

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

JILL STEIN, ALABAMA GREEN PARTY,)
ROBERT COLLINS, CONSTITUTION PARTY)
OF ALABAMA, JOSHUA CASSITY, STEVEN)
KNEUSSLE, LIBERTARIAN PARTY OF)
ALABAMA, MARK BODENHAUSEN, and)
VICKI KIRKLAND,)

Plaintiffs,)

v.)

Case Number: 2:12cv42-wkw-csc

BETH CHAPMAN, Alabama Secretary of)
State,)

Defendant)

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

NOW COME the Plaintiffs, by and through their attorneys, Dan Johnson and Richard J. Whitney, and for their Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, state:

I. While it is appropriate to consider the entire ballot access regime, logic and case law show that there is some independent outer constitutional limit for petition deadlines for minor party presidential candidates.

Defendant is correct that it is appropriate for courts to consider a state's entire ballot access regime when adjudicating First Amendment challenges to state election law. (Def.'s Br. Supp. Mot. Summ. J., Doc. 96, at 1). The number of signatures required to collect and the rules that govern eligibility of citizens to sign a petition for a minor party presidential candidate are relevant factors to for the Court to weigh. So too is the date on which the petitions must be filed. Yet Defendant mistakenly asserts that Plaintiffs' Amended Complaint focuses *only* on the March deadline for filing party petitions, and later insists that Plaintiffs can challenge the March

filing deadline “alone,” since the 3 percent requirement, in other contexts, has been found to be constitutional. (Def.’s Br. at 17 and n. 10.)

Defendant’s earlier reference is correct. It is the “totality of . . . restrictive laws taken as a whole” that must be considered by the Court. *Williams v. Rhodes*, 393 U.S. 23, 34, 89 S. Ct. 5, 10 (1968); *accord Nader v. Keith*, 385 F.3d 729, 735 (7th Cir. 2004) (“Restrictions on candidacy must . . . be considered together rather than separately.”) A petition gathering requirement of 3 percent and an August deadline would probably pass constitutional muster but Plaintiffs herein argue that a 3 percent requirement imposed in March – well before political parties nominate their candidates, and while voter interest in the general election is still at a low ebb – taken *together*, impose an unconstitutional burden on Plaintiffs’ rights as political associations, voters and candidates. And while the Amended Complaint does focus on the March deadline, it did so in the context of alleging that 44,560 signatures need to be collected by that early date. (Doc. 77 ¶ 22.) Defendant can’t have it both ways, declaiming that all factors must be considered while insisting that Plaintiffs can only raise concerns about one factor in isolation.

The deadline for minor party presidential candidates and their supporters to file nominating petitions is the *central*, not exclusive, factor at issue in this case – because there is a constitutional outer limit to this deadline. Consider the alternative: if there is no independent limit on the deadline, a State could, consistent with the First Amendment, require a minor party presidential candidate to submit only one signature on a nominating petition but do so two years before the election! While it is true that Alabama has “alleviating factors” in her ballot access regime, *Swanson v. Worley*, 490 F. 3d 894, 904, 909 (11th Circ. 2007), it is also true that the challenged petition deadline must survive constitutional scrutiny.

Other courts have been clear that a March deadline is beyond the constitutional outer limit for a minor party presidential candidate. Defendant does not cite a single opinion that upheld any deadline for minor party presidential candidates in March. In fact, she does not cite a single opinion that upheld any deadline for minor party presidential candidates earlier than July. A large number of cases have struck down deadlines earlier than July both for presidential candidates and non-presidential candidates (where the state's rationale is stronger than in the instant case). *See Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2011), *Lendall v. Bryant*, 387 F. Supp. 397 (E.D. Ark.1974), *Lendall v. Jernigan*, 433 U.S. 901 (1977), *Bergland v. Harris*, 767 F.2d 1551 (11th Cir. 1985), *Lee v. Keith*, 463 F. 3d 763 (7th Cir. 2006), *Libertarian Party of Ky v. Ehrler*, 776 F. Supp. 1200 (E.D. Ky. 1991), *Anderson v. Quinn*, 634 F.2d 616 (1st Cir. 1980), *Stoddard v. Quinn*, 593 F. Supp. 300 (D. Me. 1984), *Bradley v. Mandel*, 449 F. Supp. 983 (D. Md. 1978), *Anderson v. Morris*, 636 F2d 55 (4th Circ. 1980), *MacBride v. Exon*, 558 F.2d 443 (8th Circ. 1977), *Libt. Party of Nev. v. Swackhamer*, 638 F. Supp. 565 (D. Nev.1986), *Council of Alt. Parties v. Hooks*, 121 F. Supp. 898 (3rd Cir. 1997), *Libt. Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Circ. 2000), *Libt. Party of Tennessee v. Goins*, 793 F. Supp 2d 1064 (M.D. Tenn. 2010), *Green Party of Tennessee v. Hargett*, 2012 WL 379774 (M.D. Tenn. 2012), *Populist Party v. Herschler*, 746 F.2d 656 (10th Circ. 1984).

As a measure of voter interest and the education of voters on the political issues, the Supreme Court expressly recognized that time deadlines far removed from actual elections are insufficient State interest a voter access action arising out of Tennessee: “*Given modern communications, and given the clear indication that campaign spending and voter education occur largely during the month before an election*, the State cannot seriously maintain that it is 'necessary' to reside for a year in the State and three months in the county in order to be

knowledgeable about congressional, state, or even purely local elections.” *Dunn v. Blumstein*, 405 U.S. 330, 358, 92 S. Ct. 995 (1972). (Emphasis added.)

In *Blackwell*, Ohio's political party registration requirement amounted to only one percent of the total vote cast in the previous election. 462 F.3d at 583. Yet, this fact did not preclude the Court's conclusion that Ohio's 120 day deadline rendered Ohio's scheme unconstitutional where the 120 days deadline was a year prior to the general election. In *Blackwell*, the Sixth Circuit recognized the impact of the timing of state filing deadlines for minor political parties:

Deadlines early in the election cycle require minor political parties to recruit supporters at a time when the major party candidates are not known and when the populace is not politically energized. In that case, the LPO needed to find more than thirty thousand Ohio residents to sign its petition to appear on the 2004 ballot more than one year in advance of the election. Early deadlines also have the effect of ensuring that any contentious issue raised in the same year as an election cannot be responded to by the formation of a new political party. The combination of these burdens impacts the party's ability to appear on the general election ballot, and thus, its opportunity to garner votes and win the right to govern.

* * *

We find both the reasoning and the conclusions of these courts to be compelling. Ohio's deadline in the November preceding the election is the earliest of any deadline reviewed by a federal court. *It is 120 days in advance of the primary election and 364 days ahead of the general election for which the party wishes to appear on the ballot. This deadline imposes a severe burden on the First Amendment rights of the LPO.*

462 F.3d at 591. (Emphasis added.)

Here, the time differential between the March deadline and the general election is eight months. And as the Eleventh Circuit held in *New Alliance Party of Ala, v. Hand*, 933 F.2d 1568, 1576 (11th Cir. 1991): “No one can seriously contend that a deadline for filing for a minor party and its candidates seven months prior to the [general] election is required to advance legitimate state interests.” 933 F.2d at 1576.

II. Case law recognizes that appearing on the ballot as an independent is not a substitute for a minor party candidate and his supporters to appear as a party candidate.

Defendant argues that the duly nominated minor party presidential candidate Plaintiffs are not burdened from appearing on the ballot as independent presidential candidates, stripped of their partisan affiliation, because they can still communicate to voters that – despite their status as an independent candidate – they are still the nominee of a political party. (Def.’s Br. at 18-19.) Defendant further argues that the First Amendment does not compel the State of Alabama to allow the duly nominated presidential candidates of minor parties to appear on the ballot under the same terms as independent presidential candidates, because allowing the presidential candidates on the ballot as the nominee of their political parties would “permit them to field not only Presidential candidates but also State and local candidates down-ballot.” However, that is only true if the presidential candidate of the minor political party earns enough support in the election to qualify for ballot access for the party in the next election pursuant to Ala. Code s 17-13-40 – in which case it would be appropriate, demonstrating the modicum of support necessary for the party ballot access.

Green Party of Tennessee v. Hargett, 2012 WL 379774 M.D. Tenn. 2012), contains an extensive discussion of the role of minor parties directly on point:

As to the defense expert’s opinions on the minor political party’s futility in Tennessee, the First Amendment is the cornerstone for other constitution rights in the Bill of Rights and the Constitution. Without the First Amendment’s right of access to the courts, enforcement of constitutional rights and provisions could be rendered meaningless. The First Amendment rights of free speech, of petition for redress and to associate are critical to our democratic principles. These fundamental rights and their enforcement cannot be conditioned upon political expediency nor limited by contemporary political outcomes. “A candidate who wishes to be a party candidate should not be compelled to adopt an independent status in order to participate in the electoral process.” *McClain v. Meier*, 637 F. 2d 1159, 1165 (8th Cir. 1980) (citing *Storer*, 415 U.S. at 745, “[T]he political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other.”). “All political ideas cannot and should not be channeled into programs of our

two major parties. History has amply proved the virtue of political activity by minority, dissident groups which innumerable times have been at the vanguard of democratic thought and whose programs were ultimately accepted. ... The absence of such voices would be a symptom of grave illness in our society.” *Sweezy*. 354 US at 250-51. The Court concludes that its decision on the First Amendment must be based upon constitutional values, not political values or political expediency.

Green Party of Tennessee v. Hargett, 2012 WL 379774 at 72.

III. While Plaintiffs primarily challenge the statutory scheme on its face, they have presented evidence of actual injury from its operation.

Defendant notes that Plaintiffs admit that they did not attempt to meet the March petitioning deadline for party ballot access, and cite *Libertarian Party of Florida v. Florida*, 710 F.2d 790 (11th Cir. 1983), in support of their argument that, where plaintiffs had similarly testified they had not even attempted to undertake a petition drive because in their view the 3% [signature] requirement simply was impossible to meet,” the Eleventh Circuit stated, “Plaintiffs failed to present factual evidence that they were precluded from obtaining ballot status by the challenged [laws]. Conclusory allegations cannot prevail.” (Def.’s’ Br. at 16-17, *quoting* 710 F. 2d at 794.)

There are three flaws in this argument. First, it is apparent that the Eleventh Circuit was, at that point in its opinion, addressing an “as applied” challenge to Florida’s ballot access statutes; that part of the opinion has no applicability to the facial challenge presented by Plaintiffs in the case at bar. Second, in the quoted passage, the Eleventh Circuit first observed that the plaintiffs had not attempted a petition drive, then, in the next sentence, noted that they had failed to present factual evidence that the challenged regulations had barred them from achieving ballot access. Defendant wants the Court to read this conjunctively, as if the *only* “factual evidence” that the Eleventh Circuit would entertain would be evidence of a failed petition drive. While Defendant may desire this interpretation, the Eleventh Circuit did not state or imply such a conclusion; it simply made two closely related observations in consecutive

sentences.

Third, Plaintiffs in the instant matter *have* presented considerable factual evidence of how they are harmed by the statutory scheme at issue here. Specifically:

A. The magnitude of the three percent of gubernatorial voters/44,828 raw number signature-gathering requirement, while not constitutionally infirm when viewed in isolation, is compounded by a March primary date, held well before the national conventions of the Constitution Party (April), Libertarian Party (May) and Green Party (July). (Def.'s' Ex. A, Joint Stip. Facts ¶¶ 4, 11, 13, 14.) Thus, none of the Plaintiff parties had selected their national presidential candidate as of the date of the March primary, and, at least in the cases of the Constitution Party and Green Party, there was no certainty as to who would be the nominee. (Ex. 1, Decl. Joshua Cassity, ¶5; Ex. 2, Decl. Jill Stein, ¶¶ 3, 4.) Therefore, a candidate's campaign could only devote its own resources to winning a party ballot line in Alabama by diverting those resources from its efforts to win the party's nomination. In the case of the Green Party, this was especially burdensome because the Party had historically relied on the presidential campaign's resources to get on the ballot in many states, including Alabama where the state party lacked sufficient resources to do it on its own. (Ex. 3, Stein Ans. Interrog., ¶¶ 2, 3.) The impact on the Constitution Party was similar. (Ex. 4, Cassity Ans. Interrog. ¶¶ 4-6.)

B. Joshua Cassity, State Chairman of the Constitution Party of Alabama, testified that it would cost at least \$100,000 for his party to have achieved statewide ballot access in Alabama under its party label, which was more than the Party's annual income. (Ex. 1, ¶¶ 2, 5, 6; Ex. 4, Cassity Ans. Interrog. ¶¶ 1, 6.) In his experience, efforts by volunteers would not contribute significantly to a statewide petitioning drive. (Ex. 5, Cassity Dep. (additional excerpts), at 293, 351-353.) He noted that in his prior efforts as a volunteer, in trying to petition

at gun shows and other events where booths were available, he was either discriminatorily barred because of party affiliation or the costs were prohibitively expensive. (Ex. 5 at 178-180.) He also testified that, even if his state party could raise \$100,000, it would likely not devote such resources to a statewide ballot effort without knowing who the presidential candidate was going to be. (Ex. 5 at 367.) He also noted that lack of ballot access, in turn, hinders candidate recruitment, fundraising and message dissemination for his party, providing specific examples. (Ex. 5 at 370-373.)

C. Similarly, the Libertarian Party put the figure for petition gathering at over \$200,000, which also exceeds its annual budget. (Ex. 6, Bodenhausen Decl. ¶¶ 3, 4.) The Green Party relies more heavily on volunteers to achieve ballot access, (Ex. 8, Dep. Jill Stein, at 152-153), which, again, in Alabama and some states, can only be provided in significant numbers by the presidential campaign itself. (Ex. 2 ¶ 3; Ex. 3, ¶¶ 2, 3.)

D. Alabama allows for straight-party voting. (Def.'s' Ex. H, Johnston Affid. ¶19, Attach. D.) In May 2011, a candidate of the Constitution Party, Bill Atkinson, running for state representative in House District 105 in a Special General Election, won nearly 46 percent of the vote, with 1,642 votes. (Ex. 5 at 61-62; Dep. Ex. B (appended to Ex. 5).) Of these, 279 votes, or 17 percent of Atkinson's total, were "straight ticket" votes, indicating that a significant number of voters identified with and/or supported the Constitution Party per se, more so than the individual. Mr. Cassity testified that the Constitution Party received similar straight ticket vote totals in a 2010 Congressional race out of Mobile and Baldwin Counties, indicating a significant core party vote. (Ex. 5 at 67-71.)

E. Cassity's testimony simply confirms the obvious: That some voters respond more to an individual candidate and his/her stances, personality, etc., and some voters respond

more to a party label or identity that conveys certain ideas, values or principles to them. The Constitution Party, Green Party and Libertarian Party each have a history of nationwide (and in the case of the Green Party, international) political activism, campaigning and electoral activity, of many years. (Ex. 1 ¶¶ 9-15; Ex. 5 at 249-251; Ex. 6 ¶¶ 6-12; Ex. 7, Dep. Gene Hunter, at 166-170, 178-180; Ex. 8, Dep. Jill Stein, at 145-155; Ex. 9, Affid. Jill Stein, ¶¶ 7-8; Def.’s Ex. A at 3-8.) For each party, this has created a “brand,” or identity, that voters associate with certain political positions and values – for example, strict Constitutional construction and conservatism (Constitution Party), environmentalism and non-violence (Green Party), and belief in the efficacy of free markets (Libertarian Party). Thus, it is no remedy to an otherwise unconstitutional scheme to provide a separate and easier pathway for candidates of these parties to run as “independents.” The candidates lose the advantage of the party label, and the party loses the advantage of building its ranks by associating a popular candidate *with* the party label. This is not, as Defendants argue, simply a matter of the State of Alabama declining to provide Plaintiffs with “an additional forum for communicating their political views.” (Def.’s Br. at 19.) By stripping partisan candidates of their partisan identity as the price to pay for reasonable ballot access, this statutory scheme palpably costs them votes and opportunities for future organizing – and further tilts the playing field in favor of the established party candidates who can fully enjoy the advantages of party label or brand.

F. Plaintiffs also testified that Alabama’s March deadline hinders any effort to *gather* petitions in three concrete respects: 1) They lose the advantage of being able to identify a definite candidate, which hinders them in recruiting volunteers, (Ex. 3 ¶1; Ex. 7 at 179, Ex. 8 at 152-155), 2) signature gathering itself is hindered when, for example, a prospective signer wants to know more about who their candidate is before signing, (Ex. 7 at 167-168), and 3) it is

simply much more difficult to successfully solicit signatures at a time when voter interest in the general election is low. (Ex. 10, Bodenhausen Affid.)

G. Plaintiff Cassity also noted an additional barrier to successful petition signature collection in Alabama that is more pronounced now than it was in the past: The threat posed by the phenomenon of identity theft, which makes voters more reluctant to sign petitions that require not only an address but a date of birth. (Ex. 4 ¶1; Ex. 5 at 90-92, 102-103, 161-162.)

H. Defendants understandably cite the small vote percentages received by presidential candidates Stein, Johnson and Goode in 2012 (Def.'s Br. at 20) as evidence that the party Plaintiffs have failed to exhibit the "significant modicum of support" that the petitioning barriers are ostensibly intended to ensure. However, the obvious fallacy of this reasoning is that the 2012 election results were themselves, in part, the product of the very statutory scheme at issue, in which none of these candidates were listed on the ballot with their party affiliation. Plaintiffs have introduced evidence that, when given the opportunity to appear on the ballot with their party label, they can sometimes elicit very strong support from voters. (Def.'s Ex. A ¶41; Ex. 1 ¶¶ 14, 15.)

IV. The experience of "Americans Elect" does not aid Defendant's argument.

Defendants refer more than once to the fact that the political association "Americans Elect" achieved ballot status as a political party and contrast it to the Plaintiff's failure to make an effort to comply with the March deadline. (Def.'s Br. at 3, 10-11, Ex. C.) However, this is entitled to little, if any, weight. To put it mildly, Americans Elect was not exactly a typical third party. It evidently began as a 501(c)(4), and its last IRS filing in that category showed that it enjoyed substantial financial support from a number of businesses including Dell, Delta Airlines, Apple, FedEx and United Airlines, although the largest contributions came from its

chairman, Peter Ackerman. (Ex. 11, Americans Elect Form 8871.)¹ In the 3rd Quarter of 2010 alone, it raised over \$1.1 million. (Ex. 11 at 3, line 9.) Evidently, at some point in time between 2010 and 2012, it decided that it was a political committee required to file with the FEC; its first filing under that heading showed contributions of \$1.75 million between August 8 and December 31 of 2012. (Ex. 12, Americans Elect FEC Form 5.) Its organizational status between these two dates is something of a mystery but obviously the organization possesses the financial wherewithal to readily fund petition drives like the one it conducted in Alabama – unlike the financial resources available to Plaintiffs, at least prior to March of 2012.

Needless to say, the Constitutional protections afforded to voters and candidates of non-established parties is not reserved to those who happen to have somewhere over \$1.1 million in their coffers. Nor does any case law support the proposition that, “if it is falls within the realm of human possibility to meet the deadline, it is Constitutional.” The achievement of Americans Elect may support the conclusion that a two-tier or two-class system exists in the world of ballot access petitioning but it is simply irrelevant to the issues at hand. Indeed, what the record does show is that the *only* non-established party to attain statewide party ballot status in Alabama since 2000 – when the deadline was July 3rd – was the well-financed Americans Elect. It is the exception that proves the rule. This ballot access history is an important consideration in weighing the burdens placed on Plaintiffs. *See Storer v. Brown*, 415 U.S. 724, 742, 94 S. Ct. 1274 (1974) (noting importance of historical record as to whether independent candidates never or “rarely” achieve ballot access in deciding whether restrictions impermissibly burden the freedom of political association).

¹ Exhibits 11 and 12 were retrieved from the websites of the IRS and FEC, respectively, and are admissible as public records.

As to Defendant harping on Plaintiffs' admission that they made little or no effort to achieve statewide party ballot status: In addition to the points already made herein, the Court should note that the Constitution does not require Plaintiffs to engage in exercises of futility in order to demonstrate that their rights were violated. It is not relevant to the facial challenge at all and its relevance to an as-applied analysis cuts both ways, as it is simply another reflection of the organizational difficulties faced by non-established parties and their candidates and it completely *fails to take account of the discouraging and demoralizing impact of the very statute at issue on efforts to organize a petition drive and recruit volunteers*, by imposing a near, if not actually, insurmountable barrier to such parties and their candidates.

V. Defendant's expert testimony misses the mark.

Defendants also heavily rely on the expert opinion of Trey Hood as a means of establishing that there is "no harm" caused by requiring third-party candidates to run as independents, since, historically, they have received the same, or even greater vote totals. There are numerous problems with Prof. Hood's analysis, not the least of which is that it presumes that the only valid measure of the impact of this statutory scheme rests with the vote totals, and not with how the scheme affects the "*rights* of individuals to associate for political purposes, as well as the *rights* of qualified voters to cast their votes effectively," as protected by the First and Fourteenth Amendments. *Munro v. Socialist Workers Party*, 479 U.S. 189, 193, 107 S. Ct. 533 (1986). Even if Hood's conclusions were correct, they obviously do not take into account the long-term impact on non-established parties' ability to organize, recruit and grow, over time, when their candidates' party identification is repeatedly kept off the ballot.

Hood's analysis also suffers from a fundamental flaw: He is comparing how nominally "independent" candidates and party-identified candidates fare in *different* elections under

different circumstances with different competitors. There is no control group. The only truly scientific means of testing his hypothesis (which is all it is at present) would be to have the *same* candidate with the *same* message run against the *same* competitors during the *same* time period – first as an independent, and then as a party-identified candidate, so that the only variable would be the party label. This, of course, is impossible to do with an actual election, although it could conceivably be tested through a mock election, which Hood evidently hasn't conducted. Without such a test, Hood is simply summarizing historical data and engaging in conjecture. That conjecture is refuted by the experience-based testimony of the Plaintiffs, who report how the party identification aids their reception by actual voters, as set forth in paragraphs D., E., and H. in section III, *supra*.

VI. *Swanson*, Defendant's primary source of support, actually supports Plaintiffs' position more than Defendant's.

Defendants understandably rely heavily on *Swanson v. Worley*, 490 F.3d 894 (11th Cir. 2007) but it is not controlling here. *Swanson* upheld Alabama's three percent requirement when the primary election date was the first Tuesday in June, *id.* at 896 – which is obviously a date much closer to most presidential nominating conventions. It concerned a State Senate race, *id.*, and not, as in the case *sub judice*, a presidential contest, which raises different considerations. The *Swanson* court itself acknowledged this, in distinguishing *Anderson*:

Anderson is different in two material ways. First, *Anderson* involved a presidential election where the Supreme Court noted that "the State has a less important interest in regulating Presidential elections than statewide or local elections. . . ." *Anderson*, 460 U.S. at 795, 103 S.Ct. at 1573. In contrast, the Alabama statute, challenged by plaintiffs, addresses only statewide and local elections, and a separate Alabama statute not at issue on appeal governs independent *presidential* candidates.

490 F.3d at 907.

Swanson also acknowledged the same fact pattern that makes *Anderson* controlling in the case at bar:

In requiring independent candidates to file signature petitions by late March, the Ohio statute thus placed independent candidates at a relative disadvantage to major party candidates because (1) major party candidates alone had the flexibility to respond to intervening events between the March filing deadline and the national nominating conventions five months later, and (2) the early deadline burdened signature gathering when the general election was "far in the future." *Id.* at 790-92, 103 S.Ct. at 1570-72. This discrimination against independent candidates constituted a severe burden because "[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." *Id.* at 793-94, 103 S.Ct. at 1572 (emphasis added).

490 F.3d at 907.

Moreover, *Swanson* only concerned a challenge based on the three-percent rule itself and its combined impact with the petition deadline coinciding with the primary election date, which robbed petitioners of a valuable petitioning opportunity. *Id.* at 902. Here, Plaintiffs are relying on the combined impact of the three percent rule with an early petitioning deadline that is essentially identical to the one struck down by the Supreme Court in *Anderson*. *Swanson* plainly does not compel a conclusion in Defendant's favor; if anything it supports a conclusion in Plaintiffs' favor.

Swanson, incidentally, answers Defendant's final argument, in which she cites to the important need to have time to verify ballots and certify the general election ballot 45 days before the election. (Def.'s Br. at 23-24.) This is undeniably a legitimate state interest but it is unfathomable how this pertains to the need to impose a *March* deadline on non-established parties and their candidates. A June deadline evidently provided ample time when *Swanson* was decided; Defendant fails to explain how current circumstances help justify a deadline three months' earlier.

WHEREFORE, for the reasons set forth herein, Plaintiffs respectfully request that Defendant's Motion for Summary Judgment be DENIED.

RESPECTFULLY SUBMITTED,

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ROBERT COLLINS, CONSTITUTION PARTY
OF ALABAMA, JOSHUA CASSITY, STEVEN
KNEUSSLE, LIBERTARIAN PARTY OF
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of February, 2013, 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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