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SARAH R. JARVIS

June 27, 2012

**Hand Delivered**

Claire Mee, Court Manager  
Vermont Superior Court  
Washington Unit  
65 State Street  
Montpelier, Vermont 05602

Re: Ross C. "Rocky" Anderson, et al. v. State of Vermont and Secretary of State,  
Docket No. \_\_\_\_\_ Wncv

Dear Claire:

Enclosed for filing in the above matter is: *Complaint for Declaratory Judgment and Injunctive Relief; Affidavit of Benjamin Eastwood; Exhibit 1; Exhibit 2; Motion for Injunctive Relieve and Consolidation of Hearings*; and a check in the amount of \$262.50 to cover our filing fee.

Thank you.

Sincerely,

  
Charles L. Merriman

CLM/clm

Enclosure

cc: Client

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

CIVIL DIVISION  
Docket No. \_\_\_\_\_

Ross C. "Rocky" Anderson, )  
Benjamin L. Eastwood, )  
Daniel M. Albert, and Nicole Killoran )  
Plaintiffs )  
 )  
v. )  
 )  
State of Vermont, )  
Secretary of State James Condos )  
Defendants )

**COMPLAINT FOR DECLARATORY JUDGMENT and INJUNCTIVE RELIEF**

NOW COME Ross C. Anderson, et al., by and through their attorneys, Tarrant, Gillies, Merriman & Richardson, to file this Complaint for Declaratory Judgment and Injunctive Relief against Defendants State of Vermont and James Condos in his official capacity as Vermont Secretary of State. This complaint is brought pursuant to 12 V.S.A. § 4711, V.R.C.P. 57 and V.R.C.P. 65. Plaintiffs allege the following:

**Plaintiffs.**

1. Plaintiff Ross C. Anderson is the former Mayor of Salt Lake City, Utah and is a resident thereof. Plaintiff Anderson, known as Rocky Anderson, is the Justice Party's candidate for President of the United States in 2012.
2. Plaintiff Anderson seeks to have his name appear on the 2012 General Election Ballot in Vermont as a candidate for President of the United States.
3. Plaintiff Benjamin L. Eastwood is a registered voter in the City of Montpelier, Vermont. Plaintiff Eastwood is the campaign coordinator for Plaintiff Anderson's candidacy in Vermont. Eastwood Affidavit, ¶¶ 1, 3.

4. Plaintiff Daniel M. Albert, Esq. is a practicing attorney in the office of the Public Defender, Franklin/Grand Isle Counties. Plaintiff Albert is a registered voter in the Town of Westford, Vermont.

5. Plaintiff Nicole Killoran is a graduate of Vermont Law School, was a managing editor of the Vermont Law Review, and is a registered voter in Calais, Vermont. Plaintiff Killoran is sitting the Vermont bar examination this July. Plaintiff Killoran lived in Salt Lake City, Utah until 2009 and supported and voted for Plaintiff Anderson in his successful campaigns for Mayor during the 1999 and 2003 Salt Lake City mayoral elections.

6. Prior to June 14, 2012, Plaintiffs Eastwood and Albert signed “statements of nomination” to place Plaintiff Anderson on the 2012 General Election Ballot for the office of President of the United States.

7. Plaintiff Killoran would have signed a statement of nomination on behalf of Plaintiff Anderson, but did not have the opportunity to do so.

8. Plaintiffs Eastwood and Killoran wish to vote for, and likely would vote for, Plaintiff Anderson for President of the United States if Plaintiff Anderson were to appear on the 2012 General Election Ballot. Plaintiff Albert wishes to have Plaintiff Anderson on the 2012 General Election Ballot so as to have the option to consider, and possibly vote for, Plaintiff Anderson.

**Ballot Access in Vermont, Major Party Candidates:**

9. In presidential election years, major party candidates must submit petitions signed by at least 1,000 voters to the office of the Vermont Secretary of State in order to be placed on a Vermont presidential primary ballot. 17 V.S.A. § 2702.

10. The petitions must be submitted approximately 60 days before the primary—specifically by 5:00 p.m. on the first Monday after the first Tuesday in January for the presidential primaries held on the first Tuesday in March. 17 V.S.A. § 2701.

11. The petitions so submitted must be on forms prescribed by the Secretary of State, showing the signature of each signee, her printed name, and her town of residence. Exhibit 1 is a true and accurate copy of the form prescribed by the Secretary of State. The form is now or was formerly available at <http://vermont-elections.org/2012%20Pres%20Primary%20Forms.pdf>.

12. Once received, elections personnel at the office of the Secretary of State examine the petitions to ascertain whether the petitions conform to the requirements of Vermont's election laws. 17 V.S.A. § 2703. If a candidate's petitions do not conform to these requirements, the office is required by law to notify the candidate and the candidate is allowed ten days to cure the defects.

**Ballot Access in Vermont, Independent Candidates.**

13. In presidential election years, Vermont requires independent candidates to submit "statements of nomination" signed by at least 1,000 voters to the office of the Secretary of State in order to be placed on the general election ballot as candidates for President of the United States. 17 V.S.A. § 2402(b)(1).

14. The statements of nomination must be submitted approximately 75 days before the state primaries—specifically by 5:00 p.m. on the second Thursday after the first Monday in June for the primary held on the fourth Tuesday in August. 17 V.S.A. § 2402 (d), 2356 and 2351.

15. The statements of nomination must be on forms prescribed by the Secretary of State, showing the signature of each signee, her printed name, and her town of residence. Exhibit 2 is a true and accurate copy of the form prescribed by the Secretary of State. The form is now or was formerly available at:

<http://vermont-elections.org/2012%20GE%20Pres%20Independent%20FormsNewDate.pdf>.

16. Unlike the petitions submitted by major party candidates, the State of Vermont and the Secretary of State require that independent candidates obtain "certification by the town clerk of

each town where the signers appear to be voters that the persons whose names appear as signers of the statement of nomination are registered voters in the town and of the total number of valid signers from the town.” 17 V.S.A. § 2402 (a)(4).

17. Although the law does not so require, the Secretary of State insists that independent candidates obtain town clerk certifications on original statements of nomination. The Secretary of State will not accept certifications of photocopies or facsimiles of statements of nomination. See Affidavit of Plaintiff Eastwood, ¶ 8.

18. Once received, elections personnel at the office of the Secretary of State examine the statements of nomination to ascertain whether they conform to the requirements of Vermont’s election laws. However, in contrast to the procedure of major party candidates described in paragraph 12 above, if there are defects in an independent candidate’s statements of nomination, the office is not required to notify the candidate of the defects and the candidate is not given ten days to cure the defects.

19. The certification process is not used to verify the authenticity of signatures; rather, it is used to determine whether the names appearing on the statements are names of registered voters in Vermont.

#### **Voter checklist in Vermont.**

20. Since January 1, 2006, the Secretary of State has maintained a statewide voter checklist containing the name and address of each Vermont resident who has been found to be a legally qualified voter and the town of her residency and registration. See [http://vermont-elections.org/elections1/voter\\_checklist.html](http://vermont-elections.org/elections1/voter_checklist.html).

21. The Secretary of State developed the statewide voter checklist for the purpose of improving ballot access in Vermont and to comply with the Help America Vote Act, 2002 (HAVA), 42 U.S.C. §15483 (a).

22. The statewide voter checklist is the official checklist of the names of all persons registered to vote in Vermont and their place of residency.

**Plaintiffs' efforts to get Rocky on the ballot.**

23. In May, 2012, Plaintiff Eastwood and approximately nine other individuals began gathering signatures of registered voters in Vermont, using the "statement of nomination" form provided by the office of the Vermont Secretary of State.

24. Simultaneously, and in accordance with demands placed on them by the office of the Secretary of State, Plaintiff Eastwood and others immediately began obtaining town clerk certifications of the names on the original statements of nominations.

25. Plaintiff Eastwood and others drove to approximately 25 town clerk offices to obtain town clerk certifications while simultaneously working to gather more signatures.

26. By June 14, 2012 at 5:00 p.m., the deadline for submitting statements of nomination to the Secretary of State's office, Plaintiff Eastwood and others had obtained approximately 1,300 signatures and names on statements of nomination.

27. However, due to the unique burden placed on Plaintiffs by 17 V.S.A. § 2402(a)(2) and the Secretary of State's demand that all certifications of names be made on original statements, Plaintiffs were unable to obtain certifications on all names. In total, Plaintiffs obtained town clerk certifications on approximately 730 of the names, approximately 150 of which were obtained via facsimile.

28. Plaintiff Eastwood submitted the statements of nominations, containing approximately 1,300 signatures, to the office of the Secretary of State by 5:00 p.m. on Thursday, June 14, 2012.

29. As is readily determinable by reference to the statewide checklist required to be maintained—and maintained—by the Secretary of State, over 1,000 of the names contained on

Plaintiffs' statements of nomination are names of persons registered to vote in the State of Vermont in the towns identified next to each name.

30. The office of the Secretary of State, however, refused to honor the signatures of these Vermont registered voters and has refused to place Rocky Anderson's name on the 2012 General Election Ballot as candidate for President of the United States.

**Count One—facial violation of the Constitution of the United States.**

31. Plaintiffs incorporate the preceding paragraphs.

32. Laws which affect candidate eligibility implicate basic constitutional rights which may not be constrained absent a showing of a legitimate, important state regulatory interest.

33. On its face, the certification requirement of 17 V.S.A. § 2402 (a)(4) serves no legitimate or important state regulatory interest.

34. On its face, the exclusive right given to major party candidates—and denied to independent candidates—to cure petition defects under 17 V.S.A. § 2703 serves no legitimate or important state regulatory interest.

35. On its face, the certification requirement of 17 V.S.A. § 2402 (a)(4) places heavy burdens on Plaintiffs' access to the General Election Ballot, thereby significantly restricting Plaintiffs' freedom to associate for the advancement of beliefs and ideas. These heavy burdens are not placed on major party candidates and their supporters.

36. On its face, the absence of a right to cure petition, when such right exists for major party candidates, places a heavy burden on Plaintiffs' access to the General Election Ballot, thereby significantly restricting Plaintiffs' freedom to associate for the advancement of beliefs and ideas.

37. The certification requirement of 17 V.S.A. § 2402 (a)(4) and the major-party-candidates-only cure provisions of 17 V.S.A. § 2703 violate Plaintiff's First and Fourteenth Amendment rights under the United States Constitution and are unconstitutional on their face.

**Count Two—as applied violation of the Constitution of the United States.**

38. Plaintiffs incorporate the preceding paragraphs.

39. As applied by the office of the Secretary of State, 17 V.S.A. § 2402 (a)(4) serves no legitimate or important state regulatory interest.

40. As applied by the office of the Secretary of State, 17 V.S.A. § 2402(a)(4) places heavy burdens on Plaintiffs' freedom to associate for the advancement of beliefs and ideas. These heavy burdens are not placed on major party candidates and their supporters.

41. As applied by the office of the Secretary of State, 17. V.S.A. § 2402 (a)(4) violates Plaintiffs' First and Fourteenth Amendment rights under the Constitution of the United States.

**Count Three—facial violation of the Vermont Constitution.**

42. Plaintiffs incorporate the preceding paragraphs.

43. Article 7<sup>th</sup> of the Vermont Constitution, known as the Common Benefits Clause, ensures that the laws and regulations of this state are not drawn for the particular advantage of any set of persons.

44. Article 8<sup>th</sup> of the Vermont Constitution ensures the right to elect officers by regulations which comply with the rights ensured by the Vermont Constitution, including the Common Benefits Clause.

45. On their face, the certification requirement of 17 V.S.A. § 2402 (a)(4) and the major-party-candidates-only cure provisions of 17 V.S.A. § 2703 are legislation drawn for the specific and particular emolument and advantage of major party candidates and their supporters in violation of the Common Benefits Clause and Article 8<sup>th</sup> of the Vermont Constitution.

**Count Four—as applied violation of the Vermont Constitution.**

46. Plaintiffs incorporate the preceding paragraphs.

47. As applied by the Secretary of State, 17 V.S.A. § 2402 (a)(4) benefits and gives advantage to major party candidates and their supporters over the constitutional rights of independent candidates and their supporters.

48. As applied by the Secretary of State, 17 V.S.A. § 2402 (a)(4) does not comply with the rights ensured by the Constitution of Vermont.


49. As applied by the Secretary of State, 17 V.S.A. § 2402 (a)(4) violates Articles 7<sup>th</sup> and 8<sup>th</sup> of the Vermont Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court hear their plea and:

- A. Declare 17 V.S.A. § 2402 (a)(2) and 17 V.S.A. § 2703 unconstitutional;
- B. Schedule an expedited hearing and argument on the accompanying motion for injunctive relief, and make an early ruling on Plaintiffs' requested relief, in time to allow the Secretary of State to print ballots for the General Election which include Plaintiff Anderson as a candidate.
- C. Issue injunctive relief requiring the Secretary of State to place Plaintiff Anderson and his running mate on the 2012 General Election Ballot as independent candidates for the President and Vice President of the United States;
- D. Grant other relief as the Court deems appropriate including reasonable attorneys' fees, if available, and court costs.

Dated at Montpelier, Vermont on June 27, 2012

PLAINTIFFS

By:   
Charles L. Merriman  
Tarrant, Gillies, Merriman & Richardson  
Attorneys for Plaintiffs  
P.O. Box 1440  
Montpelier, Vermont 05601-1440  
(802) 223-1112

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

CIVIL DIVISION  
Docket No. \_\_\_\_\_

Ross C. "Rocky" Anderson, )  
Benjamin L. Eastwood, et. al )  
Plaintiffs )  
 )  
v. )  
 )  
State of Vermont, )  
Secretary of State James Condos )  
Defendants )

AFFIDAVIT OF BENJAMIN L. EASTWOOD

I, Benjamin L. Eastwood, being first duly sworn, depose and say that:

1. I am a registered voter of Montpelier, Vermont.
2. Former Mayor of Salt Lake City, Utah, Ross C. "Rocky" Anderson, is running for the presidency of the United States of America under the party name of Justice Party. Rocky's vice presidential running mate is Linda Boyd.
3. I actively campaigned to get Rocky and Linda on the general ballot in Vermont and I support and will vote for Rocky for president and Linda for vice president in November.
4. In May, 2012 and pursuant to 17 V.S.A. chapter 49, Katherine L. Eastwood, Gaelan Brown and I became electors for Rocky's petition drive. We immediately began gathering signatures of registered voters in Vermont, using a form provided by the office of the Vermont Secretary of State. Exhibit 1 is a true and accurate copy of the form.
5. Through our efforts and the efforts of approximately ten other volunteers, we obtained approximately 1,400 signatures of individuals who represented on the form that they are registered voters in the state of Vermont.
6. Vermont election law purports to require independent presidential candidates to obtain "certification by the town clerk of each town where the signers appear to be voters that the persons whose names appear as signers of the statement of nomination are registered voters in the town and of the total number of valid signers from the town." 17 V.S.A. § 2402 (a)(4).

7. The signature certification requirement of § 2402 (a)(4) is not placed upon major party or minor party candidates for the presidency.

8. The burdens placed on independent presidential candidates and their supporters by the signature certification requirement of 17 V.S.A. § 2402 (a)(4) are truly onerous and are made even more onerous by non-statutory requirements placed upon us by the office of the Secretary of State. For example, according to the office of Secretary of State, our campaign was required to obtain certifications on original Statements of Nominations forms, not copies. According to the office, we could not obtain certifications via facsimile.

9. Since any one Statement of Nomination form could contain signatures of voters from towns all over the state, the law and the Secretary's non-statutory requirements forced me and other canvassers to drive across the state attempting to obtain sufficient certifications. On memory and belief, we drove to Rutland, Milton, South Burlington, Burlington, Colchester, Essex, Winooski, Williston, Barre Town, Ferrisburgh, Shelburne, Barre City, Montpelier, Waterbury, Richmond, Berlin, Calais, Charlotte, East Montpelier, Hinesburg, Middlesex, and Northfield to collect town clerk certifications.

10. In addition, we mailed many Statements of Nomination forms to town clerks. For each mailing, we included a self-addressed, stamped envelope. Some were returned to us with certifications, some were filled out improperly and returned to us, some were returned to us without certifications, and some (containing approximately 100 signatures) we never got back.

11. Finally, and notwithstanding the Secretary's instruction, we faxed Statement of Nomination forms, containing approximately 200 signatures, to various outlying towns. We received faxed certifications on approximately 150 signatures.

12. According to 17 V.S.A. § 2356, we were required to submit 1,000 signatures by 5 p.m. on Thursday, June 14, 2012 to the office of the Secretary of State in order to get Rocky and


Linda on the general ballot. We submitted approximately 1,300 signatures, approximately 580 of which the office accepted as compliant with the certification requirement of 17 V.S.A. § 2402 (a)(4). The rest were rejected, including approximately 150 of which we obtained certification via facsimile.

13. On information and belief, the signatures which were rejected by the Secretary were signatures of registered voters.

14. In cases where primary petition signatures are illegible or otherwise defective, Vermont law allows a candidate ten additional days to correct the deficiencies. 17 V.S.A. § 2358. Consistent with this policy, we continued in our attempts to have our signatures certified. However, on information and belief, the Secretary of State instructed town clerks to cease certifying our signatures. Exhibit 2 is a true and accurate email I received from one town clerk in response to my request that she continue the certification process.

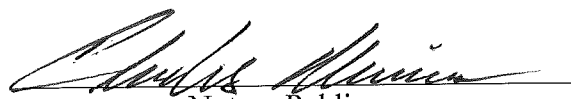
AND FURTHER DEPONENT SAYETH NOT.

Dated at Montpelier, Vermont, this 19~~th~~ day of June, 2012.

  
Benjamin L. Eastwood

STATE OF VERMONT  
WASHINGTON COUNTY, SS

SUBSCRIBED and sworn to before me this 19 day of June, 2012.

  
Notary Public

ALL-STATE LEGAL®  
**EXHIBIT**  
**1**

S.S. STATE OF VERMONT

[illegible]

**INFORMATION FOR CANDIDATES**  
**PRESIDENTIAL PRIMARY ELECTION**

**MINIMUM NUMBER OF SIGNATURES REQUIRED** – 1,000 registered voters

**WHERE TO FILE:**

Office of the Secretary of State  
Attn: Elections  
128 State Street  
Montpelier, VT 05633-1101

**WHEN YOU FILE** -17 V.S.A. § 2702.

No later than 5:00 p.m. on MONDAY, JANUARY 9, 2012.

Under Vermont law, "filed" means "deposited in the regularly maintained office of the official with whom the filing is to be made." 17 V.S.A. § 2103(13).

**CONSENT FORM** -17 V.S.A. § 2361.

A consent form stating how the candidates name will appear on the ballot should be filed with the petition no later than 5:00 p.m. on January 9, 2012.

**FILING FEE** -17 V.S.A. §2702.

Each petition shall be accompanied by a filing fee of \$2,000.00 to be paid to the Vermont Secretary of State. However, if the petition of a candidate is accompanied by the affidavit of the candidate stating the candidate's campaign committee is without sufficient funds to pay the filing fee, the secretary of state shall waive all but \$300.00 of the payment of the filing fee by that candidate.

**ONE PARTY ONLY** -17 V.S.A. §§2701, 2702.

You may run in only one party in the presidential primary election, and only major party candidates may run.

**INFORMATION FOR SIGNERS**

**WHAT IT MEANS TO SIGN** –

Your signature doesn't necessarily mean that you will vote for the candidate. It just means that you feel the candidate is a worthwhile person to be running in the presidential primary election.

**HOW MANY PRIMARY PETITIONS YOU MAY SIGN** – 17 V.S.A. § 2354.

You may sign as many primary petitions for a given office as there are nominations to be made (seats to be filled) for that office. For the presidential primary election, you may sign one petition for each major party nomination to be made.

IF YOU HAVE ANY QUESTIONS, please visit our website at <http://www.sec.state.vt.us>

If you cannot find the information you need, please call the Elections Division in the Office of the Secretary of State at (800) 439-8683 (toll free within VT) or (802) 828-2363.

CONSENT OF CANDIDATE FORM (17 V.S.A. §2702)  
**PRESIDENTIAL PRIMARY ELECTION**

Each candidate for office in a **Presidential Primary on March 6, 2012**, must file a consent form with the filing officer in order to authorize the printing of his or her name on the primary ballot.

OFFICE  
President

WHERE TO FILE  
Vermont Secretary of State  
Attn: Elections  
128 State Street  
Montpelier, VT 05633-1101

**Please complete this form carefully.** This form is required by law to establish exactly how each candidate's name, state of residence, and party will appear on the ballot. The law also requires that each candidate provide us with a mailing address. You may include initials or nicknames in your name; however, titles (i.e. Doctor, Esquire, etc.) cannot appear on the ballot. It will be most helpful if you limit your name – including spaces – to no more than 24 characters.

**This form is due in the Office of the Vermont Secretary of State no later than 5:00 p.m. on  
MONDAY, January 9, 2012.**

*I consent to having my name printed on the ballot for the office of:*  
**PRESIDENT OF THE UNITED STATES**

in the State of

**VERMONT**

**My name, state of residence, and party are as follows – exactly as I want it to appear on the ballot:**  
(PLEASE TYPE OR PRINT CLEARLY)

Name: \_\_\_\_\_

State of residence: \_\_\_\_\_

Party: \_\_\_\_\_

Candidate's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Town, State, Zip: \_\_\_\_\_

Daytime phone: \_\_\_\_\_

Evening/weekend phone: \_\_\_\_\_



CONSENT OF CANDIDATE(S) FORM  
**INDEPENDENT CANDIDATES**  
**PRESIDENT AND VICE PRESIDENT** (17 V.S.A. §§2402(a)(4), 2361)

Each candidate for office in the General Election on NOVEMBER 6, 2012 must file a consent form at the same time as the petitions with the filing officer in order to authorize the printing of his or her name on the General Election ballot.

OFFICE  
President

WHERE TO FILE  
Vermont Secretary of State  
Attn: Elections  
128 State Street  
Montpelier, VT 05633-1101

**Please complete this form carefully.** This form is required by law to establish exactly how each candidate's name, state of residence, and party will appear on the ballot. The law also requires that each candidate provide us with a mailing address. You may include initials or nicknames in your name; however, titles (i.e. Doctor, Esquire, etc.) cannot appear on the ballot. It will be most helpful if you limit your name – including spaces – to no more than 24 characters.

**This form must be filed in the Office of the Vermont Secretary of State between Tuesday, May 29 and 5:00 p.m. on Thursday, June 14, 2012.**

I consent to having my name printed on the ballot for the office of:  
**PRESIDENT OF THE UNITED STATES** in the State of **VERMONT**

My name, state of residence and party are as follows – exactly as I want it to appear on the ballot:  
(PLEASE TYPE OR PRINT CLEARLY)

**PRESIDENT:**

Name: \_\_\_\_\_

State of residence: \_\_\_\_\_

Party: \_\_\_\_\_

Signature of Presidential Candidate: \_\_\_\_\_ Date: \_\_\_\_\_

**VICE PRESIDENT:**

Name: \_\_\_\_\_

State of residence: \_\_\_\_\_

Signature of Vice Presidential Candidate: \_\_\_\_\_ Date: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

DAYTIME TELEPHONE: \_\_\_\_\_

EVENING/WEEKEND TELEPHONE: \_\_\_\_\_

## INDEPENDENT PRESIDENTIAL/VICE PRESIDENTIAL CANDIDATES

I join in a petition to place on the general ballot the name of \_\_\_\_\_, whose residence is in the state of \_\_\_\_\_ for the office of President of the United States; and the name of \_\_\_\_\_, whose residence is in the state of \_\_\_\_\_ for the office of Vice President under the party name\* of \_\_\_\_\_.

\*Party name can be three words, not include “independent,” and not be similar to a political party currently organized in Vermont. 17 VSA §2403

We nominate the following persons for the Office of Elector:

(Name)	(Town of Residence)	(Mailing Address)
(Name)	(Town of Residence)	(Mailing Address)
(Name)	(Town of Residence)	(Mailing Address)

We the undersigned are registered voters in Vermont in the Town of Residence shown next to our names.

[illegible]

**FOR OFFICIAL USE ONLY**

I hereby certify \_\_\_\_\_ names on this petition are registered voters of \_\_\_\_\_  
(Town or City)

\_\_\_\_\_  
(Official's Signature) (Please print name & title) (Date)

INFORMATION FOR CANDIDATES  
**INDEPENDENT CANDIDATES FOR PRESIDENT**  
GENERAL ELECTION

SIGNATURES REQUIRED to be added to General Election Ballot - 17 V.S.A. §2402(b)

For President - 1,000 (A separate petition form is available from the Elections Division for other independent candidates for state offices, state senate, state representative, high bailiff, or Justice of the Peace.)

ELECTORS - 17 V.S.A. § 2402(a)(4)

Your petition must include the name, address and town of residence for three electors in order to be accepted.

CONSENT FORMS - 17 V.S.A. § 2402(a)(4) A consent of candidate form and a consent form for each of the three electors must be filed at the same time as the statements of nomination, at the Vermont Secretary of State's Office.

CERTIFYING SIGNATURES - 17 V.S.A. §2402(c) Before you file these statements of nomination with the Vermont Secretary of State you must have the required number of signatures verified against the checklist by the town clerk in the town where the signer is registered to vote. We suggest that you circulate separate petition pages in each town. We also suggest you give the town clerks plenty of time in advance of the filing deadline for checking these statements of nomination. The only names which will be counted are those names certified by the town clerk as being legally registered voters.

WHERE TO FILE - 17 V.S.A. §2387

MAIL: Secretary of State's Office  
128 State Street  
Montpelier, VT 05633-1101

LOCATION: 128 State Street  
Montpelier, VT

REMEMBER, the required number of signatures must be certified by the town clerk BEFORE you file these statements of nomination with the Secretary of State. If signatures are not certified, your petition will be rejected. If more than one town clerk needs to certify names on a page, the clerk can staple a certification of signatures to the page.

WHEN YOU FILE -

No sooner than TUESDAY, May 29, 2012 but before 5:00 p.m. on Thursday, June 14, 2012.

*Note: Under Vermont law, "filed" means "deposited in the regularly maintained office of the official with whom the filing is to be made." 17 V.S.A. §2103(13).*

PARTY NAME CHOICE - 17 V.S.A. §2403 The political or other name on the statement shall be substantially different from the name of any organized political party and may not be more than three words. It shall also be different from any name on any other statement of nomination for the same office presently on file with the Vermont Secretary of State for the same election. If no party name is indicated, the word "Independent" shall be printed on the ballot.

INFORMATION FOR TOWN AND CITY CLERKS - 17 V.S.A. §2402(c) Check the name of each person who has listed your town as their residence. If the name is on your checklist, sign your initials in the right hand column. If it is not, write "no" in that column. Then certify that you have checked the statements of nomination, indicating the number of valid signatures. You can use your own certification language or you can download a sample certification from our website.

INFORMATION FOR SIGNERS - Your signature doesn't necessarily mean you will vote for the candidate in November. You are just saying that you feel the candidate is a worthwhile person to be running in the general election. By statute, you may only sign one petition to nominate a candidate for President in the General Election. 17 V.S.A. §2403

IF YOU HAVE ANY QUESTIONS, CALL THE VERMONT SECRETARY OF STATE'S OFFICE  
(802) 828-2363 or toll free within VT at 1-800-439-8683

CONSENT OF ELECTOR FORM  
**ELECTORS FOR INDEPENDENT  
PRESIDENTIAL/VICE PRESIDENTIAL CANDIDATES**  
(17 V.S.A. §§2402(a)(4), 2361)

Each presidential elector for an independent candidate or a minor party candidate for the office of president and vice president must file a consent form at the same time as the petitions with the Office of the Vermont Secretary of State between Tuesday, May 29 and Thursday, June 14, 2012.

*I consent to the filing of my name in the official records of the Office of the Vermont Secretary of State as a presidential elector for:*

Presidential candidate (print): \_\_\_\_\_

Vice Presidential candidate (print): \_\_\_\_\_

*under the party name of \_\_\_\_\_, to be*

*voted for on* **TUESDAY, NOVEMBER 6, 2012.**

PLEASE PRINT LEGIBLY

Name of Elector: \_\_\_\_\_

Town of Residence: \_\_\_\_\_

Party: \_\_\_\_\_

Signature of Elector: \_\_\_\_\_ Date: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Town, state, zip: \_\_\_\_\_

Daytime phone: \_\_\_\_\_

Evening phone: \_\_\_\_\_

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

CIVIL DIVISION  
Docket No. \_\_\_\_\_

Ross C. "Rocky" Anderson, )  
Benjamin L. Eastwood, )  
Daniel M. Albert, and Nicole Killoran )  
Plaintiffs )  
 )  
v. )  
 )  
State of Vermont, )  
Secretary of State James Condos )  
Defendants )

**MOTION FOR INJUNCTIVE RELIEF and CONSOLIDATION OF HEARINGS**

This motion is in the nature of a writ of mandamus and is filed on behalf of Plaintiffs. It is filed for the purpose of compelling the State of Vermont and the Vermont Secretary of State (collectively, the State) to include Plaintiff Anderson and his running mate, Linda Boyd, on the 2012 Vermont General Election Ballot as candidates for the President and Vice President of the United States, respectively. This motion is brought pursuant to V.R.C.P. 65.

**Memorandum of Law in Support of Motion**

**I. Standard for injunctive relief**

Rule 65 permits the issuance of a preliminary injunction prior to the resolution of a claim. Injunctive relief is an extraordinary remedy issued to deter injurious conduct. Injunctive relief is appropriate when there is not an adequate remedy at law. Injunctive relief, however, will not be granted unless the right to relief is clear. *Wild v. Brooks*, 2004 VT 74, ¶ 10, 177 Vt. 171.

To be eligible for a temporary restraining order,<sup>1</sup> the plaintiff must demonstrate that it will suffer irreparable harm and that there is either a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation, with the balance of hardships tipping decidedly in the movant's favor.

*St. Albans Co-op Creamery, Inc. v. Glickman*, 68 F.Supp.2d 380, 384 (D.Vt., 1999).

## **II. Risk of irreparable harm to Plaintiffs.**

Here, Plaintiff/candidate Anderson and Plaintiffs/voters Killoran, Albert and Eastwood are poised to suffer irreparable harm to their ballot access rights, secured by the First and Fourteenth Amendment of the Constitution of the United States and by Articles 7<sup>th</sup> and 8<sup>th</sup> of the Vermont Constitution. Unless an injunction issues, Plaintiff Anderson will not appear on Vermont's General Election Ballot for the November 6, 2012 election and Plaintiffs Killoran, Albert and Eastwood will be denied the right to express themselves, and to meaningfully associate with others for the advancement of their political beliefs and ideas, by way of the election. Clearly, the harm Plaintiffs' face is not one which can be redressed or repaired after the fact by way of a damages claim.

## **III. Plaintiffs are likely to succeed on the merits.**

As stated in the Complaint, Vermont election laws and regulations place unique and heavy burdens on independent candidates and their supporters which are not placed on major party candidates and their supporters. The test for determining the constitutionality of ballot access restriction statutes was set forth by the United States Supreme Court in 1983:

[A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that

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<sup>1</sup> As noted in *Hersey Foods Corp. v., Department of Agriculture*, 293 F.3d, 520, 522 (D.C. Cir. 2002), "the [*St. Albans*] court called its injunction a 'temporary restraining order' but it was in effect a preliminary injunction."

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

*Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564, 1570 (1983). Here, Plaintiffs' risk of injury is great and the State has no colorable or legitimate interest in imposing these burdens on Plaintiffs. Accordingly, Plaintiffs are likely to succeed on the merits.

A. Plaintiffs' risk of injury is great.

The State will undoubtedly agree that Plaintiffs constitutional rights of expression and association are injured by the challenged legislation. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces [the First Amendment right of] freedom of speech." *Anderson v. Celebrezze*, 460 U.S. at 787, 103 S. Ct. 1569 (internal citation omitted). Moreover, the injury is momentous.

In sharp contradistinction to major party candidates and their supporters, 17 V.S.A. § 2402 (a)(4) and the State's application of this law burdens Plaintiffs with traveling all over the state, attempting to get town clerks to certify names that are readily available to the Secretary of State via the Secretary's statewide voter checklist. The additional person-hours needed to perform this task significantly reduces the hours available to independents to campaign and to gather additional signatures, hobbling the independent candidates, and benefiting the political interests of the major party candidates.

Similarly, in sharp contradistinction to the rights of major party candidates and their supporters, 17 V.S.A. § 2703 does not give independent candidates or their supporters and opportunity to cure defects in their petitions. For example, assume a major party candidate and an independent candidate each submits petitions containing 1,100 signatures. Assume each submittal contains 101 faulty signatures, leaving both petitions short by one signature. 17 V.S.A. § 2703 gives the major party candidate ten days to acquire one more signature for her petition. The independent candidate, however, does not enjoy the same right under the law. Instead, she would be denied a place on the ballot for that election cycle.

B. The challenged laws forward no colorable or legitimate state interest.

Requiring a town clerk to certify that names written on a statement of nomination are the names of registered voters in the town serves no legitimate state interest.

1. Section 2402 (a)(4) does not prevent against fraud. A candidate and her supporters can obtain a copy of the statewide checklist from the office of the Secretary of State by filing a request and a sworn affidavit. Alternatively, they may obtain copies of individual town check lists from town clerks or from the Secretary of State. See [http://vermont-elections.org/elections1/voter\\_checklist.html](http://vermont-elections.org/elections1/voter_checklist.html). Once obtained, an unscrupulous candidate or her supporters could easily fill out petitions with names of registered voters and forge signatures. Provided the unscrupulous candidate or her supporters were circumspect in the way in which they forged the signatures so as to not raise suspicion, the petitions would likely pass the scrutiny of the office of Secretary of State. See 17 V.S.A. § 2358, limiting petition-reviewing officer's review of petitions.<sup>2</sup>

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<sup>2</sup> Years ago, Vermont required that candidates' petitions be accompanied by certificates stating that oaths had been administered to each signee. See *Schirmer v. Myrick*, 111 Vt. 255, 20 A.2d 125

2. Section 2402 (a)(4) does not assist in the administration of the petition process; in fact, it creates administrative inefficiency.

As stated in the Complaint, the office of the Secretary of State possesses the entire statewide checklist. The statewide checklist is “the official voter registration list for all elections in the state.” 17 V.S.A. § 2154. On information and belief, the office of the Secretary of State uses the statewide checklist to review other candidates’ compliance with petition requirements. There is no reason why the office of the Secretary of State shouldn’t use the statewide checklist to review independent candidates’ compliance with statement of nomination requirements as well.

3. Section 2703 promotes inequality among candidates and voting groups

Allowing a cure period for faulty petitions arguably promotes voters’ rights of association and speech. Certainly, were Barack Obama or Mitt Romney denied access to Vermont’s General Election Ballot because of a faulty, readily reparable petition, Vermont would justifiably be the laughing stock of the nation. More importantly, Obama’s and Romney’s supporters would be denied a right of expression and association guaranteed by the United States Constitution.

Independent candidates and their supporters are no differently placed. There is no colorable or legitimate state interest in according special rights to one group of candidates and voters while denying those same rights to the group’s political competitors.

#### **IV. Conclusion**

For the reasons given, Plaintiffs respectfully request that the court: (a) set this matter for hearing as soon as possible; pursuant to V.R.C. P. 65 (b)(2), consolidate the hearing on this motion with trial on the underlying complaint; and (c) issue a permanent

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(1941). The requirement of the oath presumably provided forwarded a state interest in protecting against petitioner fraud

injunction, requiring the Secretary of State to include Plaintiff Anderson and his running mate, Linda Boyd on the 2012 General Election Ballot as candidates for President and Vice President of the United States

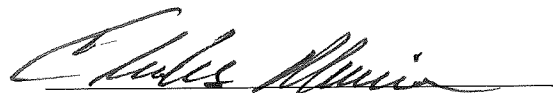
**SECURITY**

Plaintiffs respectfully request that the Court waive the security requirement of V.R.C.P. 65 (c). The rule provides that the Court may waive a security payment for "good cause shown". The security requirement is intended to secure not only costs but damages, when recoverable under 12 V.S.A. § 4447. See reporter's notes to Rule 65 (c). This action does not place Defendant at risk of loss of costs or damages. Accordingly, Plaintiffs respectfully request the Court exercise its discretion and excuse Plaintiffs from posting security for an injunction.

Dated at Montpelier, Vermont on June 27, 2012

PLAINTIFFS

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