respect to presidential preference primaries. The Libertarian Party should not be subjected to a more stringent requirement than the one suggested by the Florida Supreme Court, especially when the Libertarian Party has already submitted a valid application for a PPP and should be granted the same opportunity as other political parties to participate in the PPP.

b. Respondent's actions are also inconsistent with later U.S. Supreme Court's decisions

There are additional constitutional implications for state law defining the rights of a minor political party solely by the threshold requirement of "5 percent of the total registered electors of the state" which the Respondent relies upon. See Section 97.021(20), Fla. Stat. (2023). The U.S. Supreme Court's decision in *American Party of Texas v. White* and *Jenness v. Fortson*, both of which recognized the rights of minor parties to participate in the electoral process, subject to reasonable and nondiscriminatory regulations. See *American Party of Texas v. White*, 415 U.S. 767, 781-82 (1974) (holding that a minor party with sufficient support was entitled to a taxpayer funded primary); *Jenness v. Fortson*, 403 U.S. 431, 438-39 (1971) (upholding a 5% petition requirement for ballot access, but noting that it was not combined with other burdensome restrictions). In contrast, the State of Florida imposes multiple and cumulative barriers to minor parties, such as the 5% voter registration requirement, the lack of a PPP, and the denial of internal party office primaries. The only way to overcome these barriers is for 5% of voters to be registered under a minor political party which has never come close. These barriers are not justified by any compelling state interest, and they effectively prevent minor political parties from exercising equal ballot access with the two major parties.

IV. The Right of Association has been expanded by the U.S. Supreme Court to protect the People of Florida from compelled speech and association found in the Florida Election Code.

The fundamental right of association, which includes the right to refrain from associating with or speaking for causes that one opposes, is well-established in constitutional law. See, e.g., *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000).

The U.S. Supreme Court recently affirmed this right by striking down a Colorado law that compelled a web designer to create websites for same-sex weddings against her religious beliefs. *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (“Colorado seeks to force an individual to speak in ways that align with its views but defy her conscience on a matter of major significance.”). Similarly, Florida’s prohibition against minor political parties hosting PPPs violates the associational rights of millions of voters who do not belong to either of the two major parties. According to the Florida Voter Registration Report by the Division of Elections, one-third of registered voters in Florida are not affiliated with the Democratic or Republican parties. Yet, these voters are effectively excluded from participating in a PPP, which are crucial for selecting presidential nominees. This discrimination is especially egregious this year, since the Florida Democratic Party canceled its PPP leaving only the Republican

Party to hold a PPP. See Complaint at 8, *Steinberg v. Florida Democratic Party*, 4:23-cv-00518, (N.D. Fla.).

The Florida Election Code not only infringes on the rights of minor political parties and voters, but also forces them to subsidize the major parties with their tax dollars. Taxpayers pay for the PPPs, which are open only to the members of the parties that choose to hold them. See Section 103.101(1), Fla. Stat. (2023). This amounts to compelled speech and association, as the taxpayers are required to support the views of the candidates of the major parties, regardless of their own preferences. See, e.g., *Janus v. Am. Fed'n of State, Cnty., & Mun. Employees, Council 31*, 138 S. Ct. 2448 (2018) (“Compelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command.”).

## **F. Conclusion**

Petitioner respectfully requests that the Court take into account the importance of this vital presidential election year in exercising its jurisdiction. The Colorado Supreme Court ordered the Secretary of State there to not place the name of the presumptive Republican Presidential nominee on their presidential preference primary ballot. The Colorado situation is now before the U.S. Supreme Court to determine whether a

challenge to the qualifications of a candidate can cause that candidate's name to not be placed on the ballot of a Presidential Preference Primary despite the right of voters to vote for the candidate of their choice.<sup>1</sup> In the meanwhile, the Colorado Republican Party decided to hold a caucus changing the manner in which they select delegates to support their presidential nominee. Perhaps it is for the best to suggest the Florida Legislature revisit the mandate for taxpayer-funded presidential preference primaries and replace it with a privately-funded caucus.

For the above reasons, this Court should issue an Emergency Writ of Mandamus to the Respondent to perform their ministerial duties to place the list of candidates submitted by the Libertarian Party of Florida on the ballot for the Florida Presidential Preference Primary contest on March 19, 2024 or any other relief the Court deems just and proper.

Dated: January 24, 2024

Respectfully submitted,

/s/ Hector Roos

Hector Roos

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Petitioner

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<sup>1</sup> See *Trump v. Anderson* (No. 23-719, certiorari filed January 3, 2024, accepted January 5, 2024).



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 24, 2024 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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**CERTIFICATE OF COMPLIANCE WITH RULE 9.045**

I CERTIFY that this petition complies with the font (Arial 14-point) and word-count requirements. This filing contains 5,510 words (including sections permitted to be excluded), which is within the 13,000 word-limit prescribed in Fla. R. App. P. 9.100(g).

/s/ Hector Roos  
Hector Roos

**Request for Advisory Opinion****EXHIBIT A**

From Josh Hlavka <chair@lpf.org>  
To <DivElections@dos.myflorida.com>  
Cc <ec@lpf.org>, <rules@lpf.org>, <Candidates@lpf.org>  
Date 2023-06-21 19:11

LPF\_Request\_for\_SOS\_Adv\_Op..odt (~32 KB)

Good Evening,

Attached is a request for a advisory opinion regarding this year's Presidential Preference Primary here in Florida.

Please let me know if there are any follow up questions or considerations, I would be more than happy to answer.

Thank you for your time on this matter.

- Josh Hlavka

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Josh Hlavka  
Chair  
Libertarian Party of Florida  
Cell: 631-353-2338  
Email: [chair@lpf.org](mailto:chair@lpf.org)

"When catapults are outlawed, only outlaws will have catapults."

# EXHIBIT A



## The Libertarian Party of Florida

107 SW 9th St.  
Hallandale Beach, FL 33309

844-FLA-FREE (352-3733)

[www.LPF.org](http://www.LPF.org)

June 19, 2023

Florida Department of State, Division of Elections  
Director's Office  
Submitted as a PDF via email to [DivElections@dos.myflorida.com](mailto:DivElections@dos.myflorida.com)

Re: Request for Advisory Opinion

Dear Director:

On behalf of the Libertarian Party of Florida (LPF), a political party officially recognized under the laws of the state of Florida since 1987, we request an advisory opinion from the Division of Elections under section 106.23(2), Fla. Stat., and Rule 1S-2.010, Florida Administrative Code regarding the arrangement of the Presidential Preference Primary prescribed under section 103.101, Fla. Stat. described below (the “Arrangement”).

### Scope of Issues Addressed

The requester requests that Division of Elections issue an advisory opinion on the following issues:

1. Can a Presidential Preference Primary be held on our behalf as a minor party within the meaning of section 103.101(1).
2. Whether the Arrangement satisfies the requirement under our rules that prohibit the binding of delegates to vote for the winner at the national nominating convention (national party bylaws state that the “Use of the unit rule or unit voting is prohibited at national conventions”).
3. Whether the Arrangement is budgeted to provide for an additional political party to participate from existing revenues.

4. Whether the Arrangement prohibits the participation of voters who are not registered to vote with the political party of the candidate of their choice or alternatively, prohibit a political party from inviting No Party Affiliated voters to participate.

### **Status of Arrangement**

The requester regularly runs high-profile presidential candidates and its nominating process is the subject of significant public interest. As a result, the requester has considered submitting a list of presidential candidates to the Secretary of State as prescribed under section 103.101(2), Fla. Stat.. This proposed submission would also contain a request to open the ballot to No Party Affiliated voters. The LPF is a minor party with respects to this Arrangement.

### **Description of the Arrangement**

Under the Arrangement, the Secretary of State is currently holding a Presidential Preference Primary every 4 years. Political parties are required to submit a list of presidential candidates to the Secretary of State that are placed on the ballot. This Arrangement is required for major political parties.

### **Legal Analysis**

The requester provides an evaluation of the Arrangement under applicable law and why the requester believes the Division of Elections should opine favorably for each of the issues for which the requester seeks an advisory opinion.

1. Under this Arrangement, the Secretary of State is neither explicitly or implicitly prohibited from accepting a list of presidential candidates from a minor party. Furthermore, under the Equal Protection doctrine, the Secretary of State is required to hold a Presidential Preference Primary upon request by a minor party. See *Kusper v. Pontikes*, 414 U.S. 51 (1973) ("[t]he states may not infringe upon basic constitutional protections' and 'unduly restrictive state election laws may so impinge upon freedom of association as to run afoul of the First and Fourteenth Amendments'").
2. Under this Arrangement, only if there is “Any **party rule** directing the vote of delegates at a national nominating convention shall reasonably reflect the results of the presidential preference primary, if one is held.” should delegates to the national nominating convention be bound (emphasis mine). No such party rule exists.

3. The expenses related to this Arrangement are contained in the Division of Elections budget approved under the “Program: Elections” of the FY 2023-2024 state appropriations (lines 3206-3219). Any increases to the cost of the Arrangement are absorbed in this budget.
4. Under this Arrangement, there is no explicit prohibition against the inclusion of voters who not registered with the same party as the candidate of their choice. Rather, this seems to have been a practice by custom. As a result, the Secretary of State is not explicitly prohibited from requiring ballots designed that allow the participation of voters who are not registered to vote with the political party of the candidate of their choice or that allow the participation of a specific class of voters which a political party would like to invite such as No Party Affiliated voters to participate. See *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986) (Concluding that a state’s enforcement of a statute requiring closed primaries, against the will of the Republican Party, violated the First Amendment).

If you have any questions or concerns, you may contact me at (631) 353-2338 or [chair@lpf.org](mailto:chair@lpf.org).

Sincerely,

Joshua Hlavka, Chair, LPF

# EXHIBIT B



RECEIVED

2023 NOV 30 PM 1:07

CLERK OF SUPERIOR COURTS  
TALLAHASSEE, FL

## **The Libertarian Party of Florida**

107 SW 9th St.

Hallandale Beach, FL 33309

844-FLA-FREE (352-3733) [www.LPF.org](http://www.LPF.org)

November 24, 2023

The Honorable Cord Byrd

Secretary of State

R.A. Gray Building

500 South Bronough Street

Tallahassee, Florida 32399-0250

[DivElections@dos.myflorida.com](mailto:DivElections@dos.myflorida.com)

### **VIA HAND DELIVER / FEDEX AND EMAIL**

Re: *Florida Presidential Primary Ballot / Libertarian Candidates*

Dear Secretary Byrd:

In accordance to section 103.101(2), Florida Statutes, the Libertarian Party of Florida submits the following list of the *Libertarian candidates* to be placed on the 2024 Florida Presidential Preference Primary ballot.

Charles Ballay

Jacob Hornberger

Robert F. Kennedy Jr.

Beau Lindsey

Lars Mapstead

Chase Oliver

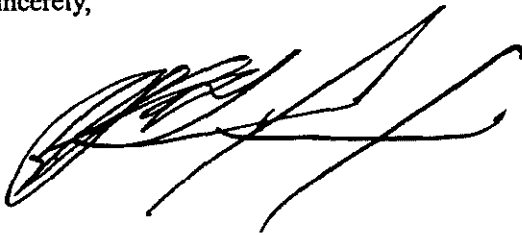
Michael Rectenwald

Joshua Rodriguez  
Robert Sansone  
Joshua Smith  
Mike ter Maat

It is our understanding that December 12, 2023 is the last day for presidential candidates to have their name removed from the Presidential Preference Primary ballot.

Should you have any questions, please feel free to contact me at (631) 353-2338 or [chair@lpf.org](mailto:chair@lpf.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua Hlavka', written over a horizontal line.

Joshua Hlavka  
Chair  
Libertarian Party of Florida

CC: Referenced candidates



### Public Presidential Campaign Contact List

Name	Address	Email
Charles Ballay	547 Baronne Street 503B, New Orleans, LA 70113	Ballay2024@gmail.com
Jacob Hornberger	43176 Center Post Terrace, Broadlands, VA 20148	jgh500@comcast.net
Robert F. Kennedy Jr.	PO Box 147, South Walpole, MA 020710147	Ellie@teamkennedy.com
Beau Lindsey	1013 Dartmouth Street, Chattanooga, TN 37405	aelindsey2014@gmail.com
Lars Mapstead	1840 41st Ave Ste 102-253, Capitola, CA 95010	lars@mapstead.com
Chase Oliver	3939 La Vista Rd STE E #368, Tucker, GA 30084	info@votechaseoliver.com
Michael Rectenwald	P.O. Box 1142, Bristol, CT 06011	michael@michaelrectenwald.com, lori@michaelrectenwald.com
Joshua Rodriguez	13857 W 67th Way, Aurora, CO 80004	info@JoshuaForUnity.com
Robert Sansone	3971 Starry Night Loop Castle Rock, CO 80109	rob.sansone@proton.me
Joshua Smith	4805 Westbrooke Pl, West Des Moines, IA 50266	joshuahxc@gmail.com
Mike ter Maat	700 Skipjack Road, Kinsale, VA 22488	mike@miketermaat.com

# EXHIBIT C



## FLORIDA DEPARTMENT of STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

December 1, 2023

Joshua Hlavka, Chair  
Libertarian Party of Florida  
107 SW 9<sup>th</sup> Street  
Hallandale, Florida 33309

Re: Florida Presidential Preference Primary

Dear Mr. Hlavka,

Our office is in receipt of your list of candidates to be placed on the 2024 Florida Presidential Preference Primary ballot.

Access to the presidential preference primary ballot is governed by section 103.101, Florida Statutes, which requires each political party *other than a minor political party* to submit a list of their candidates to us and for us to place only those listed candidates on the ballot. Since the Libertarian Party of Florida is a registered minor political party in Florida, the names submitted will not appear on the 2024 Presidential Preference Primary ballot.

Placement of the names of minor political party presidential candidates on the 2024 General Election ballot is governed by Section 103.021, Florida Statutes. The process for a minor political party candidate to have one's name placed on the ballot is also detailed in the Federal Qualifying Handbook. The Florida Election laws, Federal Qualifying Handbook and applicable forms are available on the Division of Elections' Forms & Publications' webpages through <https://dos.fl.gov/elections/>.

If you have any questions, please contact this office at 850.245.6240.

Best regards,

A handwritten signature in black ink, appearing to read "Donna S. Brown".

Donna S. Brown, Chief  
Bureau of Election Records

**Fwd: Libertarian Party of Florida Response to DOE Letter dated Dec 1, 2023**

**From** Josh Hlavka <chair@lpf.org>  
**To** Hector Roos <atlarge2@lpf.org>  
**Date** 2024-01-19 15:11

**EXHIBIT D**

LPF\_Request\_for\_SOS\_Adv.\_Op..odt(~33 KB)

- Joshua Hlavka

Begin forwarded message:

**From:** "Davis, Ashley E." <Ashley.Davis@dos.myflorida.com>  
**Date:** January 19, 2024 at 12:39:04 PM EST  
**To:** chair@lpf.org  
**Cc:** DivElections <DivElections@dos.myflorida.com>  
**Subject:** FW: Libertarian Party of Florida Response to DOE Letter dated Dec 1, 2023

Good afternoon,

Please see section 103.101, Florida Statutes, which states in pertinent part that each political party "other than a minor political party" shall elect one person or select delegates at the PPP. Minor political parties do not participate in the PPP. Section 103.021 governs minor political parties' access to the General Election ballot. I spoke to a representative of your party in August about this. If you have any further questions, I'm happy to discuss.

ASHLEY E. DAVIS  
Chief Deputy General Counsel  
FLORIDA DEPARTMENT OF STATE  
500 South Bronough Street, Suite 100  
Tallahassee, Florida 32399-0250  
(p): (850) 245-6531  
(f): (850) 245-6127

-----Original Message-----

**From:** Josh Hlavka <chair@lpf.org>  
**Sent:** Saturday, January 13, 2024 11:36 AM  
**To:** DivElections <DivElections@DOS.MyFlorida.com>  
**Subject:** Libertarian Party of Florida Response to DOE Letter dated Dec 1, 2023

EMAIL RECEIVED FROM EXTERNAL SOURCE

Ms. Brown:

The Libertarian Party of Florida is in receipt of your letter dated December 1, 2023 rejecting our application to place our list of candidates on the 2024 Presidential Preference Primary Ballot.

With all due respect, could you please clarify under what authority your office has to reject our application?

It is understandable that your office cannot provide an immediate response. This matter being of an urgent nature, please provide us a date by when to expect a response.

Under the duties and responsibilities defined under section 97.012, Florida Statutes does not seem to contain an authorization to establish rules for any section of chapter 103 which regulates political parties.

Section 103.101, Florida Statutes which provides for presidential preference primaries also does not contain any authorization providing for the Secretary of State to make a simple administrative determination. Instead, the plain language of the statute is clear and unambiguous that upon the timely receipt of the application "[t]he Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted..."Id.

Similar to the resign to run and campaign finance laws, the presidential preference primary law is not the Secretary of State's and by extension your office's to provide a simple administrative determination. Only an appropriate judicial determination upon a challenge properly made can deny this application. See State Ex Rel. Shevin v. Stone, 279 So. 2d 17 (Fla. 1972) (His charge under the constitution and statute does not extend to the substance or correctness or enforcement of a sworn compliance with the law with "matters in pais", as it were.) See also AGO 74-23.

Please provide a response confirming receipt of this email.

Thank you for your attention to this urgent and important matter affecting our democracy.

Kind regards,

- Josh Hlavka

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Josh Hlavka  
Chair  
Libertarian Party of Florida  
Cell: 631-353-2338  
Email: [chair@lpf.org](mailto:chair@lpf.org)

"When catapults are outlawed, only outlaws will have catapults."

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