UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHRISTOPHER DARNELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**No. 3:23-cv-01266**
	)	**JUDGE TRAUGER**
TRE HARGETT, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS

Defendants, Secretary of State Tre Hargett and Coordinator of Elections Mark Goins, sued in their official capacities only, move pursuant to Federal Rule of Civil Procedure 12 (b)(6), and Local Rule 7.01, to dismiss Plaintiffs' Complaint because it fails to state a claim upon which relief can be granted. Plaintiffs challenge the constitutionality of several statutes as applied to them. But the essence of Plaintiffs' Complaint is its challenge to the signature and 90-day-filing requirements in Tenn. Code Ann. § 2-1-104(a)(23) and § 2-13-107(a)(2), and those requirements have been tested and held constitutionally sound in a materially indistinguishable case. *See Green Party of Tenn. v. Hargett*, No. 16-6299, 2017 WL 4011854, at *6 (6th Cir. May 11, 2017); *Green Party of Tenn. v. Hargett*, No. 3:11-cv-00692, 2016 WL 4379150, at *40 (M.D. Tenn. Aug. 17, 2016). With respect to the remaining challenged statutes—Tenn. Code Ann. §§ 2-1-104(a)(14), (30); and 2-1-114; 2-5-208(d)(1); 2-13-107(e)(2); and 2-13-201(1)—Plaintiffs have failed to allege any facts to support their conclusory legal allegation that the statutes are constitutionally infirm. The complaint must therefore be dismissed under Rule 12(b)(6).

In support of this Motion, Defendants rely on the contemporaneously filed memorandum of law, which is incorporated herein by reference.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the above Motion was filed electronically on January 30, 2024. A true and correct copy of that filing was forwarded on the same day via the Court's CM/ECF system upon the following:

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	)	**JUDGE TRAUGER**
TRE HARGETT, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants, Secretary of State Tre Hargett and Coordinator of Elections Mark Goins, sued in their official capacities only, have moved to dismiss Plaintiffs' Complaint (ECF No. 1) pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rule 7.01 for failure to state a claim upon which relief can be granted. Defendants submit this memorandum of law in support of their motion.

Plaintiffs challenge the constitutionality of, and seek to enjoin the enforcement of, several Tennessee statutes that allegedly prevent Libertarian-party candidates from being labeled on the election ballot with their party designation in Tennessee. Specifically, Plaintiffs challenge, under "the First and Fourteenth Amendments to the United States Constitution," the constitutionality of Tenn. Code Ann. §§ 2-1-104(a)(14), (23), (30); 2-1-114; 2-5-208(d)(1); 2-13-107(a)(2), (e)(2); and 2-13-201(1), as applied to them. (Complaint, ECF No. 1, PageID# 4.) These several statutes establish the process for political parties to appear on the ballot for Tennessee elections. For the reasons discussed below, however, Plaintiffs fail to state a claim upon which relief can be granted.

BACKGROUND

Plaintiffs challenge two aspects of Tennessee's ballot-access scheme for political parties: (1) the signature requirement of 2.5% of the voters from the last gubernatorial election for a petition to become a recognized minor party, and (2) the petition filing deadline of 90 days before the general election. These two requirements are part of Tennessee's overall statutory scheme governing how political parties are recognized in Tennessee and how a political party's candidates are presented on the ballot. These statutes fall into two categories: requirements for political parties and requirements for party nominees to appear on the ballot.

A. Requirements for official recognition of political parties

In Tennessee, a "[p]olitical [p]arty" is "an organization which nominates candidates for public office." Tenn. Code Ann. § 2-1-104(a)(14). Tennessee law defines two types of political party: a statewide political party and a recognized minor party. *Id.* § 2-1-104(a)(23), (30).

Section 2-1-104(a)(30) provides:

> "Statewide political party" means a political party at least one (1) of whose candidates for an office to be elected by voters of the entire state has received a number of votes equal to at least five percent (5%) of the total number of votes cast for gubernatorial candidates in the most recent election of governor.

Section 2-1-104(a)(23) provides:

> "Recognized minor party" means any group or association that has successfully petitioned by filing with the coordinator of elections a petition which shall conform to requirements established by the coordinator of elections, but which must at a minimum bear the signatures of registered voters equal to at least two and one-half percent (2.5%) of the total number of votes cast for gubernatorial candidates in the most recent election of governor, and on each page of the petition, state its purpose, state its name, and contain the names of registered voters from a single county[.]

Tennessee Code Annotated Section 2-13-107(a)(2) provides the method by which an organization can become a recognized minor party:

> To be recognized as a minor party for purposes of a general election, a petition as required in § 2-1-104 must be filed in the office of the coordinator of elections no later than twelve o'clock (12:00) noon, prevailing time, ninety (90) days prior to the date on which the general election is to be held. Notwithstanding the minimum number of signatures required in § 2-1-104(a)(23), if an organization intends to establish a recognized minor party solely within one (1) county, in all other respects, the petition shall conform to the requirements established therein, except the petition must at a minimum bear the signatures of registered voters within such county equal to at least two and one-half percent (2.5%) of the total number of votes cast within such county for gubernatorial candidates in the most recent election for governor. The petition shall be accompanied by the name and address of the person or the names and addresses of the members of the group or association filing the petition to form the recognized minor political party.

Tennessee Code Annotated Section 2-1-114 sets forth an additional requirement:

> No political party may have nominees on a ballot or exercise any of the rights of political parties under this title until its officers have filed on its behalf with the secretary of state and with the coordinator of elections:
>
> . . .
>
> (2) A copy of the rules under which the party and its subdivisions operate. Copies of amendments or additions to the rules shall be filed with the secretary of state and with the coordinator of elections within thirty (30) days after they are adopted and shall be of no effect until ten (10) days after they are filed.

Tenn. Code Ann. § 2-1-114(2).[1]

B. Requirements for party nominees to appear on the ballot

A person cannot appear on the ballot as the nominee of a political party for the offices of Governor, Members of the General Assembly, United States Senator, Member of the United States House of Representatives, or any office elected by voters of a county, unless the political party "(1) [i]s a statewide political party or a recognized minor party; and (2) [h]as nominated the person substantially in compliance with [Tennessee law]." Tenn. Code Ann. §§ 2-13-201, -202. For a

[1] Subsection (1) of § 2-1-114 was found unconstitutional in 2015 and is no longer in effect. *Green Party of Tennessee v. Hargett*, 791 F.3d 684, 696 (6th Cir. 2015). Subsection (2) remains in effect. *Id.*

recognized minor party's candidates to appear on the regular November general-election ballot, the requirements of Section 2-1-114 must be met "no later than September 1 after the primary elections are held." Tenn. Code Ann. § 2-13-107(e)(2). If the deadline is not met, then the candidates will appear on the ballot as independent candidates. *Id.*

On general-election ballots, "the name of each political party having nominees on the ballot shall be listed in the following order: majority party, minority party, and recognized minor party, if any." Tenn. Code Ann. § 2-5-208(d)(1). "A column for independent candidates shall follow the recognized minor party, or if there is not a recognized minor party on the ballot, shall follow the minority party[.]" *Id.* The names within each column are listed alphabetically. *Id.*

C. Plaintiffs' allegations[2]

Plaintiff Libertarian Party of Tennessee is not a recognized party under Tennessee law, and it does not nominate candidates for office in Tennessee by primary election. (Complaint, ECF No. 1, PageID# 2.) Plaintiffs Christopher Darnell and Daniel Lewis are members of the Libertarian Party and registered voters in Tennessee. (*Id.* at PageID# 1.) They are potential candidates for offices elected during the November 2024 general election, and both wish to vote for Libertarian Party candidates on the Tennessee ballot in the November election. (*Id.* at PageID# 1–2.) Plaintiffs Samantha Zukowski and Charles Trayal are members of the Libertarian Party and registered voters in Tennessee who wish to vote for Libertarian Party candidates on the Tennessee ballot in the November 2024 election. (*Id.* at PageID# 2.)

Plaintiffs' claims focus on the signature requirement in Tenn. Code Ann. § 2-1-104(a)(23) and the 90-day petition filing requirement in § 2-13-107(a)(2). The Complaint alleges, for

[2] The facts are taken from the Complaint and are presumed true for purposes of this motion. They are not otherwise admitted.

example, that "it would be virtually impossible to meet the petition deadline for minor political parties of 90 days before the general election, pursuant to Tenn. Code Ann. § 2-13-107(a)(2) . . . because of the unnecessarily high *petitioning requirement*" and that the ballot-access laws "set an unconstitutional burden because achieving statewide political party status by filing the petitions required under Tenn. Code Ann. §§ 2-1-104(a)(23), and 2-13-107(a)(2) in time for a general election sets an unconstitutionally early deadline, unnecessarily high number of petition signatures, and limited time for petitioning." (Complaint, ECF No. 1, Page ID## 5, 6; *see also id.* at PageID## 6-7, 8.) Plaintiffs make no allegations about their attempts to comply with Tennessee's ballot-access laws for the November 2024 election.

LEGAL STANDARD FOR FED. R. CIV. P. 12(b)(6) MOTIONS

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the sufficiency of the complaint. In a light most favorable to the plaintiff, the court must assume that the plaintiff's allegations are true and determine whether the complaint states a valid claim for relief. *Albright v. Oliver*, 510 U.S. 266 (1994); *Bower v. Fed. Express Corp.*, 96 F.3d 200, 203 (6th Cir. 1996). To survive a motion to dismiss, the complaint's "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true." *Bell Atl. Corp. v. Twombley*, 550 U.S. 544, 555 (2007); *Ass'n of Cleveland Fire Fighters v. City of Cleveland, Ohio*, 502 F.3d 545, 548 (6th Cir. 2007). "[T]hat a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of all the elements of a cause of action, supported by mere conclusory statements do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* at 679. Additionally, determining whether a complaint states a plausible claim for relief is a

context-specific task that requires the court to draw on its experience and common sense. *Id.* Under Fed. R. Civ. P. 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'shown'—"that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Thus, "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.*

ARGUMENT

The Complaint Fails to State a Claim upon which Relief Can Be Granted.

A. Plaintiffs are not entitled to relief on their challenge to the signature requirement or to the deadline for filing a petition to be a recognized minor party.

Again, the essence of Plaintiffs' Complaint is its challenge to the signature requirement (Tenn. Code Ann. § 2-1-104(a)(23)) and the deadline for filing a petition to be a recognized minor party (Tenn. Code Ann. § 2-13-107(a)(2)). This challenge should be dismissed because Plaintiffs fail to state a claim upon which relief can be granted. The Middle District has previously held, in a case involving two other minor political parties, that Tennessee's ballot-access laws for recognized minor parties—including the signature requirement in §§ 2-1-104(a)(23) and the petition filing deadline in § 2-13-107(a)(1)—are constitutional as applied to those plaintiffs. *See Green Party of Tenn. v. Hargett*, No. 3:11-cv-00692, 2016 WL 4379150, at *32, *37-38, *40 (M.D. Tenn. Aug. 17, 2016). And the Sixth Circuit affirmed that decision. *See Green Party of Tenn. v. Hargett*, No. 16-6299, 2017 WL 4011854, at *4, *5, *6 (6th Cir. May 11, 2017). Plaintiffs

here have not alleged any facts to distinguish their particular circumstances from those of the plaintiffs in *Green Party*. Therefore, this Court should conclude that Plaintiffs have failed show that they are entitled to relief on their claims.

1. Courts give deference to a State's regulation of electoral logistics.

The Supreme Court has established and maintained a deferential analysis of electoral logistics. "[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 processes." *Storer v. Brown*, 45 U.S. 724, 730 (1974). Subjecting every electoral regulation to strict scrutiny and requiring that the regulation be narrowly tailored to advance a compelling state interest "would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

When evaluating the administration of elections, 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. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). Those rights include "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." *Green* Party, 2016 WL 4379150, at *22 (quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)). Next, the court must identify and evaluate the precise interest put forward by the State as justification for the burden imposed by its rule. *Anderson*, 460 U.S. at 789. In this analysis, the court must consider both the legitimacy and strength of the State's interests and the extent to which those interests make it necessary to burden the plaintiff's rights. *Id.* Only after weighing those factors is the court able to decide whether the State action is unconstitutional. *Id.* Actions that impose minimal burdens

on electoral rights are subject to rational-basis scrutiny, and actions that impose a severe burden on the right to vote will be subject to strict scrutiny. *Disability Law Ctr. of Alaska v. Meyer*, 484 F. Supp. 3d 693, 703 (D. Alaska Sept. 3, 2020) (citing *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434).

2. Plaintiffs are under no burden that would necessitate constitutional scrutiny of the statutes.

In *Green Party*, the plaintiffs asserted an as-applied challenge to the signature requirement of 2.5% of the voters from the last gubernatorial election for a petition to become a recognized minor party. *Green Party*, 2016 WL 4379150, at *22. The plaintiffs alleged that they were economically burdened because they could not collect the required signatures without paying signature collectors and that they were burdened because Tennessee's signature-verification system made it difficult to obtain the necessary signatures. *Id.* at *24–*27. The district court held that no burden existed because the plaintiffs failed to show—even after trial—that acquiring the signatures would cause any financial burden or that the signature verification created any burden. *Id.*

Next, this court evaluated the impact of the signature requirement within the context of the entire ballot-access scheme, including the 90-day petition filing deadline. *Id.* at *27 (citing *Green Party v. Hargett*, 767 F.3d 533, 545 (6th Cir. 2014)). Noting that the 90-day deadline "provides ample opportunity to collect signatures when voters are engaged" over a period of "three-and-a-half years," *id.* at *27-28 (internal quotation marks and citation omitted), the court found that the plaintiffs had failed to prove any burden imposed by the signature requirement, let alone a severe burden, *id.* at *29.

Plaintiffs' allegations here are materially indistinguishable. Plaintiffs claim that they are unconstitutionally burdened by the "unnecessarily high" and "rather stringent" 2.5% signature

requirement and the "early deadline" and "limited time for petitioning" imposed by the 90-day deadline. (Complaint, ECF No. 1, PageID# 5–6.) They further allege that "it would be virtually impossible" to meet the petitioning requirement" and that "the supporters of the [Libertarian Party] are unable to marshal its resources in such a manner as to conduct a successful petition drive in Tennessee so as to meet the aforesaid . . . required number of signatures." (*Id.*, PageID# 5–6.)

These are the same allegations made in the *Green Party* case. This Court should therefore reach the same conclusion reached in the *Green Party* case—i.e., that Plaintiffs have not alleged any facts to show that the signature requirement, coupled with the 90-day petition filing deadline, imposes a burden on Plaintiffs.

3. Tennessee law presents no infirmity under the *Anderson-Burdick* sliding scale.

Where no burden on a plaintiff exists, the State need not prove justifying interests. *See Green Party*, 2017 WL 4011854, at *4 ("[B]ecause the district court determined that the statute imposed no burden, the plaintiff's argument that the defendants did not present an adequate justification is immaterial."). But even if Plaintiffs had alleged facts to show that some minimal burden on Plaintiffs exists, the signature requirement and 90-day filing deadline would be constitutional under the Anderson-Burdick test. *See Green Party*, 2016 WL 4379150, at *30 (applying rational-basis review because plaintiffs had shown only a minimal burden, if any). As the district court found in *Green Party*, the State's interests are "legitimate and sufficiently weighty to justify any limitations" imposed on Plaintiffs. *Id.; see also Green Party*, 2017 WL 4011854, at *4 ("The district court applied the *Anderson-Burdick* balancing test . . . and determined that the plaintiffs failed to show that the statute was unconstitutional."). Furthermore, the 90-day petition filing deadline actually "operates to significantly lighten any burden" on Plaintiffs. 2016 WL 4379150, at *32.

The State has strong and legitimate interests in ensuring that a new political party has a significant modicum of support, avoiding voter confusion, and reducing administrative costs, all of which were recognized by the court in *Green Party*. *See id.* at *29-*32. The Supreme Court has held that States' interests in "preservation of the integrity of the electoral process and regulating the number of candidates on the ballot to avoid voter confusion, are compelling." *Am. Party of Texas v. White*, 415 U.S. 767, 783 n.14 (1974); *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (recognizing that safeguarding voter confidence is part of the compelling interest that a State has in protecting the integrity and reliability of the electoral process); *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (observing that State has a compelling interest in protecting voters from confusion and undue influence); *Eu v. San Francisco Cnty. Democratic Cent. Committee*, 489 U.S. 214, 231 (1989) (noting that the State indisputably has a compelling interest in preserving the integrity of its election process). The Supreme Court has "never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access." *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986).

Just as the court concluded in *Green Party*, neither the 2.5% signature requirement nor the 90-day petition filing deadline violates Plaintiffs' First and Fourteenth Amendment rights as applied to them. *See Green Party*, 2016 WL 4379150, at *32.

4. Decisions regarding other States' election laws confirm that Tennessee's challenged statutes present no constitutional infirmity.

Decisions regarding other, even more stringent, statutes from other States confirm the conclusion that the signature requirement and 90-day filing deadline—which allows three-and-a-half years to obtain the necessary signatures—pass constitutional muster. For example, the Supreme Court has upheld a Georgia statute that required minor-party candidates to submit a

petition signed by at least five percent of eligible voters in the State, with only 180 days to obtain the signatures, before the minor party candidate was eligible for ballot access. *See Jenness v. Fortson*, 403 U.S. 431, 433 (1971). Other courts have reached the same conclusion. *See Cowen v. Secretary of State of Georgia*, 22 F.4th 1227, 1232-33 (11th Cir. 2022) (holding that a 5% signature requirement with only 180 days to collect the signatures was constitutional); *Tripp v. Scholz*, 872 F. 3d 857, 870-71 (7th Cir. 2017) (holding that the cumulative effect of a 5% signature requirement, a notarization requirement, and a 90-day petitioning window did not violate the constitution); *Indiana Green Party*, No. 1:22-cv-00518, 2023 WL 5207924, at *3 (S.D. Ind. Aug. 14, 2023) (stating that "precedent compelled" holding that a 2% signature requirement with a June 30th deadline in the election year was constitutional).

B. Plaintiffs allege no facts supporting a claim challenging any other statutory requirement cited in the Complaint.

Beyond the signature requirement in Tenn. Code Ann. § 2-1-104(a)(23) and the 90-day filing deadline in § 2-13-107(a)(2), Plaintiffs purport to challenge the constitutionality of several other ballot-access requirements—but they do not allege any facts that would support a constitutional challenge to any such requirement. Specifically, the Complaint alleges no facts that would show entitlement to relief on a constitutional challenge to the definition of "political party" in Tenn. Code Ann. § 2-1-104(a)(14); the definition of "statewide political party" in § 2-1-104(a)(30); the requirement in § 2-1-114(2) that a political party file a copy of the party's rules; the specification in § 2-5-208(d)(1) of the order in which parties are listed on a ballot; the requirement in § 2-13-107(e)(2) that a minor party file a copy of its rules by September 1; or the requirement in § 2-13-201(1) that a political party be a "statewide political party" or a "recognized minor party" for its nominee to be so listed on a ballot. (Complaint, ECF No. 1, PageID# 4-7.)

Plaintiffs merely list these several statutes and make conclusory allegations that they are unconstitutional. (Complaint, ECF No. 1, PageID## 4-5, 5, (*Id.*) Such allegations fail to state a claim for relief. The "factual allegations in the complaint need to be sufficient to give notice to the defendant as to what claims are alleged, and the plaintiff must plead 'sufficient factual matter' to render the legal claim plausible, i.e., more than merely possible." *Cabinets to Go, LLC v. Qingdao Haiyan Real Est. Grp. Co.*, 605 F.Supp. 3d 1051, 1057 (M.D. Tenn. 2022) (quoting *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010)). Nor does the Complaint comply with Fed. R. Civ. P. 10(b), which requires a party to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." The Complaint contains only 11 numbered paragraphs, each of which relates to the signature requirement and the deadline for filing the signed petition.

Plaintiffs do allege that § 2-1-104(a)(23) is unconstitutional "taken in conjunction with" these other statutes (Complaint, ECF No. 1, PageID# 5), but beyond this conclusory allegation, Plaintiffs make no factual allegations showing why that is so—or how consideration of any of these other statutes alters the conclusion that § 2-1-104(a)(23) is constitutional in the context of the statutory ballot-access scheme, as *Green Party* held. And while Plaintiffs appear to make a separate, vague, reference to § 2-13-201(1)—*see* Complaint, ECF No. 1, at PageID# 8 (referring to the "party labeling" law, "combined with" the signature and petition-deadline requirements)—even here, Plaintiffs conclusorily allege only that the statute "discriminates against unrecognized political parties" and "serves no compelling state interest," without any supporting factual allegations.

Furthermore, *Green Party* also considered---and upheld—the constitutionality of both the "ballot order" statute, Tenn. Code Ann. § 2-5-208(d)(1), and the "party label" statute, Tenn. Code

Ann. § 2-13-201(1), as applied to the plaintiffs in that case. Again applying the *Anderson-Burdick* framework, the district court held that "the State's interests in avoiding voter confusion, creating party-order symmetry, and favoring parties with demonstrated public support are sufficiently weighty to justify its ballot-order statute." *Green Party*, 2016 WL 4379150, at *40. The plaintiffs asserted no arguments on appeal with respect to this ruling. *Green Party*, 2017 WL 4011854, at *2. The district court also concluded that the constitutional challenge to the "party label" statute "is analytically indistinct" from the constitutional challenge to § 2-1-104(a)(23); it also concluded, in the alternative, that "requiring a minor party candidate to run with the label of 'independent' rather than with his party name does not impose a burden on [the plaintiffs] or other minor parties, much less a severe burden." *Green Party*, 2016 WL 4379150, at *37-38. The Sixth Circuit agreed that the challenge to the "party label" statute was "not analytically distinct" from the challenge to § 2-1-104(a)(23); it also recognized the district court's holding that the plaintiffs had failed to prove "that it was an unconstitutional burden for their candidates not to be listed with their party affiliation." *Green Party*, 2017 WL 4011854, at *5.

CONCLUSION

For these reasons, the Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the above Memorandum was filed electronically on January 30, 2024. A true and correct copy of that filing was forwarded on the same day via the Court's CM/ECF system upon the following:

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