IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY

LIBERTARIAN PARTY OF MARYLAND and MARYLAND GREEN PARTY,	)	
Plaintiffs,	)	
v.	)	CASE NO. 02-C-11-160371
MARYLAND STATE BOARD OF ELECTIONS and LINDA LAMONE, as Administrator of the Maryland State Board of Elections,	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
OR PARTIAL SUMMARY JUDGMENT

Plaintiffs Libertarian Party of Maryland and Maryland Green Party, through their undersigned counsel, seek declaratory rulings on three categories of petition signatures that were incorrectly invalidated by defendants Maryland State Board of Elections and Linda Lamone. The Court's ruling on the validity of these signatures is likely to determine whether the plaintiffs are entitled to recertification as recognized political parties in the State of Maryland, or whether the defendants were correct to invalidate thousands of signatures from Maryland voters and terminate the plaintiffs' ballot access rights as a result.

The factual situations at issue in this motion are described in subparagraphs 42(b), 42(c), and 42(d) of the Complaint, where the plaintiffs seek the following declaratory rulings:

> (b) that the "sufficient cumulative information" standard forbids the invalidation of petition entries merely because the signer omits an unused first or middle name, or uses a nickname, when writing his or her full name or signature;
>
> (c) that the "sufficient cumulative information" standard forbids the invalidation of petition entries for name-related defects

if the entry contains address or birthdate information from which the signer's identity can be corroborated; and

(d) that no signature should be considered a "duplicate" unless a signature from the same voter has previously been validated.

In support of their request for declaratory relief, the plaintiffs submit the Memorandum of Points and Authorities filed today with this motion.

Respectfully submitted,

ANDERSON & QUINN, LLC

John A. Rego
Adams Law Center
25 Wood Lane
Rockville, Maryland 20850
(301) 762-3303

Of Counsel:

WILTSHIRE & GRANNIS, LLP
Mark A. Grannis
Jacinda Lanum
1200 Eighteenth St. NW
Suite 1200
Washington, DC 20036
(202) 730-1300

Counsel for Plaintiffs Libertarian Party of Maryland and Maryland Green Party

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY

LIBERTARIAN PARTY OF MARYLAND and MARYLAND GREEN PARTY,	)	
Plaintiffs,	)	
v.	)	CASE NO. 02-C-11-160371
MARYLAND STATE BOARD OF ELECTIONS and LINDA LAMONE, as Administrator of the Maryland State Board of Elections,	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT

Plaintiffs Libertarian Party of Maryland and Maryland Green Party, through their undersigned counsel, seek declaratory rulings on three categories of petition signatures that were incorrectly invalidated by defendants Maryland State Board of Elections and Linda Lamone. The Court's ruling on the validity of these signatures is likely to determine whether the plaintiffs are entitled to recertification as recognized political parties in the State of Maryland, or whether the defendants were correct to invalidate thousands of signatures from Maryland voters and terminate the plaintiffs' ballot access rights as a result.

In order to renew their ballot access privileges under Maryland's Election Law, the Libertarian Party and the Green Party were required to submit petitions signed by at least 10,000 registered voters. ***The State Board's own records*** **show that over 12,000 registered voters signed the Libertarian Party's petition, and almost 13,000 registered voters signed the Green Party's petition.** Under these circumstances, the State Board's refusal to recertify the

two parties for ballot access cannot be squared with any constitutionally permissible interpretation of the Election Law.

The factual situations at issue in this motion are described in subparagraphs 42(b), 42(c), and 42(d) of the Complaint, where the plaintiffs seek the following declaratory rulings:

> (b) that the "sufficient cumulative information" standard forbids the invalidation of petition entries merely because the signer omits an unused first or middle name, or uses a nickname, when writing his or her full name or signature;
>
> (c) that the "sufficient cumulative information" standard forbids the invalidation of petition entries for name-related defects if the entry contains address or birthdate information from which the signer's identity can be corroborated; and
>
> (d) that no signature should be considered a "duplicate" unless a signature from the same voter has previously been validated.

After a brief background section, the legal argument will proceed in three parts.

In Part I, we set forth the statutory context for this dispute, and describe the "sufficient cumulative information" standard so recently enunciated by the Maryland Court of Appeals in *Montgomery County Volunteer Fire-Rescue Ass'n v. Montgomery County Bd. of Elections,* 418 Md. 463, 15 A.3d 798 (Md. 2011). We will show that the signature validation process employed by the State Board—what we call a "single elimination" process—is fundamentally at odds with the statutory purpose of identifying the signers as registered voters and giving effect to their expressed intention to support the petitions in question.

In Part II, we argue that the "sufficient cumulative information" standard announced in *Fire-Rescue* leaves no room for the State to invalidate a signature from a registered voter whom the State has *actually identified.* This is perhaps clearest when the State invalidates signatures because the signer used a nickname, or omitted an unused first name or an unused middle initial. But the principle is broader, and extends even to cases in which the identity of the signer is

determined from an address or date of birth listed on the petition rather than from the printed name. This follows from *Fire-Rescue*, and it is in fact the only constitutionally permissible construction of the relevant statutory provisions.

In Part III, we explain that for similar reasons, the State cannot treat any signature as a "duplicate" unless a previous signature from the voter in question has been *validated*—not just submitted. In statutory terms, a voter cannot "sign" without creating a "signature," and if the State treats an attempted signature as a "non-signature," then it must also treat the voter in question as a "non-signer." If the voter's act is a legal nullity when the signatures are counted up, the State cannot insist that the nullity somehow operates as a legal bar to any future support of the petition. To hold otherwise would be to permit the State to treat the very same voter as having "signed" the petition and, simultaneously, having *not* "signed" the petition, a position that literally refutes itself.

BACKGROUND

Maryland law permits recognized political parties to nominate candidates directly to the general election ballot without the need for each individual candidate to collect signatures and file his or her own petition with state or local boards of elections. To obtain these ballot access privileges for the first time, a new political party in Maryland is required, among other things, to submit a petition to the State Board of Elections. "Appended to the petition shall be papers bearing the signatures of at least 10,000 registered voters who are eligible to vote in the State as of the first day of the month in which the petition is submitted." MD. CODE ANN., ELEC. LAW § 4-102(b)(2)(i).

Once a political party has been certified by the state, it automatically retains its status "until December 31 in the year of the second statewide general election following the party's qualification under § 4-102." MD. CODE ANN., ELEC. LAW § 4-103(a)(1). The party can extend its ballot access privileges in two ways: by nominating a presidential or gubernatorial candidate who receives at least 1% of the total vote for that office; or by attracting the affiliations of at least 1% of all registered voters. MD. CODE ANN., ELEC. LAW § 4-103(a)(2). If a party fails to qualify for an extension on either of these grounds, it must re-qualify "by complying with all the requirements for qualifying as a new party under § 4-102." MD. CODE ANN., ELEC. LAW § 4-103(c).

The Libertarian Party and the Green Party last renewed their party certifications in January 2007. Neither plaintiff's 2010 nominee for Governor received the votes necessary to renew the party's ballot access privileges automatically, and neither party has yet grown large enough to become entitled to automatic renewal on that ground. Thus, each party has recently attempted to renew its ballot access privileges and party status by collecting and submitting at least 10,000 valid signatures from registered Maryland voters.

By March 7, 2011, each party had submitted almost 15,000 signatures to the State Board. Inevitably, some who signed the petitions turned out not to be registered voters. But the State's own records show that the Libertarian Party's petition was supported by approximately 12,000 registered voters, and the Green Party's petition was supported by almost 13,000 registered voters. Stipulation of Facts ¶¶ 13-14. Nonetheless, the State Board invalidated roughly half of the 25,000 signatures submitted by these voters, leaving the Libertarian Party approximately 3,500 signatures short of the required 10,000, and leaving the Green Party approximately 4,000

signatures short of the required 10,000. (Detailed information on the acceptance and rejection of individual signatures can be found in Exhibits C and D to the Stipulation of Facts.)

In this motion, we seek the court's guidance on three recurring fact patterns found among the invalidated signatures. First, **the "omitted name or initial" fact pattern** covers the many Maryland voters who printed and signed their names without writing a middle initial, or without writing a first or middle name that they do not customarily use. It also includes many voters who wrote well-recognized nicknames in place of their "given" names (like "Chris" for Christopher, "Tim" for Timothy, or "Jeannie" for Jean). The State Board contends that all such signatures must be invalidated. The plaintiffs believe that although these kinds of omissions might interfere with voter identification in some cases, they will not always or even usually interfere with identification; and to the extent the signers can be (and actually have been) successfully identified in the State's own official records as registered voters, the signatures should be validated and counted toward the 10,000-signature requirement.

Second, **the "sufficient cumulative information" fact pattern** is an extension of the same principle to cover cases other than nicknames, missing names, and missing initials. It may be, for example, that a name is only partially legible when read by itself, but it might sit next to a perfectly legible address, and together these pieces of information might enable the reviewer of the petition to locate and positively identify the signer in the State's voter registration database. The signer's date of birth (which the petition form requests but does not require) is also useful and may help confirm any doubtful identifications where it is present. Although the defendants have recently agreed that omissions in a signer's printed name should be overlooked if the missing information is present in the signature, and *vice versa,* the defendants do not agree that defects in the name or signature should be curable from the other pieces of information on the

form, such as the signer's address and date of birth. But because it is no harder to search a computer database for an address than to search for a name, the plaintiffs contend that these cases should be treated the same as the "missing name or initial" cases.

Finally, **the "uncounted duplicate" fact pattern** covers cases in which a voter whose petition signature is invalidated is denied the opportunity to submit a new signature for validation. This covers approximately 500 signatures already submitted by the plaintiffs, but it has a larger prospective effect on the continuing eligibility of those thousands of Maryland voters who have submitted only one signature but have had it invalidated. The plaintiffs believe any registered voter who would like to support the petitions should have an opportunity to do so despite a failed first attempt, particularly because signatures are sometimes invalidated for reasons outside the control of the signer.

ARGUMENT

The Maryland Court of Appeals has recently made clear that petition signatures should be validated if there is "*sufficient cumulative information* on the face of the petition, e.g., a signature, a printed name, address, date of signing, and other information required by regulation, evidencing compliance with § 6-203(a), *to determine the identity of the signer.*" *Montgomery County Volunteer Fire-Rescue Ass'n v. Montgomery County Bd. of Elections,* 418 Md. 463, 15 A.3d 798, 804 (Md. 2011) (emphasis added). The key phrase is "sufficient cumulative information." If the State finds "sufficient cumulative information . . . to determine the identity of the signer," the State may not reject the signature just because it disapproves of how the voter writes his or her own name. On the contrary, the express *holding* in *Fire-Rescue* was, "*We hold*

that a signature on a petition . . . is but one component of the voter's identity that is to be considered in the validation process." *Id. at* 802 (emphasis added).

The standards applied by the defendants in this case fall short of the standards enunciated by the Court of Appeals in *Fire-Rescue*. Whatever technical shortcomings might be found within the 25,000 signatures submitted by the plaintiffs, the State has in fact identified over 12,000 registered voters who signed the Libertarian Party's petition and roughly 13,000 registered voters who signed the Green Party's petition. Both parties should therefore be recertified without delay.

I. The State's "Single Elimination" Review Process Is Fundamentally Inconsistent with the "Sufficient Cumulative Information" Standard Required by State Law.

A. Two Models of Review

Before turning to specific types of signatures, it is critical to understand how the State Board's "single elimination" review process differs from the "sufficient cumulative information" standard recently articulated by the Court of Appeals in *Fire-Rescue.* The *Fire-Rescue* opinion clearly holds that the defendants are to determine whether there is "sufficient cumulative information" to validate each line on a petition page. In practice, this means that all available information is *combined* so that *all of it* can be used to identify the voter and give effect to the support the voter is expressing for the petition. For example,

> *The Board should not stop the validation process* merely because the signature itself is illegible. If the signature field is illegible, *as may often be the case,* the election authority is able pursuant to § 6-203 and § 6-204 to validate a signature and "ensure that the name of the individual who signed the petition is listed as a registered voter" pursuant to § 6-207.

Fire-Rescue, 15 A.3d at 804 (emphasis added) (footnotes, omitted, citing sections 6-204 and 6-207). A reviewer applying *Fire-Rescue*'s "sufficient cumulative information" standard would

look at each piece of information on a petition not as a potential occasion for disqualifying a signature, but rather as an incremental step toward what the Court saw as "[p]lainly, the overarching goal of the entire Petition Subtitle" of the Election Law, namely "to ensure that only eligible voters sign petitions." *Id.* at 804.

By contrast, the March 9 SBE Guidelines used in this case (attached to the Stipulation of Facts as Exhibit A) construct a "single elimination" review process. The March 9 SBE Guidelines directed local boards to look at each element of each line of each petition page in isolation, and invalidate lines (or sometimes even pages) upon discovery of any flaw. As we have seen, a "sufficient cumulative information" process treats all of the available information (voter registration, signature date, printed name, address, birth date, and signature) as mutually reinforcing ways to identify the signer and effectuate voter intent. By contrast, a "single elimination" process treats the same pieces of information as a half-dozen independent ways to invalidate a signature and frustrate voter intent.

From these descriptions of the competing models for the review process, it might seem as if the plaintiffs are asking for quite a lot of work from the defendants and their colleagues at the local boards. But here is perhaps the most remarkable irony of this case: The reviewers who carry out the State Board's instructions *actually do use cumulative information* to identify the signers, even where some information is missing or illegible; they simply do not *validate* those signatures after the signers have been identified as registered voters. As we shall see in Part II below, elections officials in this case successfully identified many signers whose names (both printed and signed) were completely indecipherable. The trouble is that the reviewers seemingly did this not to validate the signatures, but rather to keep track of the invalidations. To put the matter somewhat differently: The State Board already has, in Exhibits C and D to the Stipulation

of Facts, **authoritative lists of substantially more than 10,000 registered voters who supported the Libertarian Party petition, and substantially more than 10,000 registered voters who supported the Green Party petitions**; those voters have already been identified, and it does not cost the State any more, either in time or in money, to treat all those signatures as valid than it does to treat them as invalid.

The "sufficient cumulative information" standard outlined in *Fire-Rescue* is above all a *realistic* account of the petition process. It shows the Court's recognition that voters are human beings, often busy human beings, who are pausing briefly in their daily affairs in order to honor and support the principle that the enterprise of self-government should be open to the widest possible cross-section of Maryland residents. They will be writing on clipboards, possibly with gloved hands. They will not see any reason to write a name or initial they do not use, or to write "Jonathan" or "Margaret" if they go by "Jon" or "Meg" in the rest of their daily affairs. They will make mistakes. *Fire-Rescue* teaches that wherever those mistakes *can* be overcome, they should be.

B. The *Doe* Detour

The State Board's mistaken approach to signature validation has its roots in a judicial decision from several years ago that provoked serious over-reaction: *Doe v. Montgomery County Bd. of Elections,* 406 Md. 697, 962 A.2d 342 (Md. 2008). Because *Fire-Rescue* did not explicitly overrule *Doe,* it is necessary to look at *Doe* and figure out what is left of that decision.

In *Doe*, the Court of Appeals rejected a referendum petition primarily on the ground that both the county board and the circuit court had incorrectly calculated the number of signatures necessary for a successful referendum petition. Thus, even if every signature validated by the

circuit court had been valid, the referendum petition would still have failed. 962 A.2d at 359-60. This was an entirely sufficient basis for the Court's decision.

But in a concluding section of the opinion, the *Doe* Court addressed section 6-203 of the Election Law, which specifies that an individual should sign his or her name in one of two ways: "as it appears on the statewide voter registration list, or the individual's surname of registration and at least one full given name and the initials of any other names." MD. CODE ANN., ELEC. LAW § 6-203(a)(1). The petition sponsors in *Doe* argued that these rules in section 6-203 were in conflict with section 6-207, which states that "[t]he purpose of signature verification . . . is to ensure that the name of the individual who signed the petition is listed as a registered voter." MD. CODE ANN., ELEC. LAW § 6-207(a)(2). The circuit court had resolved the alleged conflict by holding that "the dictates of Section 6-203 were suggestive rather than required." 962 A.2d at 360. The Court of Appeals in *Doe* held otherwise, and its observations on the mandatory nature of section 6-203 inspired an abrupt change in the standards applied by election boards statewide, which suddenly began to invalidate large percentages of petition signatures for defects in the way voters signed or printed their names. *See Fire-Rescue*, 15 A.3d at 804-05.

This over-reaction to *Doe* by election officials was the primary target of the majority in *Fire-Rescue*. "The validation guidelines . . . which the State Board revised subsequent to our decision in *Doe,* distort the purpose of § 6-203(a)(1) that is to provide *one element among many that the Board must use to satisfy the requirements of validation.*" *Fire-Rescue*, 15 A.3d at 806 (emphasis added). The Court "disavow[ed]" any interpretation of *Doe* that would lead to indecipherable signatures being "disallowed without further consideration." *Id.* at 807. On the contrary, "Plainly, the purpose of the signature requirement in § 6-203(a)(1) is to provide a personal attestation, as a signature is often used, to *evidence support for the petition* and to

provide a *unique identifier in conjunction with* the printed name, address, date, and other information required by the State Board." *Id.* at 807 (emphasis added).

Nor was this an innovation by the *Fire-Rescue* Court. The Court long ago observed that informational requirements for petition signers, which first appeared in the statutory precursor of section 6-203(a), "facilitate checking of the petitions by interested persons to ensure that only qualified persons have signed." *Barnes v. State ex rel. Pinkney,* 236 Md. 564, 571-72, 204 A.2d 787, 791 (Md. 1964). They are "clearly designed to provide additional means by which fraudulent or otherwise improper signatures upon a referendum petition may be detected." *Barnes,* 236 Md. at 574, 204 A.2d at 793. Thus, they *are* mandatory, but they are mandated for a particular purpose: the purpose of *aiding* identification. They have never been intended as new ways to disqualify signers.

From this perspective, *Doe* and *Fire-Rescue* each correct the same philosophical mistake: the mistake of thinking that the requirements of section 6-203 must be *either* mandatory (and therefore essential for signature validation), *or else* informational (and therefore irrelevant to signature validation). In truth, they are *both* mandatory *and* informational: Voters are required to supply the information in order to aid identification, and election officials are required to use it for that purpose; but nothing in the Election Law suggests that a voter's failure to supply this information requires invalidation of a signature the elections official can in fact validate using other information.

This "both/and" approach appears from the statute itself. Section 6-203(a) addresses the "individual" voter, explaining what information "an individual shall" provide "[t]o sign a petition." MD. CODE ANN., ELEC. LAW § 6-203(a). Section 6-203(b) states that an individual's signature "shall be validated and counted if," among other things "the requirements

of [section 6-203(a)] have been satisfied." Thus, a voter who complies with section 6-203(a) in all its particulars need have no concern about whether his or her signature will be validated; the statute says it "shall be."

But importantly, the statute does *not* state that a signature shall be *in*validated and shall *not* be counted if the informational requirements of section 6-203(a) are *not* met. On the contrary, section 6-207(a)(2), which governs "Verification of signatures," states, "The purpose of signature verification under paragraph (1) of this subsection is to ensure that the name of the individual who signed the petition is listed as a registered voter." Thus, the *Doe* Court was right to deny any conflict between sections 6-203 and 6-207, and the *reason* the two statutes do not conflict is because they address different parts of the process. Section 6-203 tells voters what information they must provide; section 6-207 tells election officials what to do with whatever information they receive.

Fire-Rescue finally ties this all together, and in so doing provides a way of giving effect to the language of the Election Law without doing violence to its fundamental purpose. Under any realistic view of the petitioning process, it is obvious that errors, omissions, or obscurities in the information supplied by a signer will sometimes make it impossible for the State Board to identify the signer as a registered voter, and in such cases the signature will be invalidated and the fault will be the signer's rather than the State's. But when the *cumulative information is sufficient* to identify the signer as a registered voter, and the State deems the identification reliable enough to make its own records reflect that fact, the State may not pretend to be unable to give effect to that voter's expression of support for the petition. That is the essence of *Fire-Rescue.*

II. The "Sufficient Cumulative Information" Standard Announced in *Fire-Rescue* Leaves No Room for the State to Invalidate a Signature from a Registered Voter Whom the State Has Actually Identified.

Having shone a spotlight on the most fundamental problems with the State Board's review criteria, we are in a position to deal fairly briskly with the specific factual scenarios on which we ask for the Court's declaratory ruling.

A. Nicknames, Omitted Names, and Omitted Initials

One of the more hypertechnical features of the State Board's processing guidelines is the Board's refusal to validate signatures from voters who use the name or names by which they are actually known instead of what the Board takes to be their "full" name (surname plus at least one "full" given name and at least an initial for any other given names). The defendants' position on this issue cannot be justified, because although voters are required to provide the information, the statutory instructions to the State Board regarding validation contain no hint that the omission of the information is to be considered grounds for invalidation.

Exhibit E to the Stipulation of Facts collects some representative examples from the Libertarian Party petition. We see the signatures of Jessica Bell (page 000016), Nancy Malecki (page 000036), and Beverly Russell (page 000722), all of whom printed and signed their names without using a middle initial. Jason Eddins, LaTanya Clarke, and Marvin Clarke (all on page 001772 of Exhibit E) fit the same pattern. For this omission, the State Board invalidated all of these voters' signatures. Also in Exhibit E, we find the signatures of Tim Floyd (page 001772) and Chris D. Tomlinson (page 000042). Mr. Tomlinson is a Christopher and Mr. Floyd is a Timothy; their use of universally recognizable nicknames was treated as disqualifying by the State. Mr. Floyd also omitted his middle initial.

Note, however, that *none of these omissions* actually prevented the State from correctly identifying these eight voters. All of them provided legible information (even including the optional dates of birth) from which elections officials could *and did* identify them as registered voters. The fact that they signed the Libertarian petition has been recorded in the State's "MDVOTERS" database. *See* Exhibit C to the Stipulation of Facts, at pp. 1, 3, 88, 199 and 4. The *only effect* of the signers' omissions was to provide spurious grounds for invalidating the signatures and depriving the Libertarian Party of the support these voters willingly gave. Parallel examples involving the Green Party petition can be found in Exhibit I, in the signatures of Susan Hartjen (page 000719) and Don Hammerlund (page 001924). (See also Exhibit D to the Stipulation of Facts, at pp. 80 and 252 (recording the State's successful identification of Ms. Hartjen and Mr. Hammerlund).

The invalidation of these signatures is thoroughly contrary to *Fire-Rescue*, where the Court warned, "The State Board's guidelines . . . may not evade the requirement of reasonableness, they must not be unduly burdensome, and they should not frustrate the intent of the petition signer." 15 A.3d at 805 n.14. The State Board's standards depart so far from the rule of reason that their faithful application would lead to the invalidation of the signatures and "full" names customarily used by Governor Martin O'Malley (who does not sign his middle initial), Presidents George Washington and Thomas Jefferson (who abbreviated their first names when they signed them), Presidents Stephen Grover Cleveland, Thomas Woodrow Wilson, and John Calvin Coolidge, Jr. (none of whom used or signed their given first names), and Presidents Jimmy Carter and Bill Clinton (who used and signed nicknames). Indeed, seven of the last eight U.S. presidents, as well as the current Governor of Maryland, customarily sign or signed their

names in ways that would make their support for a new party petition invalid under the March 9 SBE Guidelines.

The line in the sand that the defendants have drawn on nicknames is particularly puzzling in light of the fact that they do not insist that signers write out "Baltimore"; again and again, they accept "Balto." *See* Exhibit F to the Stipulation of Facts. They are, of course, right to accept "Balto," because no one is in any genuine doubt about the city so signified—and if there were any ambiguity, the zip code information on the petitions would quickly eliminate it. But common sense should prevail in precisely the same way when it comes to the names and initials of voters whose identities are in no genuine doubt. There is, after all, nothing in the statute (or in *Doe* for that matter) suggesting that nicknames should be treated differently as part of the required address than they are treated as part of the required name.

B. "Sufficient Cumulative Information," More Generally

We have isolated the "missing name or initial" fact pattern because it occurs so frequently, but the principle is more general and we ask this Court to give it full effect as the *Fire-Rescue* Court intended: *wherever* there is sufficient cumulative information to identify a signer as a registered voter, that signature should be counted.

Exhibit G, taken from the Libertarian Party's petition, illustrates the broader principle well. The fifth line of Exhibit G has a name that is totally illegible; no one but the signer or someone who knows him well could possibly be sure that this is the signature of Kevin D. Elliott. The name on line 4, just above Mr. Elliott's, apparently belongs to a Carolyn V., but it is far from clear that this is the signature of Carolyn Frances Vienna. In both these cases, however, elections officials *did* correctly identify the signers, presumably by using the entirely legible address information and confirming it with the birthdate information willingly supplied by both

voters. Both signatures were recorded in the State's "MDVOTERS" database, and both names appear in the listing of petition signers attached as Exhibit C to the Stipulation of Facts (p. 39). The only thing wrong with the processing of these signatures is that, at the end of it all, the State chose *not* to count them even though it knew very well who the signers were and what their position on Libertarian ballot access was.

The *Fire-Rescue* Court's emphatic insistence on a "sufficient cumulative information" standard is enough by itself to establish the plaintiffs' right to the requested relief. It is worth noting, however, that any contrary construction of the Election Law would present serious constitutional difficulties. For at least forty years now, the U.S. Supreme Court

> has recognized the constitutional right of citizens to create and develop new political parties. The 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.

Norman v. Reed, 502 U.S. 279, 288 (1992) (citing *Anderson v. Celebrezze,* 460 U.S. 780, 793-794 (1983); *Illinois Bd. of Elections v. Socialist Workers Party,* 440 U.S. 173, 184 (1979); and *Williams v. Rhodes,* 393 U.S. 23, 30-31 (1968)). The *Norman* Court continued,

> To the degree that a State would thwart this interest by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation, see *Anderson, supra,* 460 U.S., at 789, 103 S.Ct., at 1570, and we have accordingly required any severe restriction to be narrowly drawn to advance a state interest of compelling importance. See *Socialist Workers Party, supra,* 440 U.S., at 184, 186, 99 S.Ct., at 990, 991.

502 U.S. at 288-89.

The Supreme Court has emphasized that the state's obligation to use the least drastic means available to advance its interest is "particularly important where restrictions on access to the ballot are involved," because of

> the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office.

Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. at 185-86. If section 6-203 really required the State to "flyspeck" thousands of signatures and invalidate them for inconsequential errors and omissions when the State's own records show the signers' true identities, it would fail this constitutional test miserably.

The burdens imposed by the defendants' refusal to implement the "sufficient cumulative information" standard are clearly "severe" enough to trigger strict scrutiny under *Socialist Workers Party*, both for registered voters (whose expressions of support on a public question at the heart of the electoral process get nullified) and for the parties (whom the State ceases to recognize as "political parties" at all; *see* Answer ¶¶ 1-2). At the same time, the countervailing interests of the State are vanishingly small. Certainly the State cannot rely on any considerations of administrative efficiency, because validating the signatures is every bit as efficient as invalidating them. The State is already doing all the work necessary to validate all the signatures in Exhibits C and D; it just needs to make the right call at the end of the process instead of the wrong one.

Nor can the State claim that a signature that has been linked with a registered voter using addresses and birth dates is somehow less reliable (*i.e.*, more likely to be fraudulent) than a signature the State regards as valid under the March 9 SBE Guidelines. A voter's full name and

address can be fabricated from any number of online resources, not to mention a plain old telephone book. In fact, because the State's review process never calls for anyone to compare handwritten petition signatures with any other handwritten signatures on file with elections officials, the optional "date of birth" information that most voters include may be the *most* effective check against fraud in the whole process—the *only* piece of information that cannot be fabricated using a telephone book. It is simply irrational to treat easily fabricated pieces of information as self-authenticating while denying the same treatment to information that is much less widely known and therefore much less likely to have been supplied by an imposter.

There is, to be sure, an "important state interest in requiring some preliminary showing of a significant modicum of support" before granting ballot access rights to a party or its candidates. *See Jenness v. Fortson,* 403 U.S. 431, 442 (1971). But the constitutional difficulty here is not the requirement of 10,000 signatures; it is the refusal to accept signatures that lack middle initials, or include nicknames, even though the State knows those signatures came from registered voters. In any constitutional test of *those* grounds of invalidation, the State would have to concede that they have no conceivable bearing on the extent of political support for the Libertarian Party and Green Party. Beverly Russell's support would be no stronger with a middle initial, Chris D. Tomlinson's support would be no stronger if he had written "Christopher," and Kevin D. Elliott's support would be no stronger if he had printed his full name in block capital letters. Our case is therefore more like *Norman v. Reed,* a case in which a state statute was construed by the Illinois Supreme Court to impose an utterly pointless burden on the formation of new parties. The U.S. Supreme Court refused to countenance that "Draconian construction of the statute." 502 U.S. at 289. This Court would be compelled to

reach the same result if section 6-203 actually required the defendants to apply the review standards contained in the March 9 SBE Guidelines.

Fortunately, the Maryland Court of Appeals has already relieved us all of the need to reach these constitutional questions. In *Fire-Rescue,* the Court of Appeals made clear that the purpose of section 6-203's informational requirements—mandatory, to be sure, but informational nonetheless—is to help identify the signers and determine whether they are registered voters. Voters whose signatures contain gaps or mistakes may be inviting the risk that their own omissions will defeat the Board's ability to identify them, but they cannot be said to be inviting the risk that the State will simply refuse to record the support that everyone involved knows they are trying to express.

III. The State Cannot Treat Any Signature as a "Duplicate" Unless a Previous Signature from the Voter in Question Has Been Validated.

The final fact pattern on which we seek declaratory relief is the "uncounted duplicate" pattern. This occurs when the State rejects one signature from a given voter, and then proceeds to reject any future signature as a duplicate even though the first signature was invalidated. This is an untenable construction of the Election Law.

The fact pattern is illustrated by Exhibits H and J. Exhibit H, from the Libertarian Party petition, shows two signatures of Ms. Jacqueline R. Janowich, one from October 3, 2010 (page 000315) and another from January 5, 2011 (page 000322). The signature is the same on both pages, but in October Ms. Janowich used the name "Jacki" and omitted her middle initial, which prompted the election board to invalidate that signature. By contrast, Ms. Janowich's January signature complies with the State Board's requirements in every particular—but the State Board refused to count the second one because the first one was invalid. (The order was arbitrary; if the pages had been reviewed in reverse order, the January signature *would* have been valid.)

Before anyone blames this all on Ms. Janowich for leaving out her middle initial, consider Exhibit J, from the Green Party petition, which documents the cases of Jeannie L. Athey and Robert E. Guldin. Mr. Guldin signed perfectly both in September 2009 and in May 2010, but apparently the September 2009 signature (page 001075) was invalidated because it was outside the date range specified on the Green Party's "information sheet" for the petition—definitely not a fault attributable to Mr. Guldin. Mr. Guldin's May 2010 signature (page 000942) also appears to be flawless, but it was invalidated as a "duplicate" even though the signature it supposedly "duplicates" was being treated as null and void. The September 2009 signature of Jeannie L. Athey (also on page 001075, and marred only by the State's probable refusal to accept "Jeannie" for the given name "Jean") shows another instance of the same problem. Like Mr. Guldin, Ms. Athey later signed again, within the permitted date range (page 001143 of Exhibit J), but her signature was invalidated as a "duplicate." As with all the other examples cited throughout this Memorandum, the State had no trouble identifying Mr. Guldin and Ms. Athey (and Ms. Janowich) (*see* (Exhibit C at p. 41; Exhibit D at pp. 130, 108 and 140). The State simply chose at the end of the process to invalidate their signatures. That was wrong.

In all three of these cases, and many similar cases besides, registered voters tried repeatedly to support these petitions, but had valid signatures invalidated not to avoid *double*-counting their support, but to avoid counting their support even once. This situation covers over 500 signatures already submitted by the plaintiffs and successfully linked to registered voters in the State's "MDVOTERS" database. Stipulation of Facts ¶ 16.

Furthermore, the effect of this policy extends far beyond the approximately 500 voters whose votes have already been invalidated on this ground. To the extent that this litigation ends with fewer than 10,000 valid signatures credited to either plaintiff's petition, one obvious

strategy for getting to 10,000 would be to go back to the voters whose signatures were invalidated and ask them to sign again, correcting whatever defects the State found in their signatures the first time they were submitted. Unfortunately, the State Board's current policy on "duplicates" would rule out such a strategy, effectively declaring thousands of supporters of the plaintiffs' petitions ineligible to express their support, even if the invalidation of their original signature was for reasons entirely beyond their control.

The State bases this Draconian treatment of duplicate signatures on two statutory provisions, both of them inapposite. First, and obviously, the Election Law does not permit voters to have their signatures counted twice; section 6-203(b) therefore requires validation only if (among other things) "the individual has not previously signed the same petition." MD. CODE ANN., ELEC. LAW § 6-203(b)(3). But "signed" in this context has to mean *validly* signed; if the State refuses to count what Mr. Guldin did in September 2009 as a "signature," it cannot take the position that he "signed." And in fact, regardless of what the defendants say on this issue now, we note that the March 9 SBE Guidelines (Exhibit A to the Stipulation of Facts) took the same common-sense view that the plaintiffs now take, instructing reviewers to mark a voter's registration record only "[f]or each *validated* name." *See* Exhibit A, at p. 5, item 3 (emphasis added). Here, common sense and the Board's own previous view of the matter should prevail.

The second part of the statute to which the Board appeals is section 16-401(a)(9) of the Election Law, which makes it a misdemeanor to "willfully and knowingly . . . sign a petition more than once." MD. CODE ANN., ELEC. LAW § 16-401(a)(9). A host of difficulties keep this argument from getting off the ground. Most obviously, this statute also uses the word "sign," so it does not bail the State out of the self-contradiction involved in saying that a person

has previously "signed" a petition when the State itself says there was no prior "signature."[1] Moreover, the misdemeanor statute says nothing whatsoever about the validation of signatures, nor is there any reason to regard invalidation as necessarily implied; consideration of some of the other subparagraphs of the same statute confirms this.[2] Finally, there is *Barnes*, which seems to have upheld a precursor to section 16-401 as an anti-fraud measure—but in doing so the *Barnes* court also said such measures were "not requirements as to the sufficiency of referendum petitions but only collateral measures." *Barnes,* 236 Md. at 573; 204 A.2d at 729. We hesitate to make too much of this because of the intervening change in the statutory scheme, but *Barnes* certainly does tend to confirm that one cannot *assume* that a misdemeanor statute automatically dictates the result of the validation process.

There was probably a time, before the age of inexpensive computers and lightning-fast computer databases, when it was very important to combat multiple signatures on petitions. Certainly, if one imagines going line by line over 10,000 handwritten signatures without the aid of a computer, the inclusion of duplicates would be difficult to detect and important to prohibit.

---

[1] Indeed, here the problem is even worse, because to invoke this statute the State has to prove that the accused "willfully and knowingly" "sign[ed]" the petition, and neither of these elements would be easy to prove after the State invalidates a prior signature. The accused might have signed without remembering an earlier signature, or without realizing that it was the same petition drive. Or, the accused might have signed in the (true) belief that the State was treating his earlier signature as a non-signature. It is perhaps no accident that counsel for the plaintiffs has been unable to find any reported convictions under this provision.

[2] For example, subsection (a)(10) makes it a misdemeanor to "alter any petition after it is filed," but this is obviously an offense that is equally likely to be committed by a supporter or an opponent of a given petition. It would be quite odd to assume, without even a shred of textual evidence or legislative history, that any signature so altered would *automatically and implicitly* be invalidated, even if the accused had been trying to alter the signatures *in order* to make them invalid. The same is true of subsection (a)(3), which makes it a misdemeanor to misrepresent any fact in order to get someone *not* to sign a petition. Does the State believe that conviction under this subsection should automatically *add* one signature in order to punish that act? The idea that this misdemeanor statute has anything at all to do with validation lacks either textual or logical support.

Those days are long gone. The defendants have created a validation process that tracks every signature that can be positively associated with a registered voter. Detecting duplicates is an extremely simple matter, and a reviewer who learns that a voter has attempted to sign more than once learns simultaneously whether any previous attempt was successful (*i.e.*, validated) or not. As of 2011, there is no conceivable justification for invalidating a second signature if the reviewer can clearly see in the State's own records that no previous attempt at signing the petition was validated.

Some of the voters who signed the Libertarian and Green Party petitions at issue here provided less personal information than they should have, and perhaps those voters have no reason to complain if the State is unable to give legal effect to their signatures. But it is another matter entirely for the State to bar these individuals from correcting whatever problems the State found in their first attempts. In this case, the State *has* identified the voters, and *is* giving legal effect to their signatures, but it is a punitive effect far different from what they intended: disqualifying the signers from signing the petitions again. We submit that once the State has identified the signers and has declared their signatures genuine enough to preclude further support of the same petition(s), the State cannot exclude those signatures from the total number of signatures collected in support of the petition(s).

CONCLUSION

For the foregoing reasons, the plaintiffs ask the Court to declare:

> (1) that the "sufficient cumulative information" standard forbids the invalidation of petition entries merely because the signer omits an unused first or middle name, or uses a nickname, when writing his or her full name or signature;

(2) that the "sufficient cumulative information" standard forbids the invalidation of petition entries for name-related defects if the entry contains address or birthdate information from which the signer's identity can be corroborated; and

(3) that no signature should be considered a "duplicate" unless a signature from the same voter has previously been validated.

Based on these declarations, the evidence on file with the Court as Exhibits C and D to the Stipulation of Facts will make it unmistakably clear that the Libertarian Party and Green Party should be recertified as political parties with ballot access rights in the State of Maryland.

Respectfully submitted,

ANDERSON & QUINN, LLC

John A. Rego
Adams Law Center
25 Wood Lane
Rockville, Maryland 20850
(301) 762-3303

Of Counsel:

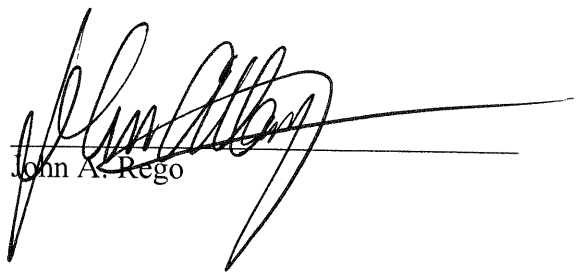
WILTSHIRE & GRANNIS, LLP
Mark A. Grannis
Jacinda Lanum
1200 Eighteenth St. NW, Suite 1200
Washington, DC 20036
(202) 730-1300

Counsel for Plaintiffs Libertarian Party of Maryland and Maryland Green Party

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Summary Judgment, was mailed, first-class postage pre-paid, on this 20th day of May, 2011 to:

Jeffrey L. Darsie
Assistant Attorney General
200 St. Paul Place, 20th Floor
Baltimore, MD 21202



John A. Rego