

LIBERTARIAN PARTY OF OKLAHOMA,
et al.,
....Plaintiffs,

v.

PAUL ZIRIAX, Secretary of the
Oklahoma State Election Board, et al.,
....Defendants.

Plaintiffs seek to have the Libertarian Party recognized in the State of Oklahoma for the 2012 General Election in order to run candidates as Libertarians for public office in the State, as well as for President and Vice President of the United States. For 2012, the five percent petition requirement of Okla. Stat. tit. 26, §1-108 requires petitions to be filed by March 1, 2012, with signatures of 51,739 registered voters of Oklahoma (a number higher than any successful petition ever submitted during a Presidential election year). Because of the unnecessarily early new filing deadline, the shortened time during the more politically active periods for petitioning, demands on petitioning for the Libertarian Party in other states, and the shortened petitioning time for the 2012 election because of the late amendment of the previous ballot access law, the Libertarians have so far collected a little over 46,000 petition signatures. The issues involved in the instant lawsuit concern whether or not the new deadline of March 1, 2012, coupled with the high petition signature requirement, the shortened petitioning time, and the new unnecessarily early filing deadline under the facts and circumstances of the current Libertarian ballot drive renders the Oklahoma election law in question (Okla. Stat. tit. 26, §1-108) unconstitutional as to

the Plaintiffs for the 2012 General Election and subsequent elections in Oklahoma. It is the contention of the Plaintiffs that this Court should, among other things, declare Okla. Stat. tit. 12, § 1-108 as applied unconstitutional and order the Libertarian Party of Oklahoma (LPO) be recognized and placed on the Oklahoma ballot, or, in the alternative, reduce the number of required signatures for 2012 to 41,702 (a reduction of 19.4% to make up for the reduced petitioning period for 2012) or an even lower number because of the loss of the more productive petitioning months of March and April, 2012, and/or grant the LPO an additional sixty-one days, i.e., until May 1, 2012, in which to gather the necessary signatures required under Okla. Stat. tit. 26, §1-108.

I. STATEMENT OF THE CASE AND HISTORY OF CHANGES IN OKLAHOMA BALLOT ACCESS LAW

This proceeding seeks a judgment declaring OKLA. STAT. tit. 26, § 1-108, as applied to the Plaintiffs for the 2012 Oklahoma General Election and all subsequent general elections in the State of Oklahoma and the facts and circumstances relating thereto, unconstitutional in that it violates in its application to the Plaintiffs herein for the 2012 Oklahoma General Election, and all subsequent Oklahoma General Elections, the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983. Plaintiffs request a preliminary injunction against Defendants prohibiting said Defendants from following and enforcing the provisions of OKLA. STAT. tit. 26, § 1-108, as applied to the Plaintiffs herein for the 2012 Oklahoma General Election, and all subsequent Oklahoma General Elections, to the extent that said statute sets an unconstitutional early deadline of March 1 during election years coupled with an unconstitutionally high petition signature requirement for the formation of new political parties and a reduction of over two months in the amount of time available for petitioning from the previous and future one year petitioning time

period allowed by law because of the lateness of the passage of the new Okla. Stat. tit. 26, § 1-108 in early May of 2011.

Prior to 1975, the predecessor law to the current OKLA. STAT. tit. 26, §1-108 had been in effect since 1923 and only required a new political party to submit a petition containing the names of 5,000 Oklahoma voters to the Secretary of State and the Secretary of the State Election Board. See, OKLA. STAT. tit. 26, §229, Laws 1923-24, Chapter 151, Page 214 (Repealed January 1, 1975). From the end of World War II in 1945 until the repeal of the old OKLA. STAT. tit. 26, § 229, on January 1, 1975, only the American Party in 1968 succeeded in meeting the requirements of the aforesaid §229 of 5000 petition signatures when it filed 23,519 petition signatures. After the enactment of OKLA. STAT. tit. 26, §1-108 (going into effect on January 1, 1975), no new political party has ever been formed in a gubernatorial election year because of the heightened signature requirement of five percent of the previous higher Presidential vote in Oklahoma. As to Presidential election year formation of new political parties, only the Reform Party in 1996 and 2000 and the Libertarian Party in 1980, 1996, and 2000 have successfully petitioned to obtain full party ballot status. While the Green Party of Oklahoma (GPO) failed in its petition drive for ballot access in Oklahoma in 2000 and the LPO failed in its petition drives for ballot access in Oklahoma pursuant to OKLA. STAT. tit. 26, §1-108, in 1976, 1981, 1984, 1993-1994, 2004, and 2007, the LPO was able to successfully petition for its Presidential candidate in 1988 and 1992, pursuant to OKLA. STAT. tit. 26, §10-101.2.

After Oklahoma's ballot access law was amended in 1985 to increase the petitioning time from 90 days to one year (Amended by laws 1985, SB 255, c. 269, § 1) as a result of the old law being declared unconstitutional in 1984, *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, 593 F.Supp. 118 (W.D. Okla. 1984), Okla. Stat. tit. 26, § 1-108 was amended again, first in 2003

and then in 2004 to move the petition filing deadline for party formation from May 31 of an even-numbered year to May 1st of an even-numbered year. Amended by laws 2003, SB 358, c. 485, § 1; Amended by laws 2004, HB 2677, c. 53, § 6, emerg. eff. April 1, 2004. No political party has been successful in petitioning for party formation in Oklahoma since this change was made. However, after a previous unsuccessful legal challenge (*Libertarian Political Organization of Oklahoma v. Clingman*, 2007 OK CIV APP 51, 162 P.3d 948) and lobbying by Plaintiffs of the Oklahoma Legislature for changes in the law, the only result was a successful liberalization of the law in only one of the two houses of the Oklahoma Legislature (viz.: the Oklahoma House of Representatives—which passed a bill which would have lowered the petition signature requirement for new political parties in Oklahoma to 22,500 and kept the May 1 petition deadline). However, the Oklahoma Legislature in May of 2011 (after the State Senate failed to pass the House version) passed and Governor Fallin signed on May 10, 2011, a new political party formation law which made the new, complained-of petitioning requirements even more difficult by keeping the 5% signature requirement, but moving the deadline from May 1 to March 1 of an even-numbered year and, in effect, cutting the petitioning period for 2012 from one year to slightly under 10 months, i.e., May 10, 2011, to March 1, 2012. Normally, petitions may be circulated a maximum of one year after the notice required under Okla. Stat. tit. 26, § 1-108(1). Amended by Laws 2011, HB 1615, c. 196, § 3, eff. November 1, 2011. However, the aforesaid reduction in petitioning time for the 2012 election cycle amounts to a loss of 71 days or 19.4% of the petitioning time previously allowed under the old law and allowed for future election cycles after 2012 under the new law.

Because of the lateness in the amendment to the aforesaid law in May of 2011, the LPO filed a Notice of Intent to form a new political party with the State Election Board on May 3, 2011, which—even if they had filed the Notice on May 1 or a few days earlier would have only allowed

them 10 months for petitioning for party formation in the year 2012. Further, because the Legislature of Oklahoma in 2004 moved the filing deadline forward approximately a month, to May 1, and subsequently moved the filing deadline even earlier by approximately two months to March 1, and without compensating for the reduced petitioning time from one year to approximately 10 months for the year 2012, Oklahoma now has the most repressive and restrictive ballot access laws in the United States.

On the 1st day of March, 2012, the LPO plans to turn in petition signatures for the recognition of the Libertarian Party of Oklahoma pursuant to OKLA. STAT. tit. 26, §1-108. Under current Oklahoma law, 51,739 valid petition signatures of registered Oklahoma voters are required in the year 2012 for the formation of a new political party. Currently, the LPO has collected in excess of 46,000 petition signatures, while the GPO has suspended its efforts because of the severity and restrictiveness of the new requirements complained of herein.

In the election year in Oklahoma for the year 2012, the filing period for political party nominations is now on April 11, 12, and 13, 2012, while the political party Primary Election is on June 26, 2012 (117 days after the Petition signature deadline of March 1st), a Runoff Primary Election on August 28, 2012 (163 days after the petition signature deadline of March 1st), and the General Election on November 6, 2012 (206 days after the petitioning signature deadline of March 1st). If OKLA. STAT. tit. 26, §1-108 is enforced so as to deny the LPO and GPO and individual Oklahoma registered voters who support its formation the right to a constitutional party formation petition deadline, time period in which to petition during 2011-2012, and signature requirement, then the rights to political association, First Amendment free speech, and free and equal elections will be abridged and denied.

II. STANDARD OF REVIEW

In deciding whether or not to grant Plaintiffs' Motion for Preliminary Injunction filed herein, the Trial Court must consider both the standard of review to be applied to a preliminary injunction request as well as the standard of review required in a ballot access case. In order to demonstrate entitlement to a preliminary injunction, four criteria must be considered by the Court: (1) whether plaintiffs have a substantial of prevailing on the merits; (2) whether plaintiffs will suffer irreparable injury if preliminary injunction is not issued, (3) the threatened injury to the plaintiffs must outweigh other injuries the defendants would suffer if the preliminary injunction issues; and (4) issuance of the proposed preliminary injunction would not be adverse to the public interest. *Country Kids 'N City Slicks, Inc. v. Sheen*, 77 F.3d 1280, at 1283 (10th Cir. 1996), citing *Autoskill, Inc. v. National Educational Support Systems, Inc.*, 994 F.2d 1476, at 1487 (10th Cir. 1992), *cert. denied*, 510 U.S. 916 (1993).

Because the Plaintiffs would suffer irreparable injury if they were not able to gain ballot access for the Oklahoma General Election ballot in the year 2012, there is no possible constitutionally recognized injury to the Defendants which would be greater than the grave injury to the fundamental rights which Plaintiffs would suffer in the case at bar, and issuance of the proposed preliminary injunction would be in the public interest rather than adverse to the public interest. In deciding whether or not to grant Plaintiffs' request for a preliminary injunction, the Trial Court should concentrate primarily on the issue of whether or not the Plaintiffs are likely to prevail on the merits in the instant case. Thus, the Court should next look to the standard of review in judging ballot access laws which impact small political parties seeking state recognition.

In ballot access cases involving a burden on fundamental rights, the appropriate standard of review is strict scrutiny. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); and *Williams v. Rhodes*, 393 U.S. 23 (1968). Since the case at bar involves ballot access restrictions that do burden minority political parties, and the corresponding constitutional right of individuals to political expression and association, the appropriate standard of review which is required by this Court is strict scrutiny, so that State laws cannot stand unless they “further compelling State interests . . . that cannot be served equally well in significantly less burdensome ways.” *American Party of Texas v. White*, 415 U.S. 767, at 780-781. More specifically, the appropriate standard of review is the analytical test applied by the United States Supreme Court in *Anderson v. Celebrezze, Id.*. In *Anderson* the United States Supreme Court set forth a standard to be used in determining whether election laws are unconstitutionally oppressive of potential voter's rights. The Supreme Court held that such constitutional challenges to specific provisions of a state's election laws cannot be resolved by litmus-paper tests that will separate valid from invalid restrictions, but rather that the Trial Court “. . . must resolve such a challenge by an analytical process that parallels its work in ordinary litigation.” *Anderson v. Celebrezze*, 460 U.S. at 789. The Supreme Court then set forth three criteria which the Trial Court is expected to follow:

It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the Plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rules. 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 facts is the reviewing Court in a position to decide whether the challenged provision is unconstitutional. *Anderson v. Celebrezze*, 460 U.S. at 789.

Thus, the Supreme Court has set forth the standard which the Trial Court is to use in analyzing specific provisions of ballot access laws as are involved in the instant action. The Court further

stressed that ". . . because the interests of minor parties and independent candidates are not well represented in state legislatures, the risk that the First Amendment rights of those groups will be ignored in legislative decisionmaking may warrant more careful judicial scrutiny." *Anderson v. Celebrezze*, 460 U.S. at 793, n. 16. This is particularly important when we are concerned with a presidential election where the effect of a state's election laws go beyond the boundaries of that state. *Anderson v. Celebrezze*, 460 U.S. at 790.

III. ARGUMENTS AND AUTHORITIES

Oklahoma ballot access laws as to third political parties do not meet the strict scrutiny standard of review because they are not framed in the least restrictive manner necessary to achieve the legitimate state aims in regulating ballot access. There is no question but that the individual states of the Union have a legitimate interest in regulating access to the election ballot so as to prevent fraud and confusion and to ensure an orderly election process. *American Party of Texas v. White, Id.*; *Williams v. Rhodes, Id.* Indeed, the United States Supreme Court has spoken clearly on the "confusion and orderliness" legitimate State interest in holding that the State may insist that a political party appearing on the election ballot demonstrate a certain degree of community support. See *American Party of Texas v. White, Id.*. What is significant in considering just how far Oklahoma may go in protecting its interest in 2012, is the fact that it appears that this year for the sixth general election in a row there is a strong possibility that Oklahoma will have no other political choices on its ballot besides the Republican and Democratic parties (with no possibility of even voting for a non-Republican or Democrat for President since there is no write-in voting permitted in Oklahoma. Okla. Stat. tit. 12, §7-127(1) and §7-129.

It is undisputed that restrictions on access to the election ballot burden two distinct and fundamental rights, “. . . the right of individuals to associates for the advancement of political beliefs, the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.” *Williams v. Rhodes*, 393 U.S. at 30. “The freedom to associate as a political party, a right we have recognized as fundamental [*Williams v. Rhodes*, 393 U.S. at 30-31], has diminished practical value if the party can be kept off the ballot. Access restrictions also implicate the right to vote because, absent recourse to referendums, ‘Voters can assert their preferences only through candidates or parties or both,’ *Lubin v. Panish*, 415 U.S. 709, 716 (1974); “*Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, at 184 (1979).

When these fundamental, constitutionally protected rights are unreasonably or unfairly limited or denied, relief is available to set aside restrictions or denial in an action such as the instant case. It is the contention of the Plaintiffs urging this lawsuit that the State of Oklahoma has gone too far in infringing the Plaintiffs’ rights to political association and ballot access. The teaching of the United States Supreme Court is that:

“even when pursuing a legitimate interest, a state may not choose means that **unnecessarily restrict** constitutionally protected liberty,” *Kusper v. Pontikes*, 414 U.S. 51 (1973), and we have required that states adopt the **least drastic means** to achieve their end. *Lubin v. Panish*, 415 U.S. at 716 . . . ; *Williams v. Rhodes*, 393 U.S. at 31-33 **This requirement is particularly important where restrictions on access to the ballot are involved.** The states’ interest in screening out frivolous candidates must be considered in light of the significant role that third parties have played in the development of the nation. [emphasis added] *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. at 185.

“As our past decisions have made clear, the significant encroachment upon associational freedom cannot be justified upon a mere showing of a legitimate state interest [citations omitted].

If the state has open to it a least drastic way of satisfying its legitimate interest, it may not choose a legislative scheme that broadly stifles the exercise of fundamental liberties. *Shelton v. Tucker*, 364 U.S. 479 [1960].” *Kusper v. Pontikes*, 414 U.S. at 58-59. In deciding what the “least drastic or restrictive means,” is, it is necessary for the Court to “. . . consider the facts and circumstances behind the law, the interest which the state claims to be protecting, and the interests of those who are disadvantaged by the classification.” *Storer v. Brown*, 415 U.S. 724, at 730 (1974), citing *Williams v. Rhodes*, *Id.*, and *Dunn v. Blumstein*, 405 U.S. 330 (1974). Also see, *Mandel v. Bradley*, 432 U.S. 173 (1977) and *McLain v. Meier*, 637 F.2d 1159 (8th Cir. 1980). In such a regard, it is interesting to look at the history of ballot access in Oklahoma.

In 1975 the requirement for a new political party to gain ballot status recognition in Oklahoma increased from 5,000 petition signatures to five percent of the total vote cast in the last gubernatorial or presidential election in Oklahoma. See *Arutunoff v. Oklahoma State Election Bd.*, 687 F.2d 1375 (10th Cir. 1982), *cert. den.*, 461 U.S. 913 (1983). In the thirty years prior to the aforesaid change in the ballot access law in 1975, only the American Independent Party had gained ballot status in Oklahoma under the old 5,000 petition signature requirement. After the change in the ballot access law, only the Libertarian Party in 1980, 1996, and 2000¹, and the Reform Party in 1996 and 2000, have gained ballot status in Oklahoma. In each of those successful petitioning years, the petition signature requirement in Presidential election years was less than it is for the current election year of 2012.² However, because of the new reduced

¹ In 1984, the Libertarian petition drive to obtain ballot status in Oklahoma failed. However, ballot status was achieved for the Libertarian Party in Oklahoma in 1984 by order of a federal court which directed that the Libertarian Party choose its nominees for political office by a political convention. *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, *Id.*.

² Under the post-1974 ballot access law in Oklahoma the higher requirement in gubernatorial years has kept all new political parties from successfully petitioning for ballot status for gubernatorial elections. “This problem was

petitioning time for 2012 from the one year period, a deadline which is now 91 days earlier than in the 2000 election year, and an all time high signature requirement for new political party access to the Oklahoma ballot, the ballot access law has gone beyond what is constitutionally necessary. As the United States Court of Appeals for the Tenth Circuit has stated:

A state's election laws, however, cannot operate so as to freeze the political status quo. They must recognize the fact that there is a constant fluidity in the fortunes of political parties. Thus, the Courts have invalidated state ballot access laws that are oppressive and make it virtually impossible for any but the two major parties to achieve ballot positions for their candidates.
Arutunoff v. Oklahoma State Election Bd., 687 F.2d at 1378.

The instant case is concerned with the question of a more restrictive standard than was considered in the *Arutunoff* case or in the case of *Rainbow Coalition v. Oklahoma State Election Bd.*, 844 F.2d 740 (10th Cir. 1988), and with the law as is applied to the 2012 General Election, see *Hudler v. Austin*, 419 F.Supp. 1002, 1009, 1013-1014 (E.D. Mich., S.D. 1976) aff'd. mem., *Allan v. Austin*, 430 U.S. 924 (1977). Additionally, *Rainbow Coalition* is not controlling precedent to the instant case because of the passage of time involving additional election data and history, the change in the filing deadline from, first, May 31 to May 1, then, May 1 to March 1, the negating of part of the *Rainbow* decision by the later decision in *Atherton v. Ward*, 22 F.Supp. 2d 1265 (W.D. Okla. 1998), and the limitation of the *Rainbow Coalition* case to laws which have since changed. In fact, the Court in *Rainbow Coalition* considered only the constitutionality of a May 31 deadline which was "troublesomely early" under previous decisions. *Rainbow Coalition v. Oklahoma State Election Bd.*, 844 F.2d at 744; *Blomquist v.*

avoided under the old law which permitted retention if a party received 10% of the votes cast in either of the preceding general elections." [Okla. Stat., tit. 26, §111, repealed by 1974 Okla. Sess. Laws, ch. 157, p. 318, §9.] *Arutunoff v. Oklahoma State Election Board*, 687 F.2d, at 1381, n. 2.

Thomson, 539 F.2d 525, at 528 (10th Cir. 1984); also see, *Populist Party v. Herschler*, 746 F.2d 656 at 661 (10th Cir. 1984).

Oklahoma's unnecessarily early March 1 petition deadline coupled with the high petition signature requirement and the reduced petitioning time of 10 months for 2012, is unconstitutional, lacks any compelling interest, and unequally and unfairly impacts in a discriminatory manner the rights of small, minor, unrecognized political parties in Oklahoma. Ballot access deadlines and petition signature requirements which are even less repressive and restrictive than in Oklahoma have been struck down or abrogated in a number of states (including, but not limited to, Alabama, Alaska³, Arkansas, Indiana, Kentucky, Maine, Maryland, Nebraska, Nevada, New Jersey, North Dakota, Pennsylvania, Massachusetts, Ohio, and Tennessee). *New Alliance Party of Alabama v. Hand*, 933 F.2d 1568 (11th Cir. 1991) (holding April deadline too early); *American Party of Arkansas v. Jernigan*, 424 F.Supp. 943 (E.D. Ark. 1977) (holding March deadline too early); *Libertarian Party of Kentucky v. Ehrler*, 776 F.Supp. 1200 (E.D. Ky. 1991) (holding deadline of 119 days prior to the primary an unconstitutional burden on voters and minor political parties); *Stoddard v. Quinn*, 593 F.Supp. 300 (D.Maine 1984) (holding April deadline too early); *Bradley v. Mandel*, 449 F.Supp. 983 (D.Md. 1978) (holding March deadline too early); *MacBride v. Exon*, 558 F.2d 443 (8th Cir. 1977) (holding February deadline too early); *Libertarian Party of Nevada v. Swackhamer*, 638 F.Supp. 565 (D.Nev. 1986) (holding April deadline too early); *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 880 (3rd Cir. 1997) (60 day deadline before primary an undue burden because "the election is remote and voters are generally uninterested in the campaign"); *McLain v. Meier*, 851 F.2d 1045, 1050-51 (8th Cir.

³ The case decisions holding petition deadlines for February, May, and June as too early for ballot access laws for the states of Alaska, Indiana, Pennsylvania, and Massachusetts are unpublished.

1988) (Nebraska’s February deadline 90 days prior to the primary held unconstitutional); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006) (Ohio’s 120 day deadline prior to primary held unconstitutional); and *Libertarian Party of Tennessee v. Goins*, 793 F.Supp.2d 1064 (M.D. Tenn. 2010) (holding unconstitutional Tennessee’s deadline 120 days prior to the primary coupled with a 2.5% petition requirement and party membership for petition signers).⁴ In contrast, the Oklahoma deadline of May 31 in even-numbered years upheld in *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd., Id.*, involved the then Oklahoma petition deadline which was only 55 days in advance of the primary election.

In judging the constitutionality of ballot access laws, a Court should consider the historical election experiences and data of the state in question. *American Party of Texas v. White, Id.; Storer v. Brown, Id.; Williams v. Rhodes, Id.; McLain v. Meier*, 637 F.2d 1159 (8th Cir. 1980). As the United States Court of Appeals for the Eighth Circuit said in the *McLain* case, “. . . our decision is influenced by the experience of other third party groups, which have not been particularly happy in North Dakota . . . Here, the record shows that third parties have not qualified for ballot positions in North Dakota with regularity, or even occasionally. The American Party is apparently the only third party to field party candidates in the past three decades.” [*McLain v. Meier*, 637 F.2d at 1165.] Similarly, considering that only two minor parties (one of which—the Reform—was aided by millions of dollars of the billionaire, Ross Perot, in 1996, and the Federal government in both 1996 and 2000) in the last thirty years have made it on the Oklahoma ballot by petition, it is obvious that Oklahoma is in a similar position to

⁴ Subsequently, the Tennessee Legislature after the *Goins* decision removed the party membership requirement for petition signers, kept the 2.5% petition requirement, and created a 119 day deadline before the primary election. This new law was declared unconstitutional on February 3, 2012, in the case of *Green Party of Tennessee v. Hargett*, Case No. 3:11-0692 (M.D. Tenn. 2012), with the Court ordering the minor political parties placed on the Tennessee ballot and stating—among other relief--that any deadline in excess of 60 days prior to the primary for the filing of petitions for recognition as a political party is unenforceable.

that of North Dakota in regard to the use of historical election statistics and data and their bearing on the election laws in question.

While some Independent candidates have made it onto the Oklahoma ballot by paying a filing fee, the United States Supreme Court has stated that “The political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other.” *Storer v. Brown*, 415 U.S. at 745. It might well be wondered if Oklahoma, . . . is willing to encourage minority political voices, but only if they are partially stripped of a legitimizing party label.” *McLain v. Meier*, 637 F.2d at 1165, n.12. “A candidate who wishes to be a party candidate should not be compelled to adopt Independent status in order to participate in the electoral process.” *McLain v. Meier*, 637 F.2d at 1165.

As the United States Supreme Court has stated in regard to ballot access laws:

A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and—of particular importance—against those voters whose political preferences lie outside the existing political parties By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity in competition in the marketplace of ideas. Historically, political figures outside the two major parties have been fertile sources of new ideas and new programs; many other challenges to the status quo have in time made their way into the political mainstream. . . . In short, the primary values protected by the First Amendment--“a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,” *New York Times Co. v. Sullivan*, 376 U.S. 254, at 270 (1964)—are served when election campaigns are not monopolized by the existing political parties. *Anderson v. Celebrezze*, 460 U.S. at 793-794.

IV. CONCLUSION

The Oklahoma ballot access law of Okla. Stat. tit. 26, §1-108 is affected this year by a shortened petitioning time for 2012 so as to have its burden fall unequally on new or small political parties because of the late amending of the law by the Oklahoma Legislature in May of

last year, not to mention the loss of the more productive petitioning months of March and April. The Tenth Circuit has found amended election codes unconstitutional as applied to a current election year because of the lessening of time to petition. *Blomquist v. Thomson*, 539 F.2d at 528-529. As the Tenth Circuit said in *Blomquist*, “The deadline is particularly troublesome when applied to Plaintiffs in the 1984 election year because it drastically reduces the time available to obtain signatures from the one-year period normally provided.” *Blomquist v. Thomson*, 539 F.2d at 528-529. Partly, because of the reduced petitioning time in Wyoming in 1984, the Tenth Circuit allowed 1,333 signatures for a June 1 deadline to be accepted to qualify a new political party that year rather than the statutorily required 8,000 signatures. *Blomquist v. Thomson*, 539 F.2d at 529. In the case at bar, Plaintiffs would suggest to the Court that a similar reduction in the number of signatures required in Oklahoma for 2012 and/or an extension of petitioning time is constitutionally and equitably appropriate.

WHEREFORE, the Plaintiffs herein pray that this Court will grant them the relief requested in their Complaint and grant Plaintiffs’ Motion for Preliminary Injunction forthwith.

Respectfully submitted this 17th day of February, 2012.

LIBERTARIAN PARTY OF OKLAHOMA,
et al., Plaintiffs

s/ James C. Linger
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2012, a true and correct copy of the above and foregoing instrument was e-mailed to Martha Kulmacz, Assistant Attorney General, Office of the Oklahoma Attorney General, 4545 North Lincoln Boulevard, Suite 260, Oklahoma City, Oklahoma 73105, at martha.kulmacz@oag.ok.gov and to Paul Ziriaux, Secretary, Tom Prince, Chairman, Steve Curry, Vice Chairman, Jim Roth, Member, Jerry Buchanan, Alternate Member, and Dr. Tim Mauldin, Alternate Member, and Oklahoma State Election Board, State Capitol Bldg., Rm. B-6, P O Box 53156, Oklahoma City, OK 73152, via U.S. Mail, with proper postage thereon prepaid.

s/ James C. Linger
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