IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JILL STEIN, ALABAMA GREEN PARTY, MATTHEW HELLINGER, ROBERT COLLINS, CONSTITUTION PARTY OF ALABAMA, JOSHUA CASSITY, STEVEN KNEUSSLE, LIBERTARIAN PARTY OF ALABAMA, MARK BODENHAUSEN, and VICKI KIRKLAND,	)	
Plaintiffs,	)	
v.	)	Case Number: 2:12-cv-00042-WKW-CSC
BETH CHAPMAN, Alabama Secretary of State,	)	
Defendant	)	

RESPONSE IN OPPOSITION
TO MOTION FOR PRELIMINARY INJUNCTION

Alabama simply does not allow for a presidential candidate of an unqualified political party duly nominated over the summer to appear on the general election ballot unless the state chapter of that political party happened to file a party petition by March 13, almost eight months before the general election. This is a severe burden to place on the First Amendment freedoms of minor party presidential candidates and their supporters, and Alabama's interests are not strong enough to justify infringing on the constitutional rights of Americans from all 50 states.

Thus, the question presented is: does the First Amendment allow Alabama to require a presidential candidate of a minor political party to file 45,000 signatures in March 13 in order to appear on the general election ballot, especially when state law

allows independent presidential candidates to file 5,000 signatures by September 6?

I. The March deadline for presidential candidates of minor parties is earlier than the First Amendment permits.

Case law supports plaintiffs' position. The 11th Circuit struck down an Alabama statute with an April 6 filing deadline for party petitions, ruling:

> "[a]though the State has a valid and compelling interest in requiring a minor party to submit its qualifying petitions and nominate its candidates at a time substantially prior to the election, it appears that this process previously occurred in July. The State has put forward nothing which would indicate that this later deadline would undermine any of its stated interests in setting procedures for ballot access. No one can seriously contend that a deadline for filing for a minor party and its candidate seven months prior to the election is required to advance legitimate state interests. Accordingly, there appears to be a less drastic means for the State to achieve its ends."

New Alliance Party of Alabama v. Hand, 933 F.2d 1568, 1576 (11th Cir. 1991). If April 6 is too early, surely March 13 is too early as well.

In *American Party v. Jernigan*, 424 F.Supp. 943 (D.C. Ark 1977), the court struck down a March (or potentially February, based on statutory ambiguity) deadline for party petitions, remarkably similar to the deadline at issue in the present case. The court explained how a requirement to collect signatures so early in the election process is practically impossible:

> Assuming signatures can be obtained beginning on a date no later than the day after the preceding general election and, therefore, assuming that signatures could then be obtained for a period of either 15 or 16 months, would such extensive periods of time render reasonable and non-onerous the seven percent requirement? The Court has heard the evidence in the case and finds that the 15 or 16 months period appears to be more reasonable than it is in fact. The evidence convinces the Court that it is always difficult to obtain citizens' signatures to anything smacking of political action. And it is almost impossible in the off year

> after a general election to stir up any interest in political matters which will not, by their nature, come to fruition for yet another year. This is a politically barren period which does not, as a practical matter, add much to the time available for obtaining signatures. Indeed, either of the possible filing dates [in February or March before a general election in November] would normally pass before any real political activity or interest therein could be expected.

American Party v. Jernigan, 424 F. Supp. 943 at 949.

Here, as in *Jernigan*, the state's requirement that presidential candidates of unqualified political parties collect signatures in the off-year election and the first few months of a presidential election appears to be more reasonable than it is in fact. The politically barren period that the state imposes on presidential candidates of unqualified political parties with its March 13 deadline is, in practice, a severe burden.

The state cites case law that stands for the proposition that a state may connect a filing deadline for unqualified political parties to the date of the primary election for qualified parties, thus depriving the organizers of the ability to gather signatures on the primary election day. Reply at 43-45. The relationship between the deadline and the primary for the qualified political parties is irrelevant to whether the deadline to turn in party petitions is too early. Defendant's authority for the proposition that the constitution does not preclude a state from setting their primary election on the same day for filing party petitions, and thus depriving would-be petitioners of the opportunity to petition on the primary day, is simply not relevant to the question at hand. See Reply 43-46.

II. Alabama's interests in regulating presidential elections are not strong enough to justify the burden, especially in light of Alabama's more reasonable deadlines for independent presidential candidates.

Plaintiffs concede that Alabama maintains important interests in regulating presidential elections. However, to justify the burden on First Amendment freedoms, these interests must be more than important. The court must evaluate the precise interests put forward by the state, determine the legitimacy and strength of each of these interests and consider the extent to which those interests make it necessary to burden the plaintiffs' rights. *See gen*. *Anderson v. Celebrezze*, 460 U.S. 780.

The state articulates three interests to attempt to justify the March deadline for minor party presidential candidates: (1) not offering a "relative advantage" to minor parties, (2) securing a voice for Alabama major party members in the major party presidential nominating process and (3) administrative necessity to prepare the ballot, particularly with absentee ballot requirements. Reply, 44-48.

The first purported interest in not providing a relative advantage to presidential candidates of minor parties vis-a-vis qualified political parties is difficult to maintain against Alabama's decision to permit independent presidential candidates to file their petitions on September 6, the same deadline as the major party candidates use to select their nominee. Further, a minor party candidate must still secure more than 40,000 signatures to appear on the general election ballot; a task the presidential candidates of qualified parties need not perform. Applying the same deadline of September 6 for minor party petitions – or even the pre-2011 deadline of June – hardly gives presidential candidates of unqualified parties a relative advantage to the major party candidates. More importantly, this so-called interest is not legitimate. The state can not justify an onerous burden on minor party presidential candidates and their supporters in order to keep them at a relative disadvantage to qualified political parties, as that reasoning is circular. The

state suggests that keeping minor party presidential candidates off the ballot is justified because it keeps them at a disadvantage. Keeping presidential candidates of unqualified political parties at a relative disadvantage is simply not a legitimate interest to justify a burden on First Amendment freedoms.

The second interest advanced by the state to justify the March deadline for minor party presidential candidates is increasing the voice of Alabama in the Republican and Democratic presidential selection process. Reply at 47. This interest is absolutely inapplicable. Alabama need not tie the deadline for unqualified political parties to file their party petitions to the same day of a state primary. They are simply separate issues for purposes of constitutional review. If Alabama wants to continue to hold a March primary election for qualified political parties, Alabama can do so with a later deadline for unqualified political parties to turn in their party petitions. This interest is not necessary to burden plaintiffs' First Amendment freedoms, as the interest in an early primary election can be protected without a similarly early deadline for unqualified political parties to turn in their party petitions.

The third interest advanced by the state is administrative convenience. Reply at 47-48. Requiring the Defendant Secretary of State to verify the party petitions in September with more than 40,000 signatures each would be an administrative burden, given the deadlines imposed for absentee ballots. The argument, however, is circular, as the decision to impose a relatively high number of signatures for minor party presidential candidates through party petitions (8 times more than independent presidential candidates) then serves to justify the exceptionally early filing deadline of March 13. Under this line of reasoning, one constitutional infirmity begets and justifies another

infirmity. A less drastic means of satisfying the legitimate state interest of administrative convenience and necessity is simply using the same standard for independent presidential candidates of 5000 signatures due in September instead of more than 40,000 signatures due in March. In any event, the previous June deadline with the high number of signatures for a party petition used until 2011 must have been administratively feasible, in the judgment of the Alabama legislature, and a return to the previous regime can not run afoul of the state's interest in administrative capacity.

Thus, evaluating the precise interests put forward by the state under the Supreme Court's *Anderson* test leaves the state wanting. None of the interests put forward by the state demonstrate the strength and validity required to justify the infringement of First Amendment freedoms of presidential candidates of unqualified political parties.

III. Forcing plaintiffs to run as independent candidates is not a constitutional substitute for presidential candidates who wish to run as nominees of political parties.

The clearly constitutional method Alabama law creates for an independent presidential candidate is no substitute for the unconstitutional path Alabama law creates for minor party (or unqualified) presidential candidates. As the Supreme Court explained in *Storer v. Brown*:

> " . . . But the political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other. A new party organization contemplates a statewide, ongoing organization with distinctive political character. Its goal is typically to gain control of the machinery of state government by electing its candidates to public office. From the standpoint of a potential supporter, affiliation with the new party would mean

> giving up his ties with another party or sacrificing his own independent status, even though his possible interest in the new party centers around a particular candidate for a particular office. For the candidate himself, it would mean undertaking the serious responsibilities of qualified party status under California law, such as the conduct of a primary, holding party conventions, and the promulgation of party platforms. But more fundamentally, the candidate, who is by definition an independent and desires to remain one, must now consider himself a party man, surrendering his independent status. Must he necessarily choose the political party route if he wants to appear on the ballot in the general election? We think not."

Storer v. Brown, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1973), at 745-46, 94 S.Ct. At 1286.

The converse is also true. A party man (or, in this case with Plaintiff Stein, a party woman), can not be compelled to choose the independent path if he wishes to appear on the general election ballot and surrender his party affiliation. The minor party presidential candidates, their supporters and their affiliated state party leaders in Alabama seek to associate together in core First Amendment activities. The desire and efforts to build a political party that plaintiffs have demonstrated and the independent candidate approach are " entirely different and neither is a satisfactory substitute for the other." *Storer* at 745, The state can not force a presidential candidate to strip his or her party affiliation in order to appear on the general election ballot, and Alabama can not justify its severe burden on plaintiffs with the constitutionally irrelevant independent presidential candidate provision.

Plaintiffs concede that the state is correct that both unqualified political parties who turn in 45,000 signatures by March 13th and qualified political parties face the same September 6 deadline to certify the name of the presidential candidate of the political party to the state, the presidential candidates of unqualified political parties will be selected after the March 13th deadline for turning in party petitions. Because the only path

for minor party presidential candidates to appear on the general election ballot as a nominee of their political party is through a party petition that must be collected and turned in months before they become the nominee of the unqualified political party, the ability for a duly nominated presidential candidate and his or her supporters to appear on the general election ballot is blocked by the calendar set out by Alabama law. If the presidential candidates of unqualified political parties were able to devote their campaign resources to securing ballot access as a candidate of a political party with a deadline after the summer conventions where they would be selected, the duly nominated presidential candidates would not be forced to strip their party affiliation in Alabama in order to appear on the general election ballot.

IV. Conclusion

For the foregoing reasons, the motion for preliminary injunction should be GRANTED, the court should DECLARE the March 13th deadline for filing party petitions in Ala. Code Section 17-6-22(a)(1) to be UNCONSTITUTIONAL and enjoin the Secretary of State from enforcing its provisions.

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Respectfully submitted,

s/Dan Johnson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of April 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record.

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