

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

JAMES HALL	:	
	:	
AND	:	
	:	
N. C. "CLINT" MOSER, JR,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 2:13-cv-00663-MEF
	:	
JIM BENNETT, Secretary of State	:	
for the State of Alabama,	:	
	:	
Defendant.	:	

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
OR PRELIMINARY INJUNCTION¹**

INTRODUCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs herein respectfully move this Honorable Court for an order granting immediate injunctive relief against Jim Bennett, Secretary of State of the State of Alabama, in his official capacity, to remedy the violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution, arising from the

¹ Plaintiffs respectfully request that all pleadings previously filed in this case be incorporated herein. The expedited schedule in this case, by agreement of the parties and as reflected in this Court's Order of October 28, 2013, provides for Plaintiffs to file this Motion and then by November 5, 2013, file a response to Defendant's Motion to Dismiss or for Summary Judgment. The instant Motion is not intended to address the Defendant's Motion. With all due respect, the sort of "litmus test" generic approach Defendant has taken in his Motion and the arguments offered in support thereof entirely run afoul of the directives from the United States Supreme Court for considering ballot access challenges and miss the established framework for analysis of the specific circumstance at issue in this case; but that will be addressed in detail in the formal Response to that Motion. The instant Motion will focus instead on the facts and legal principles the courts have held must be applied in analyzing ballot access cases generally and more specifically where a Special Election is at issue. This Motion and supporting materials are submitted, mindful of the Court's directive at the Scheduling Conference held on October 28, 2013, that all materials and argument submitted in the context of both parties' motions and responses thereto will be considered together.

combination of Alabama's ballot access laws for independent candidates for United States Congress and the truncated schedule set by the Governor of Alabama for the filing of ballot access signature petitions for independent candidates seeking access to the ballot for the December 17, 2013 Special Election for Alabama's First U.S. Congressional District.

Absent such immediate injunctive relief by this Court, Plaintiffs fundamental First and Fourteenth Amendment rights, to run for office, to vote for one's candidate of choice, to associate with each other and others for political advocacy, to the equal protection of the laws, and such other First and Fourteenth Amendment rights as will be herein described will be irretrievably denied.

Alabama law provides that in order to be placed on the ballot for a specified elected office, by the date of the first primary election for the office at issue, an independent candidate must file with the Defendant a written ballot access petition by electors qualified to vote in the election to fill the office at issue, with the number of such qualified electors signing such a petition equal to at least three percent (3%) of the qualified electors who cast ballots for the office of Governor in the last general election in the district in which the candidate seeks to qualify. *See* §§ 17-9-3(a)(3) and 17-13-3, *Code of Alabama*, (1975)(as amended).

For the office at issue in this case, 5,938 signatures from qualified electors would be required for an independent candidate's ballot access petition in a regular election cycle with no limitation on when the candidate could begin gathering the signatures. Courts regularly have found that "unlimited" time frame

for gathering signatures to be an important factor in upholding Alabama's ballot access law requirements.

This case arises, however, from Defendant's imposition of the requirement of filing 5,938 signatures of qualified electors by the first primary election, where, instead of a regular election cycle, the office is to be filled by a Special Election scheduled by the Governor on short notice with a severely truncated schedule permitting, at most, 56 days for the gathering of this same number of signatures, instead of the normal "unlimited" time frame.

Court after court within the Eleventh Circuit and around the country has found that because of the truncated time frame for a Special Election, a State's regular election cycle ballot access signature requirements and/or the date by which such signature petitions must be filed, must be adjusted to reflect the burden imposed by the truncated schedule.

Alabama's ballot access laws unconstitutionally fail to make a distinction between such requirements attending a regular election cycle and a severely truncated Special Election process and this Court's immediate intervention is required to protect the fundamental rights at issue for both Plaintiffs with respect to the Special Election for U.S. Congress at issue in this case.

Plaintiffs satisfy all of the requirements for preliminary relief.

The United States Supreme Court unequivocally has held that there is to be no "litmus test" approach in ballot access cases; rather each case must be analyzed on its own peculiar facts, and in light of the burden imposed on the particular facts

at issue. The Eleventh Circuit, district courts within the Eleventh Circuit, and other courts consistently have held that for purposes of ballot access signature petition requirements, a Special Election with a schedule that is truncated relative to the schedule in a regular election cycle is different and ballot access signature requirements that are imposed in a regular election cycle must be modified to reflect the more severe burden imposed by the truncated schedule.

Accordingly, the case law specifically and directly applicable to the circumstances at issue in this case makes it clear that Plaintiffs are substantially likely to prevail on the merits of their claim that the number of signatures required and/or the date by which the signature petitions must be filed has to be modified in order to avoid violating Plaintiffs' constitutional rights.

Secondly, without the requested preliminary relief, Plaintiffs without question will be irreparably harmed, with Plaintiff Hall kept off the ballot as a candidate for Congress and both Plaintiffs rendered unable to cast their votes for him and otherwise exercise their fundamental constitutional rights as described herein in greater detail.

Third, the preliminary relief sought would impose no undue burden on the Defendant, especially when balanced against the acute, irretrievable, and irreparable harm to the Plaintiffs.

Finally, the public interest fully favors granting the preliminary relief sought herein and there simply is no public interest in favor of denying Plaintiff Hall access to the ballot or both Plaintiffs the right to vote for the candidate of their

choice under the circumstances present here.

Accordingly, in order to protect Plaintiffs' fundamental constitutional rights under the First and Fourteenth Amendments to the United States Constitution, to free speech and association, to run for public office, to cast their votes effectively and to advance their political beliefs through the electoral process, and to the equal protection of the laws, Plaintiffs respectfully move this Court for an Order (1) prohibiting the Defendant, his agents, employees, and other persons in concert with him from enforcing the state statutes at issue to prevent Plaintiff Hall from gaining access to the ballot for the Special Election and to deny Plaintiffs the right to vote for Plaintiff Hall; (2) extending the filing deadline and decreasing the number of signatures required for ballot access by Plaintiff for the Special Election to a date and number which are fair, reasonable, and constitutionally permissible; and (3) requiring the Defendant to take all appropriate steps to certify Plaintiff Hall as an independent candidate to be placed on the Special Election ballot based on the signature petitions he filed on September 24, 2013.

SUMMARY OF THE FACTUAL BACKGROUND

On or about July 29, 2013, the Alabama Secretary of State's Office announced that a Special Election will be held to elect a member of the United States House of Representatives from Alabama's First Congressional District, in light of the August, 2013 resignation from that position by the duly elected Representative, Jo Bonner. [hereinafter "Special Election"]

According to this July 29, 2013 announcement, the dates for the Special

Election were set as follows: Primary Election, September 24, 2013; Primary Runoff, November 5, 2013; and General Election, December 17, 2013.

Plaintiffs are qualified electors in the State of Alabama. Plaintiff Hall wishes to run as an independent candidate not affiliated with any political party, for the Congressional seat at issue and to cast his vote for himself. Plaintiff Moser wanted to run as an independent candidate for the Congressional seat at issue; but after working very hard on his effort to obtain signatures for his ballot access petition, he has decided to withdraw because of the overwhelming obstacle of the number of signatures required on a severely truncated schedule and he wishes to put his support behind the independent candidacy of Plaintiff Hall, to support his campaign for the Congressional seat at issue, and to cast his vote for him as an independent candidate on the ballot.

Under Alabama's election laws, while candidates for this office representing the Democratic or Republican parties automatically get a spot on the ballot, candidates not affiliated with either of those two parties must submit ballot access signature petitions with 5,938 signatures from certifiable qualified Alabama electors and they must submit these petitions by no later than September 24, 2013.

Based upon the schedule for the Special Election, set by Alabama's Governor and announced and administered by Alabama's Secretary of State, independent candidates in Alabama for the Congressional seat at issue have 56 days to obtain and file the requisite 5,938 certified signatures instead of the approximately two years Alabama's independent candidates for this same seat

ordinarily would have to obtain and file the same number of certified signatures for the Congressional seat at issue in a regular election cycle.

Plaintiffs allege that such laws violate their rights as candidates and as voters under the First and Fourteenth Amendments to the United States Constitution.

Plaintiffs seek a declaratory judgment and injunctive relief in their First Amended Complaint in this action. [Doc. 13-1] In the instant motion Plaintiffs seek immediate injunctive relief.

RELEVANT FACTS²

Plaintiff James Hall is an adult resident-citizen of Alabama, residing in Stapleton, Alabama, within the boundaries of Alabama's First U.S. Congressional District, and has been at all times relevant to this lawsuit a qualified voter in the State of Alabama according to state and federal law. Plaintiff Hall is a proud United States Marine Corps veteran, with a wife and children who believes that he, his family, like-minded Americans and their interests have been excluded and ignored by the major political parties, run by an elite and exclusive political class and he wishes to change that through his election to the United States Congress as an independent candidate, promoting true American family values for his constituents.

² The facts set forth in this section are taken directly from the First Amended Complaint, [Doc. 13-1], so that the Court is presented with a consistent set of the relevant facts. There has been no discovery or opportunity to develop additional facts or other evidentiary sources for the facts in this case, given the expedited nature of the matter. Plaintiffs have each provided Declarations, attached hereto, which expressly attest, under 28 U.S.C. §1746, to the truthfulness of all facts alleged in the First Amended Complaint (and therefore herein as well). [Exhs. 1 & 2]

Plaintiff N.C. “Clint” Moser, Jr. is an adult resident-citizen of Alabama, residing in Mobile, Alabama, within the boundaries of Alabama’s First U.S. Congressional District, and has been at all times relevant to this lawsuit a qualified voter in the State of Alabama according to state and federal law. He shares the view that the major parties do not focus on the real issues that are important to Americans and America and that fairer ballot access opportunities for independent candidates is essential.

Defendant Jim Bennett is, upon information and belief, an adult resident-citizen of Montgomery, Alabama. He is the Secretary of State for the State of Alabama, and as such, is charged with the general administration of the election laws and specific duties under such laws which are relevant to the issues in this lawsuit.

On or about July 29, 2013, the Governor of Alabama proclaimed and Defendant publicly announced that a Special Election would be held to fill the vacancy to be created by the prospective (August 2013) retirement of the member of the United States Congress representing Alabama’s First United States Congressional District prior to the completion of his term of office.

The Governor announced that in connection with the Special Election:

A. The primary election for the Democratic and Republican parties to select their respective candidates for the office at issue would be held on September 24, 2013;

B. Any primary runoff that is to be held for the Democratic or

Republican parties would be held on November 5, 2013; and

C. The general election for the First United States Congressional District pursuant to this Special Election is to be held on December 17, 2013.

Plaintiff James Hall meets all of the eligibility requirements for election to office of United States Congressman for the First United States Congressional District in Alabama, and seeks election to that office through the Special Election presently set for that office in 2013.

Plaintiff N. C. "Clint" Moser, Jr. meets all of the eligibility requirements for election to office of United States Congressman for the First United States Congressional District in Alabama, he intended to seek election to that office through the Special Election presently set for that office in 2013, but found the signature requirements and deadline for the submission of signature petitions to create an insurmountable obstacle for his candidacy and so he has withdrawn from that effort and now seeks to support the candidacy of Plaintiff Hall and cast his vote for him as an independent candidate.

Each Plaintiff seeks to vote for Plaintiff Hall with respect to the office at issue in the Special Election and to associate with others to support his candidacy.

Plaintiff Hall's candidacy as an independent candidate is the vehicle by which Plaintiff Hall seeks election through the Special Election and through which both Plaintiffs seek to exercise their rights to political participation, to advocate their agenda for political purposes, and to put forward their political beliefs and points of view, as well as those of Plaintiff Hall's constituents, and it is

the vehicle by which he and other electors seek his access to the ballot in Alabama for the Special Election.

Under Alabama law, only the Democratic and Republican parties are permitted to hold primary elections for the position at issue at state expense.

Under Alabama law, only the candidates for the Congressional seat at issue who represent the Democratic and Republican parties will be given automatic access to the ballot in the Special Election.

Under §§17-9-3(a)(3) and 17-13-3, *Code of Alabama*, (1975)(as amended), in order to be placed on the ballot for the Special Election, because he is an independent candidate, not affiliated with either the Democratic or Republican parties, Plaintiff Hall must obtain and file with the Defendant, by no later than September 24, 2013, the date of the first primary for the Democratic and Republican parties, the signatures of 5,938 people who the Defendant certifies to be qualified electors for the office at issue.

On September 24, 2013, Plaintiff Hall personally filed his ballot access signature petitions, consisting of some 316 pages with at least 2,835 signatures which he had gathered.

On September 25, 2013, Defendant's Director of Elections wrote to Mr. Hall acknowledging receipt of the 316 pages with 2,835 signatures, but advising him that he was 3,103 signatures short of the 5,938 signatures required for ballot access and that the Defendant would not even conduct a review to determine the number of valid signatures.

The Defendant advised Plaintiff Hall that, based on the number of signatures he filed, his petition was insufficient for him to be placed on the ballot as an independent candidate for the office at issue and Defendant has refused to allow Plaintiff Hall to be placed on the ballot.

The seat at issue, member of the U.S. House of Representatives for Alabama's First Congressional District, is an elected position for a two year term, with a new general election scheduled to fill the position every two years on the first Tuesday of November of the election year in which the position is scheduled for election.

Under Alabama law, in a regular election cycle, independent candidates in Alabama who wish to seek the office at issue in this case, and electors who wish to promote the candidacy of an independent candidate for such office ordinarily have a virtually unlimited period of time to obtain and file with the Defendant, signatures from certifiably qualified electors, equal in number to three percent (3%) of the qualified electors who cast ballots for the office of Governor in the last general election for the political subdivision in which Plaintiffs seek to qualify because there is no limit on when the signature process can begin. The number of signatures required for an independent candidate seeking the office at issue is 5,938 this year.

Plaintiff Hall at all relevant times used extraordinary due diligence to obtain the requisite number of certifiable signatures; but it is fundamentally unreasonable, unfair, and unconstitutional to require him to obtain and file

petitions with the same number of certifiable signatures within the severely curtailed time frame applied to this Special Election.

On or about June 4, 2013, following the announcement of the incumbent holding the Congressional seat at issue in the Special Election that he intended to retire from the seat in August of 2013, Plaintiff Hall contacted the Defendant's office to inquire as to what a ballot action petition needed to say, so that he could create one on his own and begin trying to obtain signatures.

At that time, Defendant had not prepared any ballot access petition for independent or minor party candidates to use to obtain signatures for the Special Election at issue.

By June 7, 2013, Plaintiff Hall had created his own ballot access signature petition for the Special Election at issue and submitted it to the Defendant for approval. Plaintiff Hall contacted the Defendant's office by email and by phone on many occasions in his efforts to gain ballot access as an independent candidate in this Special Election.

On or about June 11, 2013, Defendant's office responded to Plaintiff Hall's proposed sample signature petition by making some changes to it. However, Defendant did not provide Plaintiff Hall with the date of the general election for the Special Election.

Information provided through the Defendant's website advises that a ballot access signature petition for an independent candidate for elective office in Alabama **must** state on it the date of the election at issue. [Doc. 16-3]

On July 8, 2013, Defendant's office was advised of some of the insurmountable hardships imposed on independent and minor party candidates, given the number of signatures required and a truncated time frame. Defendant was asked how long the time period would be for such candidates to try to obtain signatures for their signature petitions.

Defendant's Director of Elections responded on July 11, 2013, by forwarding a sample ballot access petition which Defendant had created in response to the July 8th inquiry, without any date stated for the election at issue, notwithstanding the requirement that such a ballot access signature petition set forth the date of the election at issue to be valid. [Doc. 16-2]

Defendant's Director of Elections advised that no date for the primary or the general election for the Special Election at issue could be provided until the Governor of Alabama issued a proclamation setting such dates. Such proclamation was scheduled to be issued on or around August 15, 2013, the date previously announced as the effective date of the resignation of the incumbent House member whose seat is at issue in this Special Election.

On July 12, 2013, Defendant's office advised that they would notify the undersigned when a calendar for the Special Election was set; but Defendant's office never provided the undersigned with such notice.

Based on issues raised in the pending related case, *U.S. v. Alabama*, Case Number 2:12-cv-00179-MHT-WC (Middle District of Alabama), the announcement of the calendar for the Special Election at issue was moved up from

August 15, 2013 to the end of July 2013 because of the concerns raised in that case by the United States about hardships the truncated schedule for this Special Election would cause for overseas absentee voters in this Special Election.

Upon information and belief, the first date on which a calendar for the primaries and general election for the Special Election at issue appeared in any public forum, was in an Order issued by Judge Thompson on July 26, 2013 in *U.S. v. Alabama*. However, as noted, the Defendant provided no notice to the undersigned, or to the Plaintiff of such calendar at any time and, upon information and belief, Defendant did not even announce or otherwise provide notice of such schedule on its website or any other public forum until on or about July 29, 2013.

Prior to the July 26, 2013 Order in the pending related case of *U.S. v. Alabama* (in which the Secretary was a defendant as well), Defendant was well aware of the hardships the signature requirement would cause for independent candidates because of the severely truncated schedule attending the Special Election and had express notice of such hardships and concerns on behalf of independent candidates; yet Defendant ignored such concerns and failed to bring the concerns of independent candidates and electors who wish to vote for independent candidates, or the impact of the combination of the truncated schedule and the signature requirement to the attention of the Court in that pending related case.

Defendant even was provided with authority from the Eleventh Circuit remanding a case in which the district court had refused to provide an

accommodation for petitioning candidates whose time frame was truncated due to a Special Election schedule, as well as the district court decision on remand, extending the time frame for obtaining signatures. [See Exhs. 3&4]

Defendant knows or should know that courts within the Eleventh Circuit and around the country have entered orders extending the deadline for obtaining signatures, reducing the number of signatures requirement, or both when dealing with the impact a Special Election's truncated schedule has on the ability of independent or minor party candidates to gain ballot access through signature petitions.

Defendant knows or should know that in light of to the impact a Special Election's truncated schedule has on the ability of independent candidates to gain ballot access and the impact the same has on electors who would like to vote for independent candidates, state legislatures within the Eleventh Circuit have removed the signature requirement altogether for independent candidates in Special Elections.

Until after it became clear on or about September 24, 2013 that a primary runoff election would be required, the date of the general election for this Special Election could not be known or set, according to information provided by Defendant. Now, it is clear that there will be a primary runoff for this Special Election on November 5, 2013, with the general Special Election currently scheduled for December 17, 2013.

No ballot access petition which complied with the requirements set forth in

the official materials published by the Defendant regarding the rules and regulations for independent candidates to gain access to the ballot access could be formulated until a date for the general election for this Special Election was established, given the requirement in Alabama that a valid access ballot signature petition **must** set forth such date on the petition itself.

Notwithstanding the facts, among others, that (a) no valid ballot access petition for the Special Election could be created until a date for the general Special Election had been set, (b) prospective independent candidates could not evaluate their ability to get the required number of signatures by the first primary date, as the statute requires, without knowing when the first primary would be set, and (c) Congressman Bonner could have changed his mind anytime before the date in August when his resignation was scheduled to become effective, Plaintiff Hall worked tirelessly throughout the months of June and July 2013 and all times since then to obtain signatures for his ballot access petition and to promote his campaign. [Exh. "1"]

From the earliest possible juncture, in his efforts to obtain signatures, Plaintiff Hall has attended virtually every community event at which he believed there likely would be significant gatherings of qualified electors in order to maximize his efficiency in soliciting and obtaining signatures. These events have included charity runs, festivals, yard sales, concerts, sporting events, a gun show, and others. His efforts at some of the events were stymied by the sponsoring organizations which were not "politically friendly."

Plaintiff Hall has tried to obtain signatures through networking efforts with social contacts and work contacts, asking each friend and contact to provide as many names as possible for potential signatories and to help him gather signatures from the lists they developed for him.

Plaintiff Hall has visited businesses within the voting district and provided signature petitions to those businesses who were willing to post them and facilitate his collection of signatures. Many places of business refused to help; but he persevered.

Plaintiff Hall and his wife independently went door to door to try to obtain signatures, with disappointing results, achieving approximately 1 signature per 12 houses visited, and encountering reticence among many to get involved with a stranger in a political matter. Plaintiff Hall also found the door to door process to be most inefficient time-wise in light of this truncated schedule. Plaintiff Hall and his wife visited approximately 5000 homes in their efforts to get signatures through this door to door method.

For the signatures Plaintiff Hall obtained, most took a good deal of time to obtain, because of obstacles that included: overcoming the potential signatory's reticence to discuss politics, concerns about the impact signing the petition would have on the person's freedom to vote for another candidate in a primary or in the Special general election, concerns about a lack of privacy in providing personal information, the time it took to fill in the required information if the person agreed to sign, and the time the person requested to read all of the language on the

petition.

Plaintiff Hall placed an advertisement to try to hire someone to help him solicit signatures; but he received only one response. This did not prove to be a successful manner of proceeding and ended up costing Plaintiff Hall about \$4.00 per signature and he is a person of limited financial means.

Plaintiff Hall and his wife have worked tirelessly at all times during the relevant time frame to try everything reasonably possible within their means to obtain signatures and in the process they have sacrificed both family and work obligations. Plaintiff Hall has missed his children's sports practices and games, family events and his work has suffered because of the time and effort he has had to devote to his Herculean effort at trying to obtain signatures to gain access to the ballot for this Special Election. His efforts have continued unabated.

Plaintiff Moser also made great effort to obtain the requisite number of signatures by September 24, 2013; but he could not meet the requirement and in great frustration has abandoned his quest for ballot access for this Special Election. He supports Plaintiff Hall's efforts and wishes to case his support and vote behind Plaintiff Hall as an independent candidate. [Exh. "2"]

Notwithstanding his best efforts and all due diligence, Plaintiff Hall was not able to obtain and file the requisite 5,938 signatures by September 24, 2013, in order to gain access to the ballot for the Special Election. His ability to obtain at least 2,835 signatures, filling 316 pages by September 24, 2013, was a major accomplishment and is far in excess of any reasonable requirement that could pass

constitutional muster in light of the State's interests and the vitally important constitutional rights at issue here.

Plaintiff Hall has been precluded from gaining access to the ballot for the Special Election and Plaintiffs Hall and Moser have been precluded from the opportunity to have Plaintiff Hall on the ballot as an independent candidate to cast their vote for because of the Alabama's law at issue in this Complaint.

The Alabama statutes regarding the filing deadlines and the number of required signatures for ballot access by independent candidates, if allowed to remain as currently set and as applied to Plaintiffs, will prevent Plaintiff Hall from gaining access to the ballot for the Special Election and Plaintiffs Hall and Moser from being able to cast their vote for Plaintiff Hall as an independent candidate. Indeed, such statutes in the context of this Special Election have created such a severe burden, others have been discouraged even from trying to qualify as an independent or small party candidate. [Exh. "3"]

Alabama's rejection of Plaintiff Hall's efforts to get on the ballot, because he filed less than 5,938 signatures by September 24, 2013, has caused tremendous harm to his candidacy, including his exclusion from campaign debates and other candidate forums and will continue to cause irreparable harm if allowed to stand and not immediately reversed. Plaintiff Hall's continuing efforts to obtain additional signatures prevent him from being able meaningfully to campaign.

The Alabama statutes regarding the filing deadlines and the number of required signatures for ballot access by independent candidates serve no

compelling state interest, are excessively burdensome and discriminatory, and are unconstitutional on their face and as applied to the Plaintiffs and their supporters.

In an accommodation to voters who wish to cast their votes in the Special Election for candidates representing the Democratic and Republican parties and in accommodation to candidates in this Special Election who represent those two parties, Defendant announced on July 29, 2013, special measures that will be provided for citizens voting from overseas, creating for them an “Instant Primary Ballot” “[d]ue to the short time frame for this election....” No such accommodation of any kind in recognition of the extraordinarily short time allotted for this Special Election has been made with respect to Plaintiffs or any candidates other than candidates representing the Democratic and Republican parties.

In a further accommodation exclusively to the Democratic Party, the Defendant, without authorization, allowed the Democratic Party’s candidates to be included in this Special Election, notwithstanding the Party’s failure to certify its candidates by the established deadline for certification. [Exh. “1” at 15-17]

Defendant has at all times relevant to this action acted under color of state law.

Defendant’s actions under color of law have deprived and will continue to deprive Plaintiffs of their fundamental constitutional rights, and unless enjoined, will continue to inflict continuing and irreparable injury to the Plaintiffs.

Defendant’s application of the discriminatory filing deadline and number of

signatures requirement provisions of Alabama law to these Plaintiffs causes and will continue to cause irreparable injury to Plaintiffs' fundamental constitutional rights for which there is no adequate remedy at law. Plaintiffs are likely to succeed on the merits in this action, and both balance of harm and the public interest favor granting an injunction as hereinbelow requested.

Such provisions of Alabama law regarding filing deadlines and number of signatures required for ballot access, on their face and as applied to these Plaintiffs violate Plaintiffs' rights to free speech and association guaranteed to them by the First and Fourteenth Amendments to the United States Constitution.

Such provisions of Alabama law regarding filing deadlines and number of signatures required for ballot access, on their face and as applied to these Plaintiffs violate Plaintiffs' right to cast their votes effectively and to advance their political beliefs as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Such provisions of Alabama law regarding filing deadlines and number of signatures required for ballot access, on their face and as applied to these Plaintiffs violate Plaintiffs' rights to equal protection of the laws guaranteed under the Fourteenth Amendment to the United States Constitution.

Plaintiffs respectfully ask the Court to consider the Declaration of Ballot Access expert Richard Winger to more fully understand the severe burden the requirements at issue here, in combination, unlawfully place on Plaintiffs' fundamental constitutional rights. [Exh. "4"] Among many other things, he

elucidates the stark contrast between the way each of Alabama’s neighbors treats independent candidates for a U.S. House seat in a Special Election, with Florida and Georgia requiring no signatures at all, Mississippi requiring 200 signatures, and Tennessee requiring just 25 signatures. [*Id.*]

BALLOT ACCESS AND FUNDAMENTAL CONSTITUTIONAL RIGHTS

There is no question that the Plaintiffs’ rights at issue here, including the right to associate for political purposes, the right to be a political candidate, and the right to cast one’s vote for a political candidate are fundamental rights guaranteed by the First and Fourteenth Amendments. *Clingman v. Beaver*, 544 U.S. 581, 586 (2005); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 224 (1989); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983).

The right of citizens to run as an independent candidate is a fundamental right of the First Amendment. “Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views....Consistent with this tradition, the Court has recognized that the First Amendment protects ‘the freedom to join together in furtherance of common political beliefs.’” *California Democratic Party v. Jones*, 530 U.S. 567, 574, 120 S. Ct. 2402 (2000), *citing Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214-215, 107 S. Ct. 544 (1986); *See also, Clingman v. Beaver*, 544 U.S. 581, 586

(2005).

Accordingly, “[r]estrictions upon the access of political parties to the ballot impinge upon the rights of individuals to associate for political purposes, as well as the rights of qualified voters to cast their votes effectively, and may not survive scrutiny under the First and Fourteenth Amendments.” *Munro v. Socialist Workers Party*, 479 U.S. 189, 193, 107 S. Ct. 533 (1986), citing *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S. Ct. 5, 10 (1968).

It is true, of course, that “States may condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office.” *Id.* Thus, courts must engage in a balancing test to weigh the rights of States to condition access to the general election ballot against the rights of citizens to form political parties that can vie for election, the right to associate with the independent candidate of choice, and the rights of citizens to cast votes effectively for their chosen candidate. As the Supreme Court explained in *Anderson v. Celebrezze*, 460 U.S. 780, 103 S. Ct. 1564 (1983):

Constitutional challenges to specific provisions of a State’s election laws therefore cannot be resolved by any ‘litmus-paper test’ that will separate valid from invalid restrictions. Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. 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 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.

460 U.S. at 789. (Internal citation omitted.)

Overall, the Court’s “primary concern is with the tendency of ballot access restrictions ‘to limit the field of candidates from which voters might choose.’ Therefore, ‘[i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters’” *Anderson*, 460 U.S. at 786. (Internal citation omitted.) Where, as in the case at bar, “the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest and is narrowly tailored to serve that interest.” *Eu v. San Francisco County Democratic Cent. Committee*, 489 U.S. 214, 222, 109 S. Ct. 1013 (1989). (Internal citation omitted.) *See also, Clingman*, 544 U.S. at 596-87 (“Regulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest. However, when regulations impose lesser burdens, “a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions”); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)(“A court considering a challenge to state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”)

In the instant case, the burden is severe, [Exhs. 1-4]. Strict scrutiny applies

and where that is the case, in addition to demonstrating an articulated compelling interest to justify the regulation, states must “adopt the least drastic means to achieve their ends.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185 (1979).

In a case the one presented here, it is the 3% signature requirement and the truncated schedule which reduces the time to collect signatures from an unlimited time frame to under two months, in **combination** that creates the severe burden and any suggestion that either factor should be analyzed in isolation is simply contrary to the mandated analysis. *See Nader v. Keith*, 385 F.3d 729, 731 (7th Cir. 2004)(“Restrictions on candidacy must . . . be considered together rather than separately.”); *See also Williams*, 393 U.S. at 34 (ballot access laws should be viewed in their totality, not in isolation).

“[W]hat is demanded (by the State) may not be so excessive or impractical as to be in reality a mere device to always, or almost always, exclude parties with significant support from the ballot. The Constitution requires that access to the electorate be real, not ‘merely theoretical.’” *Party of Texas v. White*, 415, U.S. 767, 783, 94S. Ct. 1296 (1974).

In this regard, the Court should consider that, in any political campaign for public office, especially one covering a significant territory and number of voters, there is necessarily a “start-up” period that must pass before a candidate’s campaign can even *begin* to mount a serious petition drive of this magnitude. Funds have to be raised. A campaign organization must be created and major

responsibilities assigned to staff. Volunteers must be recruited to do the petitioning, or, alternatively, enough funds raised to hire paid petitioners. If the campaign must rely on volunteers, they have to be trained. And this is a far from exhaustive list of the myriad tasks that must be performed before a petition drive can really get off the ground. For an independent candidate, getting through this start-up period – and into the starting gate for a petition drive – is necessarily a more cumbersome and time-consuming process than it is for most candidates of the two established parties, who generally have far greater resources at their disposal. The truncated schedule here, with the high signature requirement within that truncated period, left no start-up or organizing time. [Exh. 4]

See also Mathers v. Morris, 515 F. Supp. 931 (D. Md. 1981), *affirmed*, *adopting rationale*, 649 F. 2d 280 (4th Cir. 1981) (in special election to fill congressional vacancy, striking down as unconstitutional statutory scheme that required non-major-party candidate to file 5,486 valid petition signatures in 18 days, a rate of 302 per day), *Blomquist v. Thomson*, 739 F. 2d 525 (10th Cir. 1984) (Where normal petitioning period was reduced to two months, signature requirement had to be reduced proportionately), *Swanson v. Bennett*, 219 F. Supp. 2d 1225 (M.D. Ala. 2002) (where deadline for filing petitions was changed abruptly, ordering two candidates on the ballot even though they hadn't gathered required number of signatures).

A court evaluating such issues as are presented here also should consider “ballot access history” as “an important factor in determining whether restrictions

impermissibly burden the freedom of political association.” *Lee v. Keith*, 463 F.3d 763, 769 (7th Cir. 2006), *citing Storer v. Brown*, 415 U.S. 724, 742, 94 S. Ct. 1274 (1974). [Exh. 4]

Ballot access requirements that raise the bar so high as to virtually prevent independent candidates from appearing should not survive strict scrutiny analysis. “The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. . . . Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms. New parties struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties have had in the past” *Williams*, 393 U.S. at 31-31.

LEGAL STANDARD FOR A T.R.O. OR PRELIMINARY INJUNCTION

There are four factors for the Court to evaluate in considering whether a temporary restraining order or a preliminary injunction should issue:

- (1) Whether there is a substantial likelihood of success on the merits;
- (2) Whether the movant will suffer irreparable harm unless the injunction is issued;
- (3) Whether the threatened injury to the movant outweighs whatever damage the proposed injunction might cause the opposing party; and

(4) Whether granting the injunction is in the public interest.

See Alabama v. U.S. Army Corps of Eng'rs, 424 F.3d 1117, 1128 (11th Cir. 2005); *Campbell v. Bennett*, 212 F. Supp. 2d 1329, 1343 (M.D. Ala. 2002). Plaintiffs here easily meet all four factors and a temporary restraining order or preliminary injunction assuring that Plaintiff Hall is put on the ballot for this Special Election must be issued.

Plaintiffs Are Substantially Likely to Succeed on the Merits

Special Elections Require Special Rules

Plaintiffs' challenge to the law at issue here is meritorious and they are more than substantially likely to succeed on the merits.

Courts which have upheld such ballot access signature requirements as apply here (e.g. 3%) for independent or minor party candidates in a regular election cycle, nevertheless, consistently have held that the application of those same requirements to such candidates in a Special Election with a truncated schedule for gathering signatures violates the First and Fourteenth Amendments. Courts across the board have held in such situations that the number of signatures to be required must be dramatically reduced or the deadline for gathering them must be extended or both. *See e.g., Jones v. McGuffage*, 921 F. Supp. 2d 888 (N.D. Ill. 2013); *Parker v. Barnes*, Case No. 1:02-cv-1883-BBM (N.D. Ga., July 30, 2002) (Unpublished)(Holding the application of the 5% regular election cycle signature requirement to a truncated Special Election schedule to be unconstitutional; reducing the signature requirement by 1/3 because the signature

gathering period for Special Election was reduced from 180 days in regular election cycle to 120 days)[Exhibit "5"]; *Migala v. Martinez*, Case No. 89-40168-MMP (N.D. Fla., August 7, 1989)(Unpublished)[Exhibit "6"])(Holding the application of regular election cycle signature requirement to truncated schedule Special Election unconstitutional; extending deadline for submitting signatures by 60 days and reducing signature requirement from 3% to 1%)[Exhibit "1"]; *Citizens Party of Georgia v. Polythress*, 683 F.2d 418 (11th Cir. 1982)(Table),Docket No. 82-8411 (11th Cir., July 14, 1982)(vacating district court decision that dismissed constitutional claim over reduction of signature gathering period from 180 days in regular election cycle to 50 days in Special Election cycle); *Citizens Party of Georgia v. Polythress*, Case No. C82-1260A (N.D. Ga., July 26, 1982)(Unpublished)(On Remand from 11th Circuit, extending signature submission date by 30 days)[Both decisions attached hereto collectively as Exhibit "7"]; *Puerto Rican Legal Defense & Education Fund, Inc. v. The City of New York*, CV-91-2026 (Oral Order of July 31, 1991, E.D.N.Y)(Unpublished)[Attached hereto as Exhibit 8]

The recent decision in *Jones v. McGuffage*, 921 F. Supp. 2d 888 (N.D. Ill. 2013) is particularly instructive. Many of the relevant facts in *Jones* are remarkably similar to the instant case; but the difference in the burden on the independent candidate in *Jones* between a regular election cycle and the special election cycle was far less than the burden present in the instant case.

In the *Jones* case, on November 21, 2012, just days after being re-elected to

his seat in the U.S. Congress, Representative Jesse Jackson, Jr. resigned. A special primary was scheduled for February 26, 2013 and a general Special Election was scheduled for April 9, 2013. *Id.* at 891. In Illinois, independent candidates for ballot access must submit petitions with signatures of at least 5% of the voters in the last election. *Id.* The petitions were due to be filed by no later than February 4, 2013. *Id.* Ordinarily, petitioning candidates in Illinois have a limited window of just 90 days to gather signatures; under this truncated Special Election schedule, that figure was reduced to 62 days. *Id.* at 903.

In Alabama, of course, as court after court has emphasized, in a regular election cycle, there is no limitation on when a petitioning candidate can begin gathering signatures and of course, the date of the regular election is known years ahead of time.

For the Special Election at issue in the instant case, especially with the requirement that all signature petitions must state the date of the general Special Election on them to be valid, no signature gathering could begin until the date of the general Special Election was announced. The effect here was that the maximum time these Plaintiffs had was 56 days (instead of the usual 2 years or “unlimited” period). And that assumes somehow that they are attributed with knowing about the Governor’s announcement of the schedule on July 29, 2013, despite repeatedly getting information from Defendant’s office that no announcement would or could be made until the effective date of Rep. Bonner’s resignation in August and despite Defendant’s failure to provide the information

to the Plaintiff Hall or to the undersigned as requested and promised.

The court in *Jones* entered an injunction dramatically reducing the number of signatures to be required, based on the truncated schedule set for the Special Election. The 5% signature requirement would have meant the petitioning candidates had to submit at least 15,682 signatures. As noted, they ordinarily would have had 90 days to gather and submit them, with some “ramp-up” time to organize a signature campaign, since the election date would have been known well ahead of time.

The Court reduced the 15,682 number to 5,000 as a matter of first course. That is the number of signatures that had been used in Illinois where there had been redistricting, due to the uncertainty that attends the new boundaries that arise. The court found such uncertainty similar to the setting of a Special Election date without much warning. Then, to account for the difference between the truncated period for gathering signatures - 62 days instead of the usual 90 days - the Court reduced the signature requirement to 3,444, deriving that figure from the ratio of $62/90 \times 5,000$. *Id.* at 903.

In the instant case, this Court could look back historically to Alabama’s ballot access laws to conclude that just a short time ago, the State found 1% to be a sufficient amount for the independent or minor party candidate to establish a “modicum of support” and apply that figure here as a matter of first course. Then, as the Court did in *Jones*, this Court could take the ratio of almost 2 months (56 days) to 24 months between Congressional elections in a regular election cycle (or

to the “unlimited” signature gathering time frame provided in Alabama in the regular election cycle) to come up with an appropriate dramatically reduced signature requirement to account for the injury from the truncated schedule.

As for the date for filing the signature petitions, the court in *Jones*, made no change for two reasons, neither of which applies here. First, in *Jones*, the minor party candidates made no effort to organize a signature drive. The independent candidate made some effort, but collected only 645 signatures. *Id.* at 892. In sharp contrast, here Secondly, the court found that getting the signatures in by February 4, 2013 was necessary in order for the State to have time to verify the signatures by March 8, 2013, when the names for inclusion on the general Special Election ballot had to be sent to the printer of the ballots. *Id.* at 890, 901.

In the instant case, by sharp contrast, Plaintiff Hall applied the discipline and tenacity he developed in the United States Marine Corps to his signature drive and in a Herculean effort, described in the First Amended Complaint (and as will be set out in his Declaration at the appropriate time), he obtained and filed 2,835 signatures on 316 pages by the appointed date of September 24, 2013. [Doc. 12 at ¶ 47]

The second reason the *Jones* court did not change the filing date, is that it found that time was needed for verification before the ballots went out to overseas absentee voters. *Id.* at 890, 901. In the instant case, Defendant has had a chance to verify Plaintiff Hall’s signatures since September 24, 2013. He just apparently has chosen not to do so. Plaintiff Hall filed his 2,835 signatures on September 24,

2013, the date appointed by the Governor. Despite knowing that Plaintiffs were contesting the application of the regular election cycle signature requirement to a severely truncated Special Election cycle, Defendant apparently refused even to begin the verification process. Defendant certainly cannot now argue that he needs additional time for verification, having refused to undertake any verification effort since September 24, 2013.

All other factors this Court must consider for the entry of a temporary restraining order or preliminary injunction also require that such an injunction be granted immediately.

Plaintiffs Will Suffer Irreparable Harm if Mr. Hall is Not Placed on the Ballot

Clearly, for an otherwise qualified candidate to be wrongfully denied an opportunity to appear on the ballot and to deny citizens who would have voted for him that opportunity constitutes irreparable harm. *Jones*, 921 F. Supp. 2d at 901; *Swanson v. Bennett*, 219 F. Supp. 2d 1225, 1233-34 (M.D. Ala. 2002)(Same and noting no adequate remedy at law for such a deprivation).

It is patently clear that the denial of a place on the ballot in an election that is imminent constitutes irreparable harm to the candidate, his party and his prospective voters. The moment of opportunity to campaign for and win election to this public office is transitory and cannot be recreated at a later date.

In a similar case involving a motion for preliminary injunctive relief filed by petitioners seeking to have their candidate placed on the ballot, this Court agreed, noting that, “even the temporary deprivation of First Amendment rights constitutes

irreparable harm in an injunction suit.” *Johnson v. Cook County Officers Electoral Bd.*, 680 F. Supp. 1229, 1232 (N.D. Ill. 1988), citing *Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir. 1975). *Accord Marion County Committee of Indiana Democratic Party v. Marion County election Bd.*, 2000 WL 1206740 *11 (S.D. Ind. Aug. 3, 2000)(Unpublished) (“Exclusion of an otherwise-qualified candidate from the ballot would amount to irreparable harm to plaintiff, its candidate, and its members.”)

Any Balancing of the Equities Here Requires Granting the Injunction

A balancing of the hardships indisputably favors expeditiously granting the requested preliminary injunction. Putting Mr. Hall on the ballot “will not create any arduous obligations for the State,” *Swanson v. Bennett*, 219 F. Supp. 2d at 1234. While Defendant certainly is entitled to fight this lawsuit as he has chosen to do, it is both disappointing and difficult to understand any legitimate State interest this Defendant could see in refusing to put Mr. Hall on the ballot. He has shown more than a modicum of support, filing almost 3,000 signatures in fraction of the time provided in a regular election cycle and he is a man who has served his country as a United States Marine. His inclusion creates no ballot overcrowding problem. He deserves to be given a chance to stand for this office and to effectively campaign for it and the voters deserve the opportunity to vote for him.

The “balance of equities” part of the test essentially means weighing “the irreparable harm the nonmovant will suffer if preliminary relief is granted, balanced against the irreparable harm to the movant if relief is denied,” *Stewart v.*

Taylor, 104 F.3d 967, 968 (7th Cir. 1997); in other words, will the injunction “do more good than harm.” *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009). The balance of equities in the case at bar strongly favors Plaintiffs. As in *Johnson, Supra.* the impact on Defendant would be virtually nothing.

Granting the Injunction Strongly Serves the Public Interest

And finally, expeditiously putting Mr. Hall on the ballot would not be adverse to the public interest. “There is no public interest in preserving an exclusively two-party ballot or excluding qualified candidates” and there would be no burden in terms of overcrowding or otherwise from including this one independent candidate on the ballot. *Jones*, 921 F. Supp. 2d at 902. As in *Swanson v. Bennett*, 219 F. Supp. 2d at 1234, “[T]he constitutional violations described herein touch upon the public’s general right of political association and right to vote, and the preservation of such rights through injunctive relief is not contrary to the public’s interest.”

The interests of justice and fundamental fairness require granting an injunction to ensure that Mr. Hall is on the Special Election ballot and “justice delayed” would be “justice denied.”

Again following the reasoning of this Court in *Johnson*, “there would be no harm to the public interest of issuing the injunction and thereby compelling the Board to place [Plaintiff’s] name on the ballot.” *Id.* While the people of Alabama have an interest “in an orderly procedure by which qualified persons seeking

public office may enter elections,” those interests are served by the instant challenge to the constitutionality of the Alabama law. *Id.* On the other hand, the public does *not* have an interest in seeing qualified persons kept off the ballot. *Id.* “Thus, if this Court determines that plaintiffs’ constitutional rights may have been infringed, the public interest, if anything, supports granting the preliminary relief which plaintiffs’ now seek.” *Id. Accord Marion County* at *11. (“if exclusion of a late-nominated candidate violated the Constitution, the public interest would favor an injunction adding such a candidate to the ballot.”).

Defendant must recognize the realities facing an independent candidate who is a hard-working man of limited financial means and his supporters who have come together on a voluntary basis to provide an alternative to the two-party duopoly that dominates politics – and passes the laws governing ballot access – in Alabama.

All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, which innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted ... The absence of such voices would be a symptoms of grave illness in our society. *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 – 251, 77 S. Ct. 1203, 1212, (plurality opinion of Warren, C.J.).

Alabama’s election laws at issue here severely burden an independent candidate for this federal office, requiring him/her to obtain and file within less than 2 months the same number of signatures a candidate in Alabama for the same office would have “unlimited” time to gather in a regular non-Special election

cycle. *See e.g. Swanson v. Worley*, 490 F.3d 894, 901, 904 (11th Cir. 2007)(Upholding the 3% signature requirement in a regular election cycle based in significant part on the fact that “Alabama ‘allows unlimited time to conduct the petitioning effort;” finding a “strong” “alleviating factor” in support this same 3% signature requirement in a regular election cycle to be that “while there is a deadline for collecting signatures, there is no required start date or limited time period for collecting signatures”).

Based on the schedule the Governor unilaterally set and decided to announce only at the end of July, the general Special Election at issue here is set to be held on December 17, 2013.

The time frame is even more constricted by the Governor’s decision, reflected in Judge Thompson’s Order in the related case, *U.S. v. Alabama*, to provide all names for the final ballot to the printer of the ballots on November 13, 2013. [See Doc. 16-2]. However, the statutory rights at issue in that case and even the constitutional rights of the overseas voters cannot be permitted to override the fundamentally important rights of Messrs. Hall and Moser here. The rights at issue in both cases can be reconciled, of course, by granting the immediate relief sought and ordering that Mr. Hall be placed on the ballot for the general Special Election.

As a matter of law “If the period for gathering petition signatures is severely reduced, minor party (or independent) candidates effectively are denied access to the ballot in violation to (sic) the first and fourteenth amendments of (sic) the

Constitution.” *Migala v. Martinez*, Case No. 89-40168-MMP (N.D. Fla., August 7, 1989)(Unpublished)[Exhibit “1”]. That is exactly what has happened here.

So long as Plaintiff Hall’s rejection by Defendant from the general Special Election ballot is allowed to stand, Plaintiff Hall has been and will continue to be excluded from televised and other debates among the candidates for the seat at issue and otherwise will be denied the ability effectively to campaign for this office. This must be expeditiously remedied.

CONCLUSION

Based on all of the foregoing, Plaintiffs respectfully request that this Court grant the following relief:

1. Issue a preliminary and permanent injunction prohibiting the Defendant, his agents, employees, and other persons in concert with him from enforcing the state statutes at issue to prevent Plaintiff Hall from gaining access to the ballot for the Special Election and to deny Plaintiffs the right to vote for Plaintiff Hall;
2. Issue a temporary preliminary injunction requiring the Defendant to take all appropriate steps to certify Plaintiff Hall as an independent candidate to be placed on the Special Election ballot based on the signature petitions he filed on September 24, 2013;

Respectfully Submitted.

/s/ David I. Schoen
Counsel for Plaintiffs
(ASB-0860-O42D)

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Motion for Temporary Restraining Order or Preliminary Injunction to be served on all counsel of record by filing the same through this Court's ECF system on this 31st day of October, 2013.

/s/ David I. Schoen
Counsel for Plaintiffs
(ASB-0860-O42D)

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

JAMES HALL	:	
	:	
AND	:	
	:	
N. C. "CLINT" MOSER, JR,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 2:13-cv-00663-MEF
	:	
JIM BENNETT, Secretary of State	:	
for the State of Alabama,	:	
	:	
Defendant.	:	

DECLARATION OF N.C. "CLINT" MOSER, JR.

Pursuant to 28 U.S.C. Sec. 1746, I make the following declaration:

I, N.C. "Clint" Moser, Jr., am a Plaintiff in the above-captioned case. I have reviewed the First Amended Complaint in the case and all facts therein are true and accurate to the best of my knowledge and belief.

I have been involved in political campaigns since around 1984 and have worked behind the scenes in approximately 50 political campaigns. Generally, I work toward helping to get others elected or unelected; but I have, on occasion, decided to run for political office myself when I have felt that there was no candidate running who advocates position on issues that are important. My work in the past has included, among many other things, gathering signatures for ballot access drives for Presidential candidate Ron Paul.

I am very familiar with Alabama's First U.S. Congressional District. In around July of 2009, I decided to start campaigning for the Republican Party's nomination for the office of U.S.

Representative from that District, the seat held by Jo Bonner and at issue in this law suit. The Republican Party has major party status in Alabama and its candidates need not pursue the signature petition route to gain access to the ballot. Its nominee automatically is placed on the general election ballot for such office.

Fairly shortly into the campaign, for a variety of reasons, I decided to switch races and I entered the race instead for the Republican Party's nomination for the U.S. Senate seat from Alabama, held by Senator Richard Shelby. I did not need to collect any signatures to run in the Republican Party's primary (I had to pay a fee) and in 2010, I ran in the Republican Party's primary election for U.S. Senate. I received approximately 74,147 votes, which I understand to have been approximately 15.6% of the votes cast in that primary.

After that race, I considered running again as a Republican for the seat held by Congressman Bonner in 2012; but I decided against that. I considered running as an independent candidate in 2012; but with just a few months left at the time before ballot access signature petitions had to be filed, I knew that the number of signatures required would be too high to reasonably expect to get in a few months; so I decided against running.

When Congressman Bonner announced his resignation, friends and supporters of mine began to urge me to run for the seat in the Special Election that is the focus of this lawsuit. Some wanted me to run as a Republican; but ultimately after viewing the first Republican primary debate I decided to make a run as an Independent. A friend who had been the campaign coordinator in Alabama for Ron Paul and had managed his signature campaign, offered to help me obtain the required signatures.

We held a meeting and decided that it would not be an effective use of time for me, the candidate, to spend time trying to obtain signatures, as this would take away just about all

possible time campaigning and getting name recognition among the electorate, in association with the issues on which I wanted to campaign.

My friend who had coordinated the Ron Paul signature drive in Alabama thought that even though the 3% signature requirement in a shortened Special Election process seemed daunting, perhaps with his lists of volunteers and voters from the past signature campaign, it might be possible to gather the requisite number of signatures. We decided to give it an all-out try.

He tried to contact over 100 people through the internet, most of whom had gathered signatures for the Paul campaign on a volunteer basis; but he just could not get a sufficient number of people involved because the short time frame was too daunting, given the number of signatures required. This same friend put up a Facebook petition drive page; but it was not effective in sufficiently helping the signature drive.

He was in contact with the Alabama Secretary of State's office to try to create a petition that would be in acceptable form; but he read the official materials on the Secretary of State's website that directed that ballot access signature petitions must set out the date of the general election. The Secretary of State's office could not tell us the date and would not do so until the very end of July/beginning of August 2013. We were concerned about the risk of doing all the work and spending all of the time and money needed to obtain signatures, only to have the petition rejected as invalid because it did not have the date on it at the time it was signed.

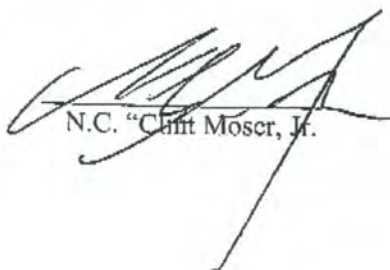
Finally, we found a young woman in Baldwin County, Alabama who was willing to volunteer to help with the signature drive and she did so. However, by September 24, 2013, she advised that she had only been able through her best efforts to obtain approximately 750 signatures. Because of the burden of having to gather 5,938 signatures within a short time frame,

I had to abandon my effort to run for this office. I decided instead to support the independent candidacy of James Hall and to associate with him to advocate for our political beliefs.

But for the severe burden the combination of the 3% signature requirement and the truncated schedule for this Special Election imposes, I believe that I would have qualified to be a candidate for Congress from Alabama's First U.S. Congressional District as an independent candidate. I fully believe that I could have gathered and filed a reasonable number of signatures within a reasonable time frame; but the application of the same signature requirement that applies to a regular election cycle election to this truncated Special Election was an impossible burden for me to overcome. I now very much want to be able to cast my vote for James Hall and to support his independent candidacy for the House seat at issue. This is not an adequate substitute for being able to run myself; but there is no other candidate in the race who I wish to support and I believe it is vitally important to be involved in the political process in our country.

I declare that the foregoing is true and correct.

Executed on October 31, 2013
Mobile, Alabama


N.C. "Chris" Moser, Jr.

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

JAMES HALL	:	
	:	
AND	:	
	:	
N. C. "CLINT" MOSER, JR,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 2:13-cv-00663-MEF
	:	
JIM BENNETT, Secretary of State	:	
for the State of Alabama,	:	
	:	
Defendant.	:	

DECLARATION OF JOSHUA CASSITY

Pursuant to 28 U.S.C. Sec. 1746, I make the following declaration:

I, Joshua Cassity, am an adult resident-citizen of the State of Alabama and since the end of 2008, I have served as the Chairman of the Constitution Party of Alabama, a political party which, among other things, fields candidates for public elected offices in Alabama.

It is my understanding that under Alabama's election laws, in order for a candidate to appear on a ballot for the office of U.S. Representative from Alabama's First U.S. Congressional District as a minor party or third-party candidate (the Constitution Party of Alabama is such a party) or as an independent candidate, he or she must obtain and file ballot access signature petitions with signatures equal in number to at least three percent (3%) of the qualified electors who cast ballots for the office of Governor in the last general election in the district at issue by 5:00 p.m. on the date of the first primary election for major parties. I am very familiar with Alabama's First U.S. Congressional District.

In 2010, David Walter obtained access to the ballot for the general election for U.S. Representative from Alabama's First U.S. Congressional District and ran against the incumbent, Jo Bonner, as a candidate of the Constitution Party of Alabama. Mr. Walter received approximately 26,357 votes in that general election. I was involved in Mr. Walter's efforts to gain access to the ballot in that race by participating in the ballot access drive and arranging contacts with paid petitioners.

The 2010 election in which Mr. Walter ran was an election in a regular election cycle with no limit on the start date for collecting signatures for ballot access petitions. The petitions were due to be filed with the Secretary of State in June of 2010.

It was clear that we would need a plan in place in advance to obtain the 3% level of signatures required. I do not recall the exact number of signatures we needed to obtain at that time in order to gain access for our Party's candidate to the ballot for the race at issue; but I believe the 3% figure was somewhere in the ballpark of the 5,938 figure I understand is needed for this race in 2013 (Special Election). Accordingly, I met with Mr. Walter in around November of 2010 to plan the signature gathering campaign.

Mr. Walter and others helping us worked tremendously hard to try to gather the 3% level of signatures for his ballot access campaign; but he could not make sufficient headway and it did not appear that even with starting some 6 months in advance, that he would be able to obtain the 3% level of signatures. After some consultation, it became clear to us that the only chance we had of obtaining the requisite number of signatures would be to hire paid signature gatherers and that is what we did. I do not recollect the exact amount of money paid to the professional signature gatherers to help us obtain the 3% level; but it was somewhere in the neighborhood of \$12,000 to \$15,000 and that was an extraordinary amount of money. Mr. Walter's campaign

paid for the petitioners. Only by paying these professionals this amount of money were we able to secure the requisite number of signatures even in a regular election cycle year with an all-out effort on our part. Even with the paid help, we only obtained the requisite number of signatures just about right at the deadline. It was a very difficult and expensive process for us and the burden was very significant.

The Constitution Party of Alabama very much wanted to field a candidate for the 2013 Special Election to fill this same seat, now vacated by the mid-term resignation of Jo Bonner. Toward that end, we contacted the Alabama Secretary of State's office after we learned of Congressman Bonner's resignation. I discussed with a representative of the Secretary of State's office a case from a federal appeals court in Georgia which I understand required a modification of the requirements for filing ballot access petitions in the case of a Special Election with a shorter time frame for gathering signatures than is provided for in a regular election cycle. I was advised that the case was "unpublished" and that there would be no modification and that the same 3% level of signatures would be required within a very short time frame. Further complicating matters and adding to the tremendous burden this would create, was the fact that the Secretary of State's office was unable to provide us with a date for the primary or general election for the Special Election.

Without knowing the schedule for the general Special Election we could not even create ballot access petitions that would be considered valid by the Secretary of State under Alabama law, based on the information provided on the Secretary of State's website which we consulted ("Candidate Filing Guide"), as that unequivocally directs that a ballot access signature petition must have on it the date for the general election at issue. I recall someone at the Secretary of State's office suggesting that we get petitions signed without the date of the election on them and

then just add the date later; but this was directly contrary to what the official Candidate Filing Guide posted on the official website of the Secretary of State and we did not feel we could risk relying on an employee's suggestion that was contrary to what the official document provided.

Additionally, without knowing the Special Election schedule and, indeed, before the effective date of Congressman Bonner's resignation, we could not even begin to mount a campaign for ballot access in this race, based on the uncertainties of whether the time frame would reasonably permit the gathering of the requisite number of signatures and even whether Congressman Bonner might change his mind and not resign.

In my experience, a small party candidate or independent candidate without tremendous financial resources, could not reasonably even consider mounting such a campaign, considering the likely expenses of time and money required, while these factors remain unknown and without being able to circulate a signature petition that had the date of the general election at issue – with the risk that doing so without that date would entail, based on the official notice on the Secretary of State's website.

Notwithstanding our great desire to run a Constitution Party candidate in the Special Election for the seat Mr. Bonner vacated, we ultimately concluded that the combination of the short time frame and the number of signatures required would make it virtually impossible for any small party or independent candidate to gain access to the ballot and certainly made it impossible for our Party and we abandoned our efforts, based solely on this very severe burden imposed by the signature requirement and the short time frame (a time frame which we could not even ascertain until the very end of July or beginning of August).

The Constitution Party has successfully pursued ballot access in Alabama in a shortened schedule Special Election for state office in 2011, but it has only been able to do so because of

the relatively small number of signatures required to gain access (generally a few hundred signatures at most). We concluded for 2013, that the burden in trying to gain access to the ballot for the Special Election for Rep. Bonner's seat was just too severe to overcome and so we decided to focus on local legislative elections instead.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 31, 2013

Gallian, Alabama
Meveng City

Joshua Cassity 10/31/13
Joshua Cassity

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUL 30 2002

LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

WAYNE PARIER, HELMUT
FORREN, DANIEL W. BROWN,
DAVID CENTER, CHAD
ELWARTOWSKI, JOHN L.
HOUMAN, KERRI FULLER,
WILLIAM W. GARDIN, GARY
HOLDER, MERRILL L. MATLOCK,
JR., CAROLE ANN RAND,
WILLIAM D. PEPPER, LORENZO
THOMSON, MARGARET
THOMSON, JAMES W. HARRIS,
PAMELA P. POTTER and THE
LIBERTARIAN PARTY OF
GEORGIA,

Plaintiffs,

v.

ROY BARNE: GOVERNOR OF THE
STATE OF GEORGIA, and CATHY
COX, SECRETARY OF STATE OF
THE STATE OF GEORGIA,

Defendants.

CIVIL ACTION

NO. 1:02-CV-1883-BBM

ORDER

The plaintiffs have moved for a preliminary injunction [Doc. No. 4-1] requesting that the court order that the names of Libertarian Party candidates for the United States House of Representatives for the Third, Seventh, Eighth, Ninth and Eleventh Districts of Georgia (the "candidates") be printed on the ballots in

that the Secretary of State for the State of Georgia (the "Secretary") be ordered to have such name printed on the ballots if the candidates are able to provide the Secretary with a suitably reduced number of signatures on a petition for each such district.

Factual and Procedural Background

As a result of the 2000 decennial census, Georgia's representation in the United States House of Representatives (the "House") was increased from 11 to 13 seats. Accordingly, on September 28, 2001, Georgia's General Assembly adopted legislation reapportioning its congressional districts, which legislation was signed into law by Governor Roy Barnes on October 1, 2001.

Because the State of Georgia (the "State") is covered by Section 5 of the Voting Rights Act of 1965, the reapportionment plan had to receive "preclearance" from the U.S. Department of Justice before it could take effect.¹ On October 10, 2001, the State filed an action in the U.S. District Court, District of Columbia, requesting a declaratory judgment that Georgia's reapportionment plan "[did] not have the purpose and [would] not have the effect of denying or abridging the right to vote on account of race or color." On April 5, 2002, the

¹ The historical purposes of and obligations imposed by Section 5 are amply explained in Georgia v. Ashcroft, 195 F. Supp.2d 25, 29-31 (D.D.C. 2002).

District Court granted the State's request as to the portion of the reapportionment plan which set forth the new House districts.

At some point prior to or while such proceedings were pending in Washington, the Libertarian Party of Georgia (the "Party") decided to field candidates for election to the new Third, Seventh, Eighth, Ninth and Eleventh districts. One of the plaintiffs, Dr. Helmut Forren, chairman of the Party ("Dr. Forren"), obtained detailed maps of the new congressional districts from Georgia's Legislative and Congressional Reapportionment Office (the "Reapportionment Office") and access to the Reapportionment Office's website, which provided interactive and demographic data showing the districts' boundaries overlaid with major roadways, bodies of water, zip codes, county boundaries and voting precincts. Dr. Forren also began to oversee efforts to obtain petition signatures in such districts in order to allow the Party's candidates to appear on the November ballots.

Thereafter, before preclearance was granted, but no later than February 2007, Dr. Forren began corresponding with Linda W. Beazley ("Ms. Beazley"), the Director of the State's Elections Division (a division in the office of the Secretary). In his correspondence, Dr. Forren requested "relief" from the number of signatures which would ordinarily be required of a third-party or

independent candidate seeking to be listed on the ballot for a congressional race. Ms. Beazley respectfully refused this request as well as a number of similar requests brought by Dr. Forren over the next several months, indicating lack of authority. In various letters over the ensuing months, however, Ms. Beazley did provide Dr. Forren and the Party's candidates with the number of signatures each would be required to produce with their petitions in order to be listed on the ballots in such districts.² During this time, Dr. Forren also repeatedly attempted, without success, to obtain firm voter registration data for the districts in which the Party's candidates were running.

The last correspondence between Ms. Beazley and Dr. Forren during this period is dated June 25, 2002. In this letter, Ms. Beazley provided the following data, based on information she obtained from the Reapportionment Office, regarding the total registered voters and the numbers of valid signatures that would be required as to each district in which the Party is fielding a candidate:

² At one time or another, the number of signatures required in at least one district, the Eleventh, changed three times: from 15,874 signatures to be required per a letter from Ms. Beazley dated March 11, 2002; to 19,410 signatures per a letter dated June 12, 2002; to 17,337 per another, later letter dated June 12, 2002; and finally, to 14,337 signatures, per Ms. Beazley's letter dated June 25, 2002, more fully described below.

DISTRICT	TOTAL REG. VOTERS	INVALID SIGS REQUIRED
...		
Third	305,435	15,272
...		
Seventh	311,226	15,561
Eighth	328,983	16,449
Ninth	320,675	16,034
...		
Eleventh	286,730	14,337

In this letter, Ms. Beazley also instructed Dr. Forren to disregard earlier, conflicting information provided by her office.

On July 1, 2002, the plaintiffs – Party candidates for the above-referenced districts, voter loyal to the Party residing in such districts, and the Party itself (the “plaintiffs”) – filed the present action, seeking from this court the following relief: (1) an “inquiry” into ballot access for Party congressional candidates in Georgia in the 2002 election year; (2) a revised deadline for the payment of the \$4,353 fee required to be paid by any candidate who wishes to qualify to appear on the November 5, 2002 ballot (the “ballot”); (3) injunctive relief permitting Party candidates automatically to appear on the ballot upon payment of the \$4,353 qualifying fee on the deadline specified by the court; (4) any other relief

the court deem proper "to address the time limits and other problems set forth in the [plaintiff's] Complaint"; (5) a declaration that Georgia's ballot access law is unconstitutional as applied to this year's election; (6) an award to the plaintiffs of "reasonable attorneys fees, expert witness fees and expenses and costs" of bringing the present action; and (7) "other and further declaratory and injunctive relief as may seem fit and proper to" the court. Concurrently with their complaint, the plaintiffs also filed an "Emergency Motion for Preliminary Injunction and Expedited Hearing." This hearing was held on July 26, 2002, permitting testimony and argument on the plaintiffs' motion for preliminary injunction. The court now considers this motion.

Discussion

The Libertarian Party of Georgia is, according to Georgia law, a "political body," which is to say, a third party which has not won a significant portion of the vote in the most recent presidential or gubernatorial elections. Ga. Code Ann. § 21-2-2 (3), (24) and (25). In order for its candidates to appear on a ballot for a congressional election, therefore, it must submit petitions in accordance with the following provisions:

[a] nomination petition of a candidate for [non-statewide] office shall be signed by a number of voters equal to 5 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such

petition to be registered as a candidate for the election at which such candidate seeks to be elected. However, in the case of a candidate seeking an office for which there has never been an election or seeking an office in a newly constituted constituency, the percentage figure shall be computed on the total number of registered voters in the constituency who would have been qualified to vote for such office had the election been held at the last general election and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected.

Ga. Code Ann. § 21-2-170(b). A voter who signs such a petition must, in addition, "declare therein that he or she is a duly qualified and registered elector of the state, county, or municipality entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition." Ga. Code Ann. § 21-2-170(c). Signatures can only be collected during the 180-day period preceding the qualifying deadline. Ga. Code Ann. § 21-2-170(e). This year, this 180-day period began on February 6, 2002 and ends on August 5, 2002.

The plaintiffs object to these requirements due to circumstances presented in the current election year. The plaintiffs contend that they effectively lost the first 60 days of the 180-day period in which they were permitted by Georgia law to obtain petition signatures. This is true, they argue, because until the reapportionment plan was approved by the order of the court in Washington, there was no certainty regarding the districts' actual boundaries, and therefore no certainty regarding which voters were in fact qualified to sign any given

petition. The plaintiffs have therefore requested injunctive relief in one of the following forms: (1) that they be excused entirely from complying with the petition requirements, needing instead only to pay the qualifying fee as to each candidate, or (2) that the number of required petition signatures be reduced proportionately to account for the first 60 days in the 180-day period during which time, according to the plaintiffs, their ability to collect signatures was curtailed by uncertainty surrounding the reapportionment plan.

"The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated." Northeastern Fla. Ch. of the Ass'n of Gen. Contractors of America v. City of Jacksonville, 896 F.2d 1283, 1284 (11th Cir. 1990) (citing American Radio Ass'n v. Mobil Steamship Ass'n, Inc., 483 F.2d 1, 4 (5th Cir. 1973)). The court may not issue a preliminary injunction unless the plaintiffs are able to establish the following four factors:

- (1) a substantial likelihood that plaintiff[s] will prevail on the merits,
- (2) a showing that plaintiff[s] will suffer irreparable injury if an injunction does not issue,
- (3) proof that the threatened injury to plaintiff[s] outweighs any harm that might result to the defendants, and

(2) a showing that the public interest will not be disserved by grant of a preliminary injunction.

Id. at 1284 (citing Cunningham v. Adams, 808 F.2d 815, 819 (11th Cir. 1987)).

"The preliminary injunction is an extraordinary and drastic remedy not to be granted until the movant 'clearly carries the burden of persuasion' as to the four prerequisites. 'The burden of persuasion in all of the four requirements is at all times upon the plaintiff.'" *Id.* at 1285 (citing United States v. Jefferson County, 720 F.2d 1511, 1519 (11th Cir. 1983)). "[P]reliminary injunctions of legislative enactments—because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits—must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts." *Id.*

Here, the plaintiffs have been able to meet their burden of persuading the court that all four factors necessary for a preliminary injunction to issue are indeed present.

First, the court finds that there is a "substantial likelihood" that the plaintiffs will prevail on the merits of their case. Although the Supreme Court has upheld Georgia's ballot access law as constitutional, its ruling was based, at least in part, on a third-party candidate's ability to "seek, over a six months'

period, the signatures of 5% of the eligible electorate for the office in question.”

Jenness v. Fortson, 403 U.S. 431, 438 (1971). At least one subsequent decision of the Supreme Court failing to hold a ballot access provision constitutional did rely, at least in part, on a finding that the period of time in which a third-party or independent candidate was able to collect signatures was limited, given the number of signatures to be gathered. See Storer v. Brown, 415 U.S. 724 (1974). In the Eleventh Circuit, moreover, there is precedent which encouraged injunctive relief from the requirements of Ga. Code Ann. § 21-2-170 in an election year following a census, where the reapportionment plan was not approved until 130 days into the 180-day signature-gathering period. See Citizens Party of Georgia v. Poythress, No. 82-8411, slip op. at 2 (11th Cir. 1982), table disposition published at 683 F.2d 418 (11th Cir. 1982); see also Libertarian Party of Ga. v. Harris, 644 F. Supp. 602, 606 (N.D. Ga. 1986) (Hall, J.) (describing the district court’s decision on remand of Citizens Party to extend the 180-day period by an additional 30 days since “plaintiff had not known which streets or houses to canvass” during the period before the reapportionment plan was precleared). The court finds that the facts before it today are sufficiently similar to those in Citizens Party that there exists a “substantial likelihood” that the plaintiffs will be able to prevail on the merits.

Second, the court finds that the plaintiffs have shown that they "will suffer irreparable injury if an injunction does not issue." "An injury is 'irreparable' only if it cannot be undone through monetary remedies." Cunningham, 808 F.2d at 821 (citing Cate v. Oldham, 707 F.2d 1176, 1189 (11th Cir. 1983)). No monetary remedies are available to the plaintiffs if they are ultimately able to prevail on the merits. Furthermore, no other remedy will be available to the plaintiffs after August 5 if they are not able to have their petitions evaluated at that time. If the plaintiff candidates' petitions are submitted after August 5, there may not be sufficient time for the Secretary to verify the signatures that they do have, or, thereafter, to have the candidates' names included on the ballots which will need to be sent ahead of time to absentee voters.

Third, the plaintiffs have adequately shown that the injury which may result from their being prevented to submit a reduced number of petition signatures far outweighs the burdens to the State as a result thereof. The Supreme Court has held that

[t]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election.

at 112. The defendants cite this interest as the primary and continuing justification for the State's ballot access laws. Since this court's order will require the plaintiffs to produce petition signatures equivalent to two-thirds that normally required, or approximately 3⅓% (instead of 5%) of the voters in each district who would be entitled to sign the petition, the only "harm" which might result to the defendants is that they be required to validate a lesser number of petition signatures, a number which nevertheless reflects a "significant modicum of support" for the Party's candidates.³ Such harm to the State, however, does not outweigh the harm which the candidates have suffered by virtue of the uncertainty, however minimal, which prevailed over their signature canvassing efforts during the first 60 days of the signature collection period.

Finally, the court finds that the plaintiffs have shown "that the public interest will not be disserved by" the preliminary injunction the court intends to grant herein. The plaintiffs allege, and the defendants do not dispute, that no third party or independent candidate has ever successfully petitioned to be listed on the ballot for a congressional election in Georgia. The defendants claim, however, that Georgia's ballot access laws are necessary to prevent "confusion and frustration of the democratic process" by limiting the number of candidates

³ Indeed, the State only requires candidates for statewide office to provide petitions signed by one percent of the electorate qualified to vote in an election. Ga. Code Ann. § 21-2-170(b).

whose names are printed on the ballots. If past experience is any guide, even if the Party's candidates are successful in providing a sufficient number of valid signatures to the Secretary in order to have their names printed on the ballots, the voters will have to consider, at most, three candidates for any given congressional seat. The court fails to see how this choice would "confus[e] and frustrat[e] . . . the Democratic process" or disserve the public interest.

Accordingly, the court will GRANT the plaintiffs' motion to the extent they have been harmed,⁴ i.e., making allowance for the fact that there was no certainty regarding the boundaries of congressional districts until 60 days into the signature-collecting period called for by Georgia law. The court will

⁴ At the hearing, the plaintiffs presented evidence that, from the point of view of Dr. Forren, the difficulty of collecting signatures in gerrymandered districts warranted an additional percentage reduction in the number of signatures to be collected for each district, since voters in or near districts which had been gerrymandered were more likely to be confused about where they were qualified to vote. The court is sympathetic to the Party's frustrations in this regard and recognizes that certain forms of gerrymandering have been found unconstitutional to the extent they have a retrogressive effect on the minority vote. See, e.g., Gomillion v. Lightfoot, 364 U.S. 339 (1960). However, the plaintiffs here do not claim an impact on the minority vote. Also, although the plaintiffs allege that the districts have been drawn to perpetuate what they allege to be Democratic control of the legislative process in Georgia, the Supreme Court has held that the intentional drawing of district boundaries for partisan ends and for no other reason does not violate the Equal Protection Clause. Davis v. Bandemer, 478 U.S. 109, 138-39 (1986). The court also heard testimony that it was not exactly common in any election year for a voter to know in which district he or she is registered to vote, much less the number of his or her voting precinct. The court therefore finds that such gerrymandering difficulties are inherent in the signature gathering process, no matter what the shape of the voting districts at issue, and irrespective of the amount of time the party has to collect signatures. Accordingly, the court has made no adjustment for this factor, as the court believes that the conclusions of Jennness are fully applicable to such difficulties. Jennness, 403 U.S. at 38-39 (noting that voters may sign multiple nominating petitions, and that their signatures need not be sworn).

therefore ORDER the Secretary to accept signatures in an amount corresponding to two-thirds (because the plaintiffs had only 120 days of the 180 days to which they would otherwise have been entitled) of the number of valid signatures, as to each district, specified in Ms. Beazley's letter dated June 23, 2002.

Summary

The plaintiffs' motion for a preliminary injunction [Doc. No. 4-1] is hereby GRANTED as set forth below. The court hereby ORDERS the Secretary of State for the State of Georgia to have printed the names of the Libertarian Party of Georgia candidates for the United States House of Representatives for the Third, Seventh, Eighth, Ninth and Eleventh Districts if such candidates provide petitions on or by August 5, 2002 containing numbers, respectively, equal to or greater than the following numbers of valid signatures:

Third District:	10,181 valid signatures
Seventh District:	10,374 valid signatures
Eighth District:	10,966 valid signatures
Ninth District:	10,689 valid signatures
Eleventh District:	9,558 valid signatures


BEVERLY B. MARTIN
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

MARLON MIGALA, et al.,

Plaintiffs,

v.

CASE NO. 89-40168-MMP

BOB MARTINEZ, et al.,

Defendants.

O R D E R

This cause comes before the court upon plaintiffs' complaint (Doc. 3) and request for expedited ruling (Doc. 7). Plaintiffs' request for expedited ruling is GRANTED. This court conducted a hearing on August 4, 1989, in which the parties were allowed to present evidence and argument. This court finds that Florida's statute for minor party access to the ballot is unconstitutional as applied to these plaintiffs under the circumstances described below. Therefore, the relief requested in plaintiffs' complaint is GRANTED to the extent discussed below.

FILED

1989
OFFICE OF CLERK
U. S. DISTRICT COURT
NORTH, DIST. FLA.

THE FACTS

On May 30, 1989, Congressman Claude Pepper died, leaving Florida's 18th Congressional District without representation in Congress. On June 6, 1989, Governor Martinez announced that a special election would be held on August 29, 1989, to fill the vacant seat. Executive Order 89-113. Also on June 6, 1989, Florida's Secretary of State issued a memorandum setting 8 a.m. June 19, through noon June 20, 1989, as the qualifying dates for special election candidates.

On June 7, 1989, plaintiff Paula Zimmer, Chairperson of the Libertarian Party of Florida, telephoned the office of Secretary of State and was told that there would not be enough time for a candidate to qualify for the special election by petition. Later that day, another person from the Secretary of State's office, Barbara Robinson, telephoned Zimmer and stated that 5,525 valid signatures and a filing fee of \$2,685 would be required for candidates to qualify for the special election by petition. Zimmer Affidavit paragraphs 2-3.

On June 9, 1989, Robinson again telephoned Zimmer and stated that petition forms would be sent upon receipt of the signed oath required of candidates for office. Plaintiff Marlon Migala signed the oath which was sent Federal Express to the Secretary of State and received by that office on June 13, 1989. No petition forms were sent by the office of

the Secretary of State. Instead, an affidavit of undue burden was mailed by regular mail on June 15, arriving in Miami on June 21, 1989. Zimmer Affidavit paragraphs 4-6. The June 20 qualification deadline passed.

On June 21, plaintiffs created their own, unofficial petition forms. Plaintiffs collected a total of 547 signatures on June 23-24 and July 8-9. Zimmer Affidavit paragraphs 7-8. To this date, the Secretary of State still has not provided official petition forms to plaintiffs.

THE LAW

The right of a candidate to be placed on the ballot is protected by the Constitution. Hadnott v. Amos, 394 U.S. 358, 364 (1969). Florida's election laws provide an avenue through which minor party and independent candidates may be placed on the ballot for general elections. Fla. Stat. section 99.0955 (independent candidates); Fla. Stat. section 99.096 (minor party candidates). A minor political party may have the names of its candidates placed on the ballot for offices elected on a less than a statewide basis:

if such petition requesting that the party be assigned a position on the general election ballot is signed by 3 percent of the registered electors of the district, county, or other geographical entity represented by the office, as shown by the compilation by the Department of State for the last preceding general election.

Fla. Stat. section 99.096(1). The form of the petitions is prescribed by the Department of State, and petitions "shall

be provided by the Department of State." Fla. Stat. section 99.096(2) (emphasis added). Generally, minor parties have about 180 days in which to obtain signatures for petitions. See Fla. Stat. section 99.096(3).

If the period for gathering petition signatures is severely reduced, minor party candidates effectively are denied access to the ballot in violation to the first and fourteenth amendments of the Constitution. See Citizens Party of Georgia v. Poythress, Case No. 82-8411 (11th Cir. July 14, 1982) (time reduced from 180 days to 50); Turin v. State of Florida, Case No. 82-1819-Civ-SMA (S.D. Fla. Sept. 13, 1982) (no time to qualify before the deadline).

APPLICATION OF THE LAW

Under the unique circumstances of this case, access to the ballot has been completely denied to plaintiffs in violation of the first and fourteenth amendments of the United States Constitution. Plaintiffs were given only 14 days, instead of the normal 180, in which to qualify by petition. The inadequacy of this shortened qualifying period does not even take into account the fact that to this day, the Department of State has failed to provide petition forms as required by statute.

This case is distinguished from the one presented to the court in Coonan v. Smith, Case No. 89-1232-Civ-Nesbitt (S.D. Fla. June 16, 1989) (order denying preliminary injunction). Coonan was attempting to qualify as a major

party candidate (Democrat) in the special election to fill Claude Pepper's seat. Coonan could have paid \$4,475 or submitted petitions signed by 3,001 registered Democrats of the 18th District. Coonan asserted that the shortened filing time violated the first and fourteenth amendments and adversely affects serious candidates who are unable to pay the filing fee, but does not affect frivolous candidates who have money. The court found that Coonan's efforts to meet the statutory requirements for placement on the ballot were "somewhat less than energetic." Coonan at 5. Coonan's lack of energetic pursuit caused the court to give little weight to her asserted injury compared to the strength and legitimacy of the state's asserted interests. Id. at 3-5 (citing Bergland v. Harris, 767 F.2d 1551 (11th Cir. 1985) (requiring balancing test for ballot access restrictions)).

Plaintiffs in this case have pursued access to the ballot vigorously. Furthermore, they have only one avenue of access to the ballot -- petition -- unlike Coonan, who could pay a fee or petition. Also unlike Coonan, plaintiffs have never received official petition cards. Plaintiffs have a substantial likelihood of success on the merits. Every avenue of access was blocked despite their good faith efforts to get on the ballot.

Under these circumstances, plaintiffs' irreparable injury of being barred from the ballot outweighs the state's interest in orderly elections. Ballots cannot be printed

until after the second special primary scheduled for August 15, 1989. Allowing plaintiffs additional time and reducing the number of required signatures should not substantially delay printing of the ballots in time for the August 29th election. In addition, the integrity of the election can be preserved by requiring plaintiffs to submit a reduced number of signatures.

An injunction in this case would be in the best interest of the public. Therefore, it is ORDERED that a preliminary injunction is issued as follows:

1. The Florida Department of State shall provide petition cards to plaintiffs as soon as reasonably possible.
2. Plaintiffs shall have until noon August 16, 1989, to submit to the appropriate supervisor of elections the prescribed number of petition signatures for verification on an expedited basis, but otherwise in accord with Florida Statutes section 99.096.
3. The number of signatures required shall be reduced to one percent of the registered electors of the 18th Congressional District as shown by the compilation by the Department of State for the last preceding general election. The court recognizes that this number is not precise, but would indicate a sincere effort by a serious candidate.
4. Upon verification of the appropriate number of petition signatures and the candidate's meeting all other requirements by noon August 16, 1989, for placement on the

ballot, the name of the Libertarian Party's candidate shall appear on the special election ballot.

DONE AND ORDERED this 7TH day of August, 1989.


United States District Judge

DO NOT
PUBLISH

FOR THE ELEVENTH CIRCUIT

No. 82-8411
Non-Argument Calendar

CITIZENS PARTY OF GEORGIA,
DANNY FEIG, BETSY HALL, and
JIM COONAN,

Plaintiffs-Appellants

versus

DAVID POYTHRESS, Secretary of
State of the State of Georgia,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(July 14, 1982)

Before GODBOLD, Chief Judge, MATCHETT and CLARK, Circuit Judges.

PER CURIAM:

The Citizens Party of Georgia and Danny Feig, its candidate for state senator from Senate District 36, filed suit in United States District Court seeking, under 42 U.S.C. Section 19 and the Voting Rights Act of 1965, an injunction against enforcement of provisions of the Georgia Election Law. Under this law Feig must file a petition by the second Wednesday in July containing signatures of 5% of the voters of District 36. All of the signatures must have been obtained within 180 days before the petition is filed. The Georgia legislature redrew the boundaries of District 36, and final preclearance by the Attorney General of the district, as redrawn, was not given until May 24, 1982, at which time of the 180 allowable days to obtain signatures approximately 130 days already had elapsed.

The plaintiffs contended that this petition requirement, as applied to them under these unique circumstances, violated the Voting Rights Act of 1965 and denied Feig access to the ballot in

MAI *[Signature]* *[Signature]*

violation of the First Amendment, as incorporated into the Fourteenth Amendment. The district court denied injunctive relief. It dismissed the Voting Rights Act claim on the ground that the shortening of the time for obtaining signatures was not an act enacted or sought to be administered by the state. It dismissed the constitutional claim on the ground that the act alleged to be in violation of the Constitution was at most a "garden variety" election irregularity not warranting constitutional protection, citing Duncan v. Roythress, 657 F.2d 691 (5th Cir. 1981). Plaintiffs have moved in this court for an immediate hearing and judgment requiring that Feig's name be put on the ballot. The defendant has filed his brief in opposition.

Plaintiffs' claim cannot be read, in the light most favorable to them, to assert merely a "garden variety" election irregularity under Duncan. The irregularities held in Duncan not to merit constitutional oversight involved the miscounting of ballots. The right of a candidate to be placed on the ballot, on the other hand, is protected by the Constitution itself. Hadnott v. Amos, 394 U.S. 358, 364 (1969).

For this reason, the judgment of the district court must be vacated and the cause remanded to the district court for reconsideration of its denial of relief and its dismissal of the complaint. The court may wish to consider the Supreme Court's analysis of ballot access in Mandel v. Bradley, 432 U.S. 173 (1977) and Jenness v. Fortson, 403 U.S. 431 (1971).

VACATED and REMANDED.

UNITED STATES COURT OF APPEALS

Eleventh Circuit

DECISIONS WITHOUT PUBLISHED OPINIONS

The following cases have been decided without formal opinion prepared for publication in the permanent law reports:

Title	Docket Number	Date of Decision	Disposition	Appeal from and Citation (if reported)
** Transport v. Goodyear	81-5118	6/29/82	AFFIRMED	S.D.Fla.
* Brown v. Wainwright	81-5999	6/29/82	AFFIRMED	S.D.Fla.
*/** McNeely v. Claytor	81-6088	6/29/82	AFFIRMED	S.D.Fla.
** Grove v. Shearson	81-5741	7/ 2/82	AFFIRMED	S.D.Fla.
** U. S. v. Johnson	81-7464	7/ 2/82	AFFIRMED	S.D.Ala.
** N.L.R.B. v. Jax Mold	81-7646	7/ 2/82	AFFIRMED	N.L.R.B.
** Abernathy v. Equifax	81-7771	7/ 2/82	AFFIRMED	N.D.Ga.
** Belcher Towing Co. v. N.L.R.B.	81-5666	7/ 6/82	REVERSED	N.L.R.B.
Maag v. U. S.	81-7145	7/ 6/82	AFFIRMED	N.D.Ga.
Warehouse v. N.L.R.B.	81-7487	7/ 6/82	AFFIRMED	N.L.R.B.
* Williams v. Wainwright	81-5808	7/ 7/82	AFFIRMED	S.D.Fla.
* U. S. v. Lewis	81-6220	7/ 7/82	AFFIRMED	N.D.Fla.
* Turton v. Jones	81-5605	7/ 9/82	AFFIRMED	S.D.Fla.
* Turton v. Turton	81-5683	7/ 9/82	AFFIRMED	S.D.Fla.
U. S. v. Mayes	80-7500	7/13/82	AFFIRMED	N.D.Ga.
Harrison v. Merrill Lynch	81-5386	7/13/82	REVERSED	S.D.Fla.
Clements v. Wainwright	81-5765	7/13/82	AFFIRMED	S.D.Fla.
*/** U. S. v. Vandever	81-5926	7/13/82	AFFIRMED	S.D.Fla.
* Campbell v. Wainwright	81-6016	7/13/82	VACATED	M.D.Fla.
* U. S. v. Law	81-7719	7/13/82	AFFIRMED	N.D.Ga.
Maryland Cas. v. Campbell Elec.	81-7785	7/13/82	REVERSED	M.D.Ga.
* U. S. v. Peterson	81-5954	7/14/82	AFFIRMED	M.D.Ga.
Astor v. White Electrical Co.	81-7653	7/14/82	AFFIRMED	N.D.Ga.
* Citizens Party of Ga. v. Poythress	82 8111	7/14/82	VACATED	N.D.Ga.
* Huff v. Massey	81-5444	7/15/82	AFFIRMED	S.D.Fla.
* Allen v. U. S.	81-7717	7/15/82	REVERSED	N.D.Ala.
Keishian v. Buckley	81-7787	7/16/82	AFFIRMED	N.D.Ga.
*/** U. S. v. Barfield	81-5729	7/19/82	AFFIRMED	S.D.Fla.
* Nemecek v. Lake Shore Hosp.	81-5842	7/19/82	AFFIRMED IN PART	M.D.Fla.
* Jackson v. Zlock	81-6023	7/19/82	DISMISSED	S.D.Fla.
*/** Brodie v. Alexander	81-7716	7/19/82	AFFIRMED	S.D.Ga.
* Roberts v. Blue Shield of CA	81-7805	7/19/82	AFFIRMED	N.D.Ala.
Crain v. Borman	81-5169	7/21/82	AFFIRMED	S.D.Fla.
** Lane v. C.I.R.	81-5834	7/21/82	AFFIRMED	U.S.T.C.
** Walker v. Hunt Bldg. Corp.	81-7698	7/21/82	AFFIRMED	S.D.Ga.

* Fed.R.App. P. 34(a); 11th Cir. R. 23.

** Local Rule: 25 case.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S. D.C. - Atlanta.

JUL 29 1982

BEN H. CARTER, Clerk

CITIZENS PARTY OF GEORGIA,
DANNY FEIG, BETSY HALL
and JIM COONAN,

Plaintiffs,

vs.

DAVID POYTHRESS, Secretary
of State of the State of
Georgia,

Defendant.

CIVIL ACTION
FILE NO. C82-1260A

ORDER

IT IS HEREBY ORDERED that the time within which DANNY FEIG, the Citizens Party Candidate for State Senate District 36, may file his nominating petitions to obtain access to the November general election ballot be and hereby is extended by thirty (30) days; said petitions, which must contain 1993 valid signatures of persons duly registered to vote within new Senate District 36 to qualify FEIG for ballot access, shall be filed no later than 12 o'clock noon on Friday, August 13, 1982.

This matter having been resolved, the case is hereby dismissed, with prejudice.

SO ORDERED this 26 day of July, 1982.

Ben H. Carter
U.S. DISTRICT COURT JUDGE
Northern District of Georgia

D+P

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT ED. N.Y.

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PUERTO RICAN LEGAL DEFENSE, :
& EDUCATION FUND, INC. :

CV 91-2026

★ JUL 31 1991
P.M. 7/31/91
TIME A.M.

Plaintiff, :

v. :

THE CITY OF NEW YORK, :

United States Courthouse
Brooklyn, New York

Defendant. :

July 30, 1991
10:30 a.m.

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TRANSCRIPT OF DECISION ON HEARING
BEFORE THE HONORABLE GEORGE C. PRATT,
UNITED STATES CIRCUIT JUDGE,
MIRIAM GOLDMAN CEDARBAUM and REENA RAGGI,
UNITED STATE DISTRICT COURT JUDGES

APPEARANCES:

For the Plaintiff: PUERTO RICAN LEGAL DEFENSE &
EDUCATION FUND
99 Hudson Street
New York, N.Y. 10013
By: ARTHUR A. BAER, ESQ.

For the Defendant: NEW YORK CITY DEPARTMENT OF LAW
OFFICE OF CORPORATION COUNSEL
100 Church Street
New York, N.Y. 10007
By: VICTOR KOVNER, ESQ.
Corporation Counsel

Court Reporter: FREDERICK GUERINO
225 Cadman Plaza East
Brooklyn, New York 11201
(718) 330-7687

Proceedings recorded by mechanical stenography, transcript
produced by Computer-Assisted Transcription

Frederick R. Guerino, C.S.R. Official Court Reporter

28

1 JUDGE PRATT: Our three-judge court has considered
2 all of the matters that have been presented to us, both
3 today and the last time we sat in June.

4 We are prepared to put on the record our
5 decision. Before I do so, I would like to give some
6 explanation of the reasoning, the thought process that
7 brought us to the determination that we are making.

8 The Voting Rights Act, Section 5, provides that a
9 change in election procedures, practices, and so forth may
10 not be enforced until it has been approved either by a
11 District Court sitting in the District of Columbia, or by
12 the Attorney General. We interpreted that provision in the
13 Voting Rights Act literally the last time we sat, when we
14 denied an injunction against the petitioning process. We
15 still have that view of the Act. Under that view, there
16 were no Councilmanic districts in existence until I believe
17 it is last Friday, when the Attorney General approved the
18 modified plan.

19 What we are faced with today is that the new City
20 Council, which has been proposed and worked upon by so many
21 groups in the City, was interfered with, in effect, by
22 federal law. Federal law is supreme under the Federal
23 Constitution. So, there's no question that the Voting
24 Rights Act's provisions must be applied. We view what we
25 are doing today as essentially an operation in damage

1 control.

2 The City is certainly entitled to a new Council.
3 All the processes leading in that direction seem to have
4 been taken, and there are no problems in that regard before
5 us.

6 We think it is extremely important that the
7 election in November for the new Council take place as
8 nearly as possible in compliance with state law as can be
9 arranged, and toward that end we are making the following
10 order:

11 This is adapted from the proposed order submitted
12 to us by the City.

13 1. The Board of Elections is directed to process
14 designating petitions in the primary and general elections
15 for City Council districts in accordance with the terms of
16 this order.

17 2. For purposes of this year's primary and
18 general elections for City Council, a candidate otherwise
19 qualified to be elected as a member of the City Council,
20 may be elected from a district in which he or she does not
21 reside so long as such candidate resides in the City of New
22 York. A candidate may run in only one district, and shall
23 designate the district in writing to the Board of Elections
24 on or before August 7, 1991.

25 3. The last day for filing petitions with the

Frederick R. Guerino, C.S.R.

Official Court Reporter

1 Board of Elections seeking designation as a candidate for
2 party nomination for Council member is August 7, 1991.

3 A person seeking designation may file designating
4 petitions on or before August 7, 1991, whether or not such
5 candidate previously filed designating petitions, and a
6 candidate who has previously filed designating petitions
7 may submit new petitions to supplement his or her old
8 petitions.

9 4. The minimum number of valid signatures required
10 on designating petitions for party nomination shall be 180
11 or one percent of the voters enrolled in the party in the
12 Council district in which such designation is sought,
13 whichever is less.

14 5. The minimum number of valid signatures required
15 on independent nominating petitions shall be 540 or one
16 percent of the registered voters in the Council district in
17 which such nomination is sought, whichever is less.

18 6. For any designating petition, all witnesses and
19 signatories must reside in the Council district in which
20 the candidate is seeking to be designated as a candidate
21

1 valid, even if such voter has before today signed another
2 designating petition for the same office, in which event
3 both signatures shall be counted notwithstanding the
4 provisions of New York State Election Law, Section
5 6-134(5).

6 8. The provisions of the New York State Election
7 Law regarding the residency requirements of signatories on,
8 and subscribing witnesses to, petitions for an opportunity
9 to ballot and independent nominating petitions shall remain
10 in full force and effect.

11 9. The last day to file objections to any
12 designating petition for City Council member shall be
13 August 9, 1991.

14 10. The last day to file specifications on the
15 grounds of objection to any designating petition shall be
16 August 14, 1991. If an objection is filed, but
17 specifications in support of same are not filed, the
18 objection shall be null and void.

19 11. The last day to file a certificate of
20 declination or a certificate of acceptance of any
21 designation shall be August 9, 1991.

22 12. The last day to file a Wilson-Pakula political
23 party committee authorization of any designation by
24 petition of a person not enrolled in such party shall be
25 August 9, 1991.

2 vacancy in any designation where the vacancy was caused by
3 reason of declination shall be August 12, 1991.

4 14. The last day to file a Wilson-Pakuia party
5 committee authorization of any designation contained in a
6 certificate to fill a vacancy in a designation caused by
7 declination shall be August 12, 1991.

8 15. A petition for an opportunity to ballot in any
9 Council district shall be filed by August 7, 1991, and
10 shall be signed by the same number of enrolled voters of
11 the party as are required by this order, on a designating
12 petition for the same party for the same district.

13 16. The last day to file objections and
14 specifications of objections to a petition for an
15 opportunity to ballot shall be the same as those provided
16 herein respectively for objections and specifications of
17 objections to designating petitions.

18 17. The last day to institute a proceeding in New
19 York State Supreme Court with respect to any designating
20 petition, petition for an opportunity to ballot, or
21 certificate in relation to a designation (unless such a
22 certificate is in connection with a death or
23 disqualification) shall be August 16, 1991.

24 18. The hearings of the New York City Board of
25 Elections on objections to designating petitions, petitions

1 for an opportunity to ballot, and certificates filed in
2 relation to a designation, shall commence on August 19,
3 1991, at a time to be determined by the Board of
4 Elections.

5 19. The last day for an order of the Supreme Court
6 of the State of New York to be made in connection with a
7 proceeding instituted regarding a designating petition,
8 petition for an opportunity to ballot, or a certificate in
9 relation to a designation (unless such a certificate is in
10 connection with a death or disqualification) shall be
11 August 23, 1991, if possible.

12 20. Objections to an independent nominating
13 petition for City Council member shall be filed no later
14 than August 22, 1991, and the last day to file
15 specifications of the grounds of such objections shall be
16 August 27, 1991.

17 21. The last day to file a certificate of
18 acceptance or a certificate of declination of any
19 independent nomination for City Council member shall be
20 August 23, 1991. The last day to file a certificate to
21 fill a vacancy in an independent nomination caused by
22 declination shall be August 26, 1991.

23 22. Objections to any certificate of declination,
24 certificate of acceptance, certificate of Wilson-Pakula
25 party authorization, or certificate to fill a vacancy in a

1 designation for party nomination or in an independent
2 nomination for City Council member shall be filed within
3 two days after the filing of the certificate to which
4 objection is made, or within two days after the last day
5 provided herein to file such certificates, if no such
6 certificate is filed. When such an objection is filed,
7 specifications in support of the objection shall be filed
8 within two days after the filing of the objection; and if
9 no such specifications are filed in support of the
10 objection, then the objection shall be null and void.

11 23. The Board of Elections shall determine the
12 candidates for all public offices appearing on the absentee
13 and military ballots for the September 12, 1991, primary
14 election on August 13, 1991, and shall mail all military
15 ballots on August 26, 1991.

16 24. The provisions of the New York State Election
17 Law shall remain in full force and effect for the 1991
18 primary and general elections, except as otherwise provided
19 herein.

20 25. If any modification to the foregoing schedule
21 appears to be necessary, an application for relief may be
22 made to the Honorable Reena Raggi, Judge of the Eastern
23 District of New York, who may make such order, including a
24 reconvening of this adjourned three-judge court, as in her
25 discretion seems appropriate.

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There were four applications to intervene. Two have been withdrawn. Those by Susan Alter and by Clark, Rainey, Ramos and Morris are granted. The plaintiffs' motion to reconsider our order of June 18, 1991 is denied.

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

JAMES HALL	:	
	:	
AND	:	
	:	
N. C. "CLINT" MOSER, JR,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 2:13-cv-00663-MEF
	:	
JIM BENNETT, Secretary of State	:	
for the State of Alabama,	:	
	:	
Defendant.	:	

DECLARATION OF JAMES HALL

Pursuant to 28 U.S.C. Sec. 1746, I make the following declaration:

I am a Plaintiff in the above-captioned case and I seek to run as an independent candidate in the general Special Election to be the Representative in the United States Congress from Alabama's First U.S. Congressional District presently scheduled for December 17, 2013. ("Special Election")

I filed this lawsuit as a last resort to try to secure my fundamental constitutional rights and to gain access to the ballot for the Special Election, after all other efforts toward that end failed. The following reflects some of the efforts I have undertaken to secure my spot on the ballot for the Special Election:

Notwithstanding the facts, among others, that (a) no valid ballot access petition for the Special Election could be created until a date for the general Special Election had been set, (b) neither I nor other prospective independent candidates could evaluate our ability to

get the required number of signatures by the first primary date, as the statute requires, without knowing when the first primary would be set, and (c) Congressman Bonner could have changed his mind any time before the date in August when his resignation was scheduled to become effective, I have worked tirelessly throughout the months of June and July 2013 and all times since then to gain access to the ballot.

I began trying to get signatures from the earliest possible juncture. In my efforts to obtain signatures, I have attended virtually every community event at which I believed there likely would be significant gatherings of qualified electors in order to maximize my efficiency in soliciting and obtaining signatures. These events have included charity runs, festivals, yard sales, concerts, sporting events, a gun show, and others. My efforts at some of the events were stymied by the sponsoring organizations which were not "politically friendly."

I have tried hard to obtain signatures through networking efforts with social contacts and work contacts, asking each friend and contact to provide as many names as possible for potential signatories and to help me gather signatures from the lists they developed for me.

I have written informational pieces about my candidacy, my platform and my personal, family, and professional background and have distributed them and posted them as widely and prominently as possible to give myself name exposure. I have attached to this Declaration some of the campaign materials that I distributed to try to promote my campaign, with the hope that I could develop some name recognition and let people know where I stand on the issues so that I could get more signatures and get more supporters in the election.

I have visited businesses within the First Congressional District and provided signature petitions to those businesses who were willing to post them and facilitate my collection of signatures. Many places of business refused to help; but I have persevered.

My wife and I independently went door to door to try to obtain signatures, with disappointing results, achieving approximately 1 signature per 12 houses visited, and encountering reticence among many to get involved with a stranger in a political matter.

I found the door to door process to be most inefficient time-wise in light of the truncated schedule for the Special Election. My wife and I visited approximately 5000 homes in our efforts to get signatures through this door to door method.

For the signatures we obtained, most took a good deal of time to obtain, because of obstacles that included: overcoming the potential signatory's reticence to discuss politics, concerns about the impact signing the petition would have on the person's freedom to vote for another candidate in a primary or in the Special general election, concerns about a lack of privacy in providing personal information, the time it took to fill in the required information if the person agreed to sign, and the time the person requested to read all of the language on the petition.

I placed an advertisement to try to hire someone to help me solicit signatures; but I received only one response. This did not prove to be a successful manner of proceeding and ended up costing me about \$4.00 per signature and I am a working man of limited financial means.

My wife and I have worked tirelessly at all times during the relevant time frame to try everything reasonably possible within our means to obtain signatures for my ballot access petition. I believe that our chances to get more signatures was doomed from the start by the failure to give us sufficient lead time to actually organize a signature drive and plan the most efficient course of action. I still believe it would be impossible for an independent candidate to get 5,938 signatures in the short period of time allotted for this Special Election; but the burden

of trying to do so definitely was dramatically increased by insufficient lead or planning time and by the failure to provide prospective candidates with a schedule for the primary and general Special Election sooner. That would have increased both planning time and the time I would have had to gather signatures. I do not understand why the Governor did not announce those dates right after Congressman Bonner announced his resignation. That would have greatly eased the burden, even if still far too short a period of time in comparison to the unlimited lead time candidates for this office have in a regular election cycle.

In the process we have, sadly, sacrificed both family and work obligations. I have missed my children's sports practices and games, and family events. My work has suffered dramatically because of the time and effort I have had to devote to my absolute best efforts at trying to obtain signatures to gain access to the ballot for this Special Election. My efforts have continued unabated; but once the September 24, 2013 deadline passed, it has gotten even much harder to get any signatures because people believe know that the deadline has passed and believe that I will not be permitted to have a spot on the ballot no matter how many signatures I get.

Because I had to spend so much of my time trying to obtain signatures, I have suffered tremendously in my ability to campaign. I have had to spend just about all of my time that I was not in work or sleeping, trying to obtain signatures. I tried to use the meetings with people whose signature I was trying to obtain to at least let that person know where I stand on the issues; but most often I found the person uninterested in discussing politics.

Since September 24, 2013, I have been rejected from campaign debates and other public forums for campaigning because I was rejected by the Secretary of State's office and people do not believe I will be allowed on the ballot. I have been told by at least one group that holds

debates for this race that as soon as I get an Order from the Court allowing me to be on the ballot, I will be permitted to join the debates.

I want very much to be a candidate in this Special Election because I believe I have a very important platform. I intend to pursue issues that I believe are important to most of the voters in Alabama's First Congressional District and which are not being advocated adequately by the current members of Congress.

In addition to my political views which I seek the opportunity to advocate in Congress, I believe that my service to my country in the United States Marine Corps is a valuable asset that I would bring to Congress and it taught me a great work ethic and values that I believe would well serve my constituents. I have applied that discipline and work ethic to my efforts to obtain ballot access signatures.

In addition to my best efforts to get as many qualified signatures as quickly as possible, I also initiated communications with the Alabama Secretary of State's Office to educate myself as thoroughly as possible about everything I needed to do to get on the ballot for this Special Election.

To that end, beginning the first week of June, 2013, shortly after Congressman Bonner announced his resignation, which he said would effective in August of 2013, I began regularly telephoning the Secretary of State's office and then began email correspondence with that office as well, all directed to make sure I was on top of everything I had to do to get on the Special Election ballot and to move as quickly as possible to try to get the signatures.

My primary contact person by phone and email at the Secretary of State's office was a man who identified himself to me as Clay Helms. I spoke to him regularly to ask him about the procedures to get on the ballot for the Special Election. I also communicated with Ed Packard in

the Elections Division of the Secretary of State's office. At all times, I initiated the contact with the Secretary of State's office in my efforts to learn all that I could about the process and to speed along my ballot access signature process.

In early June I drafted what I thought might suffice as a ballot access signature petition form. I created my own form because the Secretary of State's office advised me that they did not have one prepared. I sent mine in for approval and received feedback on it from Mr. Packard.

I looked on the Secretary of State's website for information about the ballot access procedure for the Special Election; but I could not find any information anywhere on the website about how independent candidates gain access to the ballot in any election. I was then directed by the Secretary of State's office to a document on their website called Candidate Filing Guide and I was told that this would provide me with all of the official information I would need on how to gain access to the ballot for the Special Election through the ballot access signature petition process. A copy of the section of this Guide that I was directed to and read about independent candidates is attached to this Declaration. It also was attached as an Exhibit to my Reply in support of the Motion to Consolidate that my lawyer filed for me in this case. See Doc. 16-3.

I learned from the Secretary of State's Candidate Filing Guide that in order to be valid, any signature petition that I used to obtain signatures for ballot access had to have the date of the general election I was seeking to participate in on the petition form. I was told by the Secretary of State's office that I could not be given a date for the general Special Election at issue until the Governor formally announced a schedule and that the schedule would not be announced until Congressman Bonner's resignation became effective in mid-August 2013.

Indeed, on or about July 29, 2013, I saw a newspaper article claiming that the schedule had been set and so I called Clay Helms to ask him about it. He told me that he did not know anything about it and reiterated that as far as he knew, no schedule would be set until August and so I could not know the date of the general Special Election until that time. Even more importantly, perhaps, I could not know the date by which I would have to get my signature petitions filled out and filed. This, along the other factors I have described, created a huge burden for me and made it just about impossible to effectively pursue the signature collection process.

I called back the Secretary of State's office on August 5, 2013 and for the first time I was told the dates for the Special Election's primaries and general election.

Notwithstanding my best efforts and due diligence to the effort at all times, I was not able to obtain and file the requisite 5,938 signatures by September 24, 2013. However, I was able to obtain at least 2,835 signatures, filling 316 pages by September 24, 2013, and I filed these with the Alabama Secretary of State's office before 5:00 p.m. on that date.

On September 25, 2013, the Secretary of State's office sent me a letter telling me that my effort to get on the ballot as an independent candidate had been rejected because the 2,835 signatures that I obtained would not suffice and that they were so advising me without verifying the signatures. I have attached a copy of that rejection letter to this Declaration.

I do not understand why the Governor delayed so long in setting and announcing a schedule for the Special Election, nor why in a Special Election with such a short schedule, an independent candidate should have to file the same number of signatures as in a regular election cycle year for which there is unlimited time in advance to plan and start getting signatures. These were insurmountable barriers in combination to my access to the ballot for this Special

Election, despite my working as hard as possible to obtain the signatures. I believe the fact that I got as many signatures as I did in the short time frame provided clearly indicates sufficient support for me to be an independent candidate for the position at issue in this Special Election.

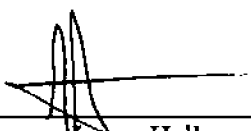
I cannot imagine any legitimate interest the State of Alabama could have in keeping me off of this Special Election ballot under all relevant circumstances. I served my country honorably in the United States Marine Corps and I believe that I have ideas to advocate as a member of Congress that will well serve the people of my District, the people of Alabama, and my country. I know that there are constituents in the First District who want to associate with me and cast their vote for me in this Special Election.

I understand that the Democratic Party missed its filing deadline to qualify for this Special Election; but the Secretary of State expressly made an exception for their candidates, ironically purporting to have made that exception in the interest of greater inclusion of candidates on the ballot. (See attached) That same principle should be applied here.

I have reviewed the First Amended Complaint and believe all facts asserted therein to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 31, 2013
Stapleton, Alabama



James Hall



This is who I am.

James Hall was born at Providence Hospital in Mobile in 1974. He weighed 11 pounds 8 ounces and received a trophy as the biggest baby ever born at the hospital. James lived in Mobile and attended St Paul's and St Luke's Episcopal Schools until he moved to Stapleton and Graduated from Baldwin County High School in 1993. He then attended Faulkner State University until joining the Marine Corps in 1995. Before leaving for boot camp, he married his high school sweetheart, Beverly Vines of Fairhope. James was meritoriously promoted in boot camp and again after he was named the Honor Graduated at the School of Infantry. His first duty station was Naval Weapons Station Yorktown, in Yorktown, Virginia. He earned his third meritorious promotion by being named Marine of the Quarter for the Second Quarter 1997 of Marine Corps Security Force Company. Later that year, James and Beverly transferred to the 2nd Battalion Seventh Marine Regiment in 29 Palms, California. There he was promoted to the rank of Sergeant. While stationed in California, James and Beverly attended a taping of the Price is Right. As luck would have it, James was picked out of the audience to go on the show. There James won each of his games and eventually winning the Showcase Showdown. He even spun a Dollar on the Wheel. Also while stationed in California, James did a 6 month tour on the USS Belleau Wood, Pohang, South Korea, and the Island of Okinawa. After getting back to California, James applied to and was accepted to join the MECEP Program to become a Commissioned Officer, but the call to return home was too much. James and

Beverly left the Marine Corps at the end of 1999. Once back home, jobs were scarce for a Marine Infantry Veteran. James applied all over the area and was turned down just as much. He was finally hired as a baler / janitor at Poser Business Forms in Fairhope. It was only about a year and a half until James was promoted to Shift Supervisor. While at Poser's, James and Beverly celebrated the births of their two boys. P was born (Marine Corps Birthday!) and N was born on . James left Poser (PrintXcel at this time) in 2007 and joined Cintas in Mobile. He is still working there as a Production Supervisor and Health and Safety Coordinator today. In 2011, James joined the Board of Directors for the Stapleton Volunteer Fire Department. He was voted in as Vice President in 2012 and President in 2013. James and his family love the outdoors. On any given weekend you can find them camping, hunting, fishing, shooting, and sometimes gardening. They attend Stapleton United Methodist Church.



FOR IMMEDIATE RELEASE:

James Hall announces his intention of running for Representative of the First Congressional District of Alabama

Stapleton, Alabama - June 4, 2013

"THESE are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands by it now, deserves the love and thanks of man and woman." These words, written by Thomas Paine, so long ago; could not ring truer if they were written just yesterday. My fellow taxpayers, these ARE the times that try men's souls.

Today, as average American citizens, we are beset upon all sides by the very tyrannies from which our forefathers fought so valiantly to escape. We are subject to attacks on our most hallowed freedoms. Our *Bill of Rights* declares that; *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."* yet children in our schools are not allowed to pray. *"...or abridging the freedom of speech..."* only if you do not mention Constitution or Patriot. *"...the right of the people to keep and bear arms, shall not be infringed."* as long as they don't have a high capacity magazine or pistol grip. *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."* again, only if you don't mention words such as Liberty and Freedom. *"The powers not delegated to the United States by the Constitution, nor prohibited it by the States, are reserved to the States respectively, or to the people."* Where does the Constitution mention Health Care, EPA, Education, or Energy? Those are Powers of the States and of the People, not of the Federal Government.

It is under these current attacks that I have decided to run for Representative of the First Congressional District of Alabama. I am a Marine Veteran, middle-class tax payer, family man, blue-collar Production Supervisor, working a 50 plus hour a week job and trying to raise a family, just like you. I am any man. I am every man. Because of my passion for doing what is right and never-ending sense of duty, I am ready to take our fight to Washington. I am tired of being represented by career politicians, Washington insiders, good ol' boys, special interests, lawyers, and back door deals. Being a Representative of the People should be an honor bestowed upon the very best of us, not a career bought and paid for with big money.

-more-

As our elected Representative to Congress, I will fight for our Freedom from an oppressive government. I will fight to eliminate wasteful spending of our hard earned tax dollars. I will fight the power of our out-of-control Departments and Agencies like the IRS, EPA, Department of Energy, and Department of Education to give that power back to the People. I will work to continue to bring Economic Development opportunities and good paying jobs to South Alabama. I will fight to establish Term Limits for federally elected positions. I will bring a real common-sense approach to running our government. I will fight to return our government to the People, just like you.

Going forward, I humbly ask for your support in my endeavor to represent the common man and woman. It is not the politicians or the Federal Government, but WE, the People, common men and women just like you; that make The United States of America the greatest country on earth.

Respectfully submitted,

James Hall

James Hall

Stapleton, Alabama 36578

Email to: jamesrhall4@gmail.com

www.jameshallforcongress.com

###

My name is James Hall. I was born and raised in Mobile and have lived in the District for 34 years. I graduated from Baldwin County High School and after attending Faulkner State, I joined the Marine Corps. After serving in the Marines I moved back to Stapleton and have lived there ever since. I am currently a Production Supervisor for the Cintas Corporation in Mobile. I am married to my wonderful wife Beverly for 18 years and have two awesome sons, Pierce and Nate.

Alexander Hamilton once said

“The natural cure for an ill administration, in a popular or representative constitution, is a change of men.”

That is why I am running. We need a change of men in our Government today. Not from Democrat or Republican, liberal or conservative, but from the professional, career politicians, the Washington insiders, the lawyers, the lobbyists - the Elite, Political Class that Rules us in Washington today.

In this special election, we have the choice of electing more lawyers, more career politicians, or more Washington insiders. If you're happy with the way the Government is running, then you have several of those candidates to choose from.

But if you are like me – if you are tired of the politicians trampling on our Constitution, tired of the Government attempting to control everything in our lives - tired of the Elite Political Class passing laws that only APPLY TO YOU AND ME – then there is only one clear choice here tonight. That is me.

Just like you, I am fed up with the way our Government is run. If elected, I will not be part of the Establishment or Political Class. I will fight every day to hold our elected leaders accountable for their actions. I will fight every day to keep the Federal Government out of our lives. I will fight every day to take care of the People in our District. We have a huge opportunity. With your support, we can make a statement right here in Alabama that will shake the very pillars of Washington DC. The only vote for real change is for me. Thank you.

"Our safety, our liberty, depends upon preserving the Constitution of the United States as our fathers made it inviolate. The people of the United States are the rightful masters of both Congress and the courts; not to overthrow the Constitution, but to overthrow the men who pervert the Constitution." -- **Abraham Lincoln**

"A government big enough to give you everything you want, is big enough to take away everything you have." -- **Thomas Jefferson**

"One thing our founding fathers could not foresee... was a nation governed by professional politicians who have a vested interest in getting reelected. They probably envisioned a fellow serving a couple of hitches and then looking forward to getting back to the farm." -- **Ronald Reagan**

"No man's life, liberty or fortune is safe while our legislature is in session." -- **Benjamin Franklin**

"Nothing scares members of Congress more than angry freedom-loving Americans." -- **Congresswoman Michelle Bachmann**



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70 comments

Alabama Democrats: We never received notice of AL-01 deadline



Print (http://blog.al.com/wire/print.html?entry=/2013/08/alabama_democrats_we_never_rec.html)

(<http://connect.al.com/staff/gtalbot/index.html>) By George Talbot | gtalbot@al.com

(<http://connect.al.com/staff/gtalbot/posts.html>)

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on August 09, 2013 at 4:15 PM updated August 09, 2013 at 4:27 PM



Nancy Worley, acting chairwoman of the Alabama Democratic Party

The head of the Alabama Democratic Party said she never received notice from state officials regarding a deadline to certify candidates in the special election for the 1st Congressional district.

Nancy Worley, acting chairwoman of the party, said she was unaware of the deadline until she received a call from a Democratic legislator shortly after the deadline passed at noon Tuesday.

"It's hard to meet a noon certification deadline the day after candidate filing ends when no one has told you the deadline,"

Worley said by email. "No one sent me a calendar with timelines, no one called me, etc."

Alabama Secretary of State Jim Bennett said Wednesday that the party had missed the deadline

(http://blog.al.com/wire/2013/08/alabama_democrats_miss_al-01_d.html) to certify candidates Burton LeFlore and Lula Albert-Kaigler for the Sept. 24 primary election. But Bennett said he agreed to allow the candidates access to the ballot out of a sense of fairness to voters in the southwest Alabama district.

"We believe it to be in the public interest," Bennett said.

Worley, a former Alabama Secretary of State, said LeFlore and Albert-Kaigler qualified with the party on Monday. She said that she was made aware of the deadline at about 12:15 p.m. on Monday, and immediately contacted the Secretary of State's Office.

"A few minutes later, I received a call from (Deputy Secretary of State) Emily Thompson telling me to bring the certification over to her office in the next few minutes," Worley said. "I delivered this certification to Ms. Thompson, who told me that the certificate was in order and would be sent to the printers."

Worley said Thompson told her that notice of the deadline was sent out by email. But Worley said she never received the notice.

"I have reviewed all of my recent emails and have not found a calendar or list of deadlines sent to me by the Secretary of State," Worley said.

"I do not sit with a computer 'glued to my eyeballs' 24 hours a day, and I do not consider email to be an official method of notification; however, I would certainly have met any deadline if I had received an email and known the deadline."

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677 Live at 9 with Drew Champain: The swinging gate edition (http://al.com/sports/index.ssf/2013/10/live_comments)

552 Which SEC team has the most 'volatile' fans in the league? This study tells you (http://al.com/sports/index.ssf/2013/10/wh_comments)

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Alabama Democrats miss AL-01 deadline, but will get ballot access



Print (http://blog.al.com/wire/print.html?entry=/2013/08/alabama_democrats_miss_al-01_d.html)
(<http://connect.al.com/staff/gtalbot/index.html>) By George Talbot | gtalbot@al.com
(<http://connect.al.com/staff/gtalbot/posts.html>)

Email the author | Follow on Twitter (<http://www.twitter.com/georgetalbot>)
on August 07, 2013 at 3:58 PM, updated August 07, 2013 at 6:55 PM



Jim Bennett (AL.com photo)

The Alabama Democratic Party missed a Tuesday noon deadline to certify candidates in the special election for the 1st Congressional District, but will be allowed access to the Sept. 24 primary ballot, according to Alabama Secretary of State Jim Bennett.

Bennett said the party was about an hour late in submitting its list of qualified candidates to his office Tuesday.

"Technically we could have kept them off the ballot but would that have been in the best interest of the voters in the First District?" said Bennett. "If we err we will do so on the side of being inclusive."

The Alabama Democratic Party said candidates Burton LeFlore and Lula Albert-Kaigler qualified with the party on Monday to run for the seat, which was vacated Friday by U.S. Rep. Jo Bonner, R-Mobile.

Nine Republicans have qualified to run for the seat, (http://blog.al.com/wire/2013/08/9_republicans_2_democrats_qual.html) and one Independent - James Hall of Stapleton - is petitioning to appear on the general election ballot.

The Secretary of State's office told AL.com on Tuesday that both parties had submitted their lists of candidates and that all 11 candidates were certified.

Bennett, who took office July 31, said he agreed to certify the Democrats after discussing the missed deadline with legal counsel.

"We believe it (to be) in the public interest," Bennett said.

Bennett was appointed by Gov. Robert Bentley to fill out the term of former Secretary of State Beth Chapman, who resigned in July to take a position as political director for the Alabama Farmers Federation.

It's Bennett's second stint in the job. He was appointed secretary of state in 1993 and was elected to the position in 1994 and 1998. His election in 1998 marked the first time for a Republican to hold the office since Reconstruction.

Bennett said party politics did not play a role in his decision.

"We would have given the Republican Party the same opportunity," he said. "It would have been a bit heavy handed to play politics with the election schedule. We try to make non-partisan decisions. Our main interest is to protect the right to vote by our soldiers overseas."

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1647 Blue Cross notifies 87,000 Alabama policy holders that plans don't meet Obamacare standards. Won't be available next year. (http://blog.al.com/wire/2013/10/obamacare_comments) (updated) (http://blog.al.com/wire/2013/10/obamacare_effect_blue_cro_comments)

677 Live at 8 with Drew Champin: The swinging gate edition. (http://al.com/sports/index.ssf/2013/10/live_at_8_with_drew_champin_comments)

Which SEC team has the most 'votable' fans in the league? This study tells you

Bennett said his office had to draft the ballot forms for overseas and military voters on Tuesday. Those ballots must be mailed on Friday and Saturday, he said.

"We didn't want to let a filing delay by the Democratic Party interfere with the right of our soldiers to vote," he said. "It would not have been fair to the candidates who qualified on time or the voters of the First Congressional District in making their individual choices."

Nancy Worley, the head of the Alabama Democratic Party, could not immediately be reached for comment Wednesday. Worley is a former Alabama Secretary of State.

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You have to know one thing. Up until July 23, Jo Bonner wasn't going to resign until August 15. But on that day, he announced he would resign two weeks earlier on Aug 2. On July 26, Bentley announced he would seek an EXPEDITED election schedule and chose Aug 3-5 as the qualification days, i.e. only one business day (Mon 8/5) to officially file.

I don't know if this was part of a scheme or just an honest effort to hold a quicker election, but an expedited schedule on top of a moved up transition date is "interesting coincidence". I appreciate SOS Bennett allowing the Dem candidates the chance to file, since obviously, they aren't in the GOP info loop and weren't quite ready.

(<http://al.com>)



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<http://al.com/sports/index.ssf/2013/10/wh>
comments)

Dean Young says homosexuality 'always has been, always will be' wrong in USA
344 (http://blog.al.com/wire/2013/10/dean_young)
comments)
http://blog.al.com/wire/2013/10/dean_young_says_homosex
comments)

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327 (http://al.com/auburnfootball/index.ssf/2013/10/auburn_very)
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JAMES HALL

AND

N. C. "CLINT" MOSER, JR,

Plaintiffs,

v.

JIM BENNETT, Secretary of State
for the State of Alabama,

Defendant.

Civil Action No. 2:13-cv-00663-MEF

DECLARATION OF RICHARD WINGER

Pursuant to 28 U.S.C. Sec. 1746, I make the following declaration:

My name is Richard Winger. I am over 18 years of age, and reside at

I make this report based on my own personal knowledge and research
that I have conducted.

I have collected election returns for federal office, and statewide state office, ever since I was in high school, beginning in 1960. I either possess, or have seen, election returns for all states for all federal offices, and all statewide state offices, back to 1888. In order to complete my collection, I traveled to many state capitols and reviewed state archives, and, when necessary, old newspapers. I also used the collection of the Inter-University Consortium on the campus of the University of Michigan at Ann Arbor. I even contributed election returns to the Inter-University Consortium which I found and which had previously been lacking in the Consortium collection.

In 1960, I also began obtaining copies of state election laws, because I was fascinated by these laws. Because I have continuously been interested in this subject since 1960, I kept abreast of changes in these laws made since 1960. I became aware of the ballot access laws prior to 1960 in two ways: (1) I spent hundreds of hours in law libraries, especially the Stanford Law Library, researching the ballot access laws of all states before 1960. The Stanford Law Library was by far the best place for this research, because it had actual books on the shelf, easily accessible, containing state session laws for all states, and code books for all states, going back into the 19th century; (2) starting when I was in college at the University of California at Berkeley, beginning in 1961, I spent thousands of hours reading old copies of minor party publications. These newspapers and newsletters commonly alerted their readers when changes to the ballot access laws were being made.

To see an example of how I have used my research to calculate the number of signatures in each state in the past, see my article in the *Election Law Journal*, Volume 5, number 2, 2006, which was peer-reviewed.

Among other election related projects, in my work, I engage in systematic original research compiling data on ballot access laws from each state and cross-referencing it against election data from each state showing which independent or minor party candidates for U.S. House qualified to appear on the ballot.

I have conducted such research on many other occasions. In my October 2001 print issue of *Ballot Access News*, I calculated the number of signatures in each state, 1928 thru 2002, for a new or previously unqualified party to place nominees on the ballot for U.S. House in all districts in the nation. That is 38 different elections, and for each one of them, I had to calculate the number of signatures required in all U.S. House districts. Most states require a flat number of

signatures, not a percentage of some base. But for states with percentages, I simply did the work. Almost always the base was the last vote cast. In a few cases it was the number of registered voters – so I obtained the number of registered voters. I located and collected voter registration state totals over the years and did the math.

I have researched ballot access laws and data from 1888 to the present. There were no ballot access laws in the United States before 1888, because there were no government-printed ballots in the United States before 1888, except that Louisville, Kentucky used government-printed ballots for its own city elections in 1887. Some of the states did not have government-printed ballots until the 1920's, and South Carolina didn't have any until 1950.

I have attached a current C.V. to this Declaration for the Court's consideration. I have been found qualified as an expert in the area of ballot access law by many courts around the country, including in Alabama, as by C.V. reflects.

In my opinion, based on my long and varied experience in ballot access cases, the combination of the 3% signature requirement and the truncated Special Election schedule set by Alabama's Governor with respect to the Special Election at issue for the U.S. House race in 2013 for Alabama's First Congressional District poses a severe burden for any independent candidate hoping to gain access to the general Special Election ballot for that race.

I can think of no legitimate interest Alabama could possibly have in imposing such a severe burden and I believe this burden makes it practically impossible for an independent candidate to gain access to the ballot for such a Special Election. The burden is especially severe because of the combination of restricting regulations (the number of signatures required and the schedule for obtaining and filing them).

My opinion is consistent with Alabama's ballot access history with respect to Special

Elections for the U.S. House, even though the universe of such events to study is small.

One of the ways in which the truncated schedule imposes a severe burden on a prospective independent candidate in this Special Election in combination with the high number of signatures required is that it eliminates any period of time for the candidate to meaningfully prepare for the arduous signature drive. This is an important period for any independent candidate who has to engage in the petition process and it is especially important for an independent candidate, for he or she has no party infrastructure to rely on for help.

The “start-up” period for an independent candidate should include sufficient time to raise funds, create a campaign organization, distributing major responsibilities, recruit and organize volunteers to go out and get signatures or raise enough funds to hire paid petitioners.

If the campaign is to rely on volunteers, they must be trained, and there are many more things that need to be done months before the actual petitioning begins in order for the signature drive to be effective – and it would have to be exceedingly effective to obtain at least 5,938 signatures in anything less than a 6 month period of time. Indeed, if 5,938 signatures are required to qualify, any prudent candidate would obtain well in excess of that number to account for any verification issues.

The “start-up” period is more important and more difficult and time-consuming for the independent candidate than even for the small party candidate, again because of the lack of infrastructure and generally fewer resources, both financially and in terms of manpower.

Alabama stands in sharp contrast to its neighbors in imposing its 3% requirement in a Special Election for U.S. Congress. In Georgia and Florida, for example, in a Special Election for U.S. Congress no signatures at all are required for an independent candidate, in Mississippi only 25 signatures are required, and in Tennessee only 25 signatures are required. In the latter

two states, this is the requirement even in regular election cycles. I have researched the issue and have not found any ballot crowding or other negative consequence attending any Special Election for U.S. Congress in any of these neighboring states.

The decisions from the United States Supreme Court in *Williams v. Rhodes*, 393 U.S. 23 (1968) and *Jenness v. Fortson*, 403 U.S. 431 (1971), and decisions from many other courts in many other cases clearly reflect the relevance to these courts of a comparison among states to help the court decide whether ballot access restrictions are reasonable and can pass the applicable level of constitutional scrutiny.

Special Elections raise unique challenges for the independent candidate who must gather signatures and the combination of the high signature requirement with the drastically truncated schedule for gathering and filing signatures in this case is an overwhelming obstacle for the independent candidate which renders it impossible to obtain ballot access for all but the wealthy candidate who can try to meet the signature requirement with an army of paid professional petitioners – and even then the burden would be great.

It is clear that the burden of having to gather 5,938 signatures in a period of approximately two months, or even in four months, is dramatically and significantly more severe than the same signature requirement in a regular election cycle in Alabama with no limit at all on when the independent candidate can begin the signature petitioning process – even years ahead of the election for which he or she has in mind. It does not in any meaningful way address the burden imposed by the combination of the truncated schedule and the same signature requirement applicable to a regular election cycle to point to decisions upholding the 3% requirement in a regular election cycle.

Such an approach reflects a “litmus test” analysis, which is exactly what the United

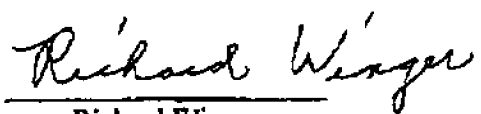
States Supreme Court and courts across the country have said must never be applied to ballot access cases with the fundamentally important rights at issue.

I am familiar with the decision from the Eleventh Circuit in the case of *Citizens Party of Georgia v. Polythress*, 683 F.2d 418 (11th Cir. 1982)(Table) and the disposition on remand, in which the district court extended the deadline where the Special Election schedule reduced the signature petitioning time frame from 180 days to 50 days to account for the burden the Special Election schedule imposed. A copy of the decision was provided to the Alabama Secretary of State's office. My research indicates that the number of signatures required for the election at issue in that case at that time was approximately 2000. The burden imposed in the instant case in Alabama by requiring 5,938 signatures in approximately two months, rather than in an "unlimited" time frame as some Alabama courts have characterized the time frame for the regular election cycle is far more severe than the burden presented by the circumstances in the *Citizens Party* case. The decision in *Citizens Party*, while unpublished, has nevertheless been cited and followed in Special Election cases elsewhere within the Eleventh Circuit.

I do not yet know what interests the State of Alabama claims it has to support the severe burden its combination of the 3% signature requirement and the truncated schedule imposes, nor can I imagine any compelling, important, or even rational interest that exists to justify the same and that could not be addressed with less drastic means.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 31, 2013
San Francisco, CA


Richard Winger

Richard Winger Curriculae Vitae

Updated Sep. 15, 2013

EDUCATION

BA, Political Science, University of California, Berkeley, 1966
Graduate study, Political Science, UCLA, 1966-67

EMPLOYMENT

Ballot Access News, Editor 1985-Present

Editor of newsletter covering legal, legislative and political developments of interest to minor parties and independent candidates. Researcher of ballot access laws of all 50 states from years 1888-present; well versed in how ballot access laws of each state work historically and how they compare to each other. Responsible for reading all statutes, regulations, legal opinions, and state attorney general opinions on rights of political parties and the publications of minor parties.

On the Editorial Board of *Election Law Journal*, published by Mary Ann Liebert, Inc., Larchmont, N.Y., since 2001.

PUBLICATIONS

Wrote a chapter or two in each of these books:

America Votes! A Guide to Modern Election Law and Voting Rights, 2nd edition, 2012, published by the American Bar Association's Section of State and Local Government Law, editor Benjamin E. Griffith.

Others, Vol. 2, Third Parties During The Populist Period, by Darcy G. Richardson (2007: iUniverse, Inc., New York). Wrote the book's Appendix, "Early Ballot Access Laws for New and Minor Parties."

Democracy's Moment

edited by Ronald Hayduk and Kevin Mattson (2002: Rowman & Littlefield, Lanham, Md.)

The Encyclopedia of Third Parties in America

edited by Immanuel Ness and James Ciment (2000: M.E. Sharpe, Inc., Armonk, N.Y.)

Multiparty Politics in America

edited by Paul S. Herrnson (1997: Rowman & Littlefield, Lanham, Md.)

The New Populist Reader

edited by Karl Trautman (1997: Praeger, Westport, Ct.)

Additional articles published in these periodicals:

University of Arkansas Little Rock Law Review

Wall Street Journal

American Review of Politics

The Long Term View
University of Mass. Law Review
California Journal
Election Law Journal (two articles)
Cleveland State Law Review
Chronicles Magazine
Price Costco Connection
Fordham Urban Law Journal

Also, I have written "Election Law Decisions" in each issue of the newsletter of the American Political Science Association's Section on Representation and Electoral Systems, which appears twice a year, starting with the 2005 issues.

NATIONAL INTERVIEWS on Minor Parties, Independents, Ballots and Ballot Access

<i>NBC</i>	<i>National Public Radio</i>
<i>ABC</i>	<i>Pacifica Radio</i>
<i>CNN</i>	<i>MSNBC</i>

CASES: TESTIMONY or AFFIDAVITS (political party or candidate prevailing, or case pending)

Alaska: Libertarian Party v Coghill, state superior court, 3rd dist., 3AN-92-08181, 1992. Court issued injunction enjoining enforcement of petition deadline for minor parties.

Arizona (3 cases): Campbell v Hull, 73 F Supp 2d 1081 (1999); Az. Libt. Party v Hull, superior ct., Maricopa Co. 96-13996, 1996. Nader v Brewer, 531 F 3d 1028 (9th cir., 2008).

Arkansas (3 cases): Citizens to Establish a Reform Party v Priest, 970 F Supp 690 (E.D. Ark. 1996); Green Party of Ark. v Priest, 159 F.Supp.2d (E.D. Ark. 2001); Green Party of Ark. v Daniels, U.S. District Court, 448 F.Supp 2d 1056 (E.D.Ark. 2006).

California: California Democratic Party v Jones, 530 US 567 (2000); California Justice Committee v Bowen, 2012 WL 5057625 (C.D.Cal.).

Colorado: Ptak v Meyer, 94-N-2250, U.S. Dist. Ct., 1994. Court ordered Secretary of State to place Libertarian legislative candidate on ballot.

Florida (2 cases): Libt. Party of Fla. v Mortham, 4:96cv258-RH, U.S. Dist. Ct., N.D., 1996. Court ordered Secretary of State to place Libertarian vice-presidential candidate on ballot. Reform Party v Black, 885 So.2d 303 (Fla. 2004).

Georgia: Bergland v Harris, 767 F 2d 1551 (11th cir., 1985). U.S. Court of Appeals remanded case back to U.S. District Court. Before U.S. District Court acted, legislature substantially eased law, so case became moot.

Hawaii: Libt. Party of Hi. v Waihee, cv 86-439, U.S. Dist. Ct., 1986. Court ordered Lieutenant Governor to extend petition deadline for new parties.

Illinois: (3 cases): Nader v Ill. State Bd. of Elections, 00-cv-4401, U.S. Dist. Ct., N.D., 2000. Court ordered State Board of Elections to place candidate on ballot. Lee v Ill. State Bd. of Elections, 463 F.3d 763 (7th cir. 2006). Jones v McGuffage, 921 F Supp 2d 888 (N.D.. Il, 2013).

Iowa: Oviatt v Baxter, 4:92-10513, U.S. Dist. Ct., 1992. Court ordered Secretary of State to put Grassroots Party candidate for Congress on ballot.

Kansas: Merritt v Graves, 87-4264-R, U.S. Dist. Ct., 1988. State did not defend three election laws and signed consent decree on independent petition deadline, requirement that independent petitions not be circulated outside of circulator's home precinct, and requirement that voters could only register in qualified parties. This case should

not be confused with another by the same name decided in December, 1988.

Kentucky: Libt. Pty. of Ky. v Ehrler, 776 F Supp 1200 (E.D. 1991)

Maryland (2 cases): Dixon v Md. State Adm. Bd. of Elec. Laws, 878 F 2d 776 (1989, 4th cir.); Green Party v Bd. of Elections, 832 A 2d 214 (Md. 2003).

Montana: Kelly v Johnson, U.S. Dist. Ct. 08-25 (2012).

Nevada (2 cases): Libt Pty. of Nev. v Swackhamer, 638 F Supp 565 (1986); Fulani v Lau, cv-N-92-535, U.S. Dist. Ct., 1992. Court ordered Secretary of State to put various minor parties on ballot.

New Jersey (2 cases): Council of Alternative Political Parties v Hooks, 999 F Supp 607 (1998); Council of Alternative Political Parties v State Div. of Elections, 781 A 2d 1041 (N.J.Super. A.D. 2001).

New York (3 cases): Molinari v Powers, 82 F Supp 57 (E.D.N.Y. 2000); Schulz w Williams, 44 F 3d 48 (2nd cir., 1994); Green Party of N.Y. v N.Y. State Bd. of Elections, 389 F.3d 411 (2nd cir., 2004).

North Carolina: Obie v N.C. Bd. of Elections, 762 F Supp 119 (E.D. 1991); DeLaney v Bartlett, 370 F.Supp.2d 373 (M.D. 2004).

Ohio: Libertarian Party of Ohio v Blackwell, 462 F.3d 579 (6th cir. 2006).

Oklahoma: Atherton v Ward, 22 F Supp 2d 1265 (W.D. Ok. 1998).

Pennsylvania: Patriot Party of Pa. v Mitchell, 826 F Supp 926 (E.D. 1993).

South Dakota: Nader v Hazeltine, 110 F Supp 2d 1201 (2000).

Tennessee: Libt Party v Thompson, U.S. Dist. Ct., 793 F Supp 1064 (M.D. 2010); Green Party of Tennessee v Hargett, 882 F Supp 2d 959 (M.D..Tn. 2012).

Texas: Pilcher v Rains, 853 F 2d 334 (5th cir., 1988).

Virginia: Libt. Pty of Va. v Quinn, 3:01-cv-468, U.S. Dist. Ct., E.D. (2001). Court ordered State Board of Elections to print "Libertarian" party label on ballot next to name of Libertarian candidates.

Washington: Washington State Democratic Central Committee v Washington State Grange, pending in U.S. Supreme Court, 11-1263.

West Virginia (3 cases): State ex rel Browne v Hechler, 476 SE 2d 559 (Supreme Court 1996); Nader v Hechler, 112 F.Supp.2d 575 (S.D.W.V., 2000); McClure v Manchin, 301 F Supp 2d 564 (2003).

CASES: TESTIMONY or AFFIDAVITS (political party or candidate not prevailing)

Alabama: Swanson v Bennett, 490 F.3d 894 (11th cit. 2007).

Arizona: (2 cases) Indp. Amer. Party v Hull, civ 96-1240, U.S. Dist. Ct., 1996; Browne v Bayless, 46 P 3d 416 (2002).

Arkansas (2 cases): Langueth v McKuen, LR-C-92-466, U.S. Dist. Ct., E.D., 1992; Christian Populist Party v Sec. of State, 650 F Supp 1205 (E.D. 1987).

California: Socialist Workers Party v Eu, 591 F 2d 1252 (9th cir., 1978).

Florida (2 cases): Fulani v Smith, 92-4629, Leon Co. Circuit Court, 1992; Libertarian Party of Fla. v State of Fla., 710 F 2d 790 (11th cir., 1983).

Georgia (2 cases): Libertarian Party of Ga. v Cleland, 1:94-cv-1503-CC, U.S. Dist. Ct., N.D. (1994); Esco v Secretary of State, E-53493, Fulton Co. Superior Court, 1998.

Idaho: Nader v Cenarrusa, cv 00-503, U.S. Dist. Ct., 2000.

Illinois: Libt Party v Rednour, 108 F 3d 768 (7th cir., 1997).

Kansas: Hagelin for President Committee v Graves, 804 F Supp 1377 (1992).

Maine (2 cases): *Maine Green Party v Diamond*, 95-318, U.S. Dist. Ct., 1995; *Maine Green Party v Secretary of State*, 96-cv-261, U.S. Dist. Ct., 1996.
Maryland (2 cases): *Ahmad v Raynor*, R-88-869, U.S. Dist. Ct., 1988; *Creager v State Adm. Bd. of Election Laws*, AW-96-2612, U.S. Dist. Ct., 1996.
Missouri: *Manifold v Blunt*, 863 F 2d 1368 (8th cir. 1988).
New Hampshire: *Werme v Gov. of N.H.*, 84 F 3d 479 (1st cir., 1996).
North Carolina: *Nader v Bartlett*, 00-2040, 4th cir., 2000.
Ohio: *Schrader v Blackwell*, 241 F 2d 783 (6th cir., 2001).
Oklahoma (3 cases): *Rainbow Coalition v Okla. State Elec. Bd.*, 844 F 2d 740 (1988); *Nader v Ward*, 00-1340, U.S. Dist. Ct., 1996; *Clingman v Beaver*, __US__ (May 2005).
Oregon: *Libt Party v Roberts*, 737 P 2d 137 (Ore. Ct. of Appeals, 1987).
Texas (2 cases): *Texas Indp. Party v Kirk*, 84 F 3d 178 (5th cir., 1996); *Nat. Comm. of U.S. Taxpayers Party v Garza*, 924 F Supp 71 (W.D. 1996).
Virginia: *Wood v Meadows*, 207 F 3d 708 (4th cir., 2000).
West Virginia: *Fishbeck v Hechler*, 85 F 3d 162 (4th cir., 1996).
Wyoming: *Spiegel v State of Wyoming*, 96-cv-1028, U.S. Dist. Ct., 1996.

QUALIFIED EXPERT WITNESS

Fishbeck v Hechler, 85 F 3d 162 (4th cir. 1996, West Virginia case)
Council of Alternative Political Parties v Hooks, 999 F Supp 607 (1998, N.J.)
Citizens to Establish Reform Party v Priest, 970 F Supp 690 (E.D. Ark, 1996)
Atherton v Ward, 22 F Supp 2d 1265 (W.D.Ok. 1998)
Calif. Democratic Party v Jones, 530 US 567 (2000)
Swanson v Bennett, not reported, U.S. Dist. Ct., m.d.Ala. (02-T-644-N)
Beaver v Clingman, 363 F 3d 1048 (10th cir., 2004, Okla. case)
Green Pty v N.Y. Bd. Elec., 267 F Supp 2d 342 (EDNY 2003), 389 F.3d 411 (2nd 2004)
Lawrence v Blackwell, 430 F.3d 368 (6th cir. 2005)

In all cases in which I was presented as an expert, the opposition accepted that designation, except in the Green Party of New York case. The U.S. District Court ruled that I qualify as an expert. See headnote #1 at page 342, and footnote nine on page 350. The 2nd circuit agreed, 389 F.3d 411 (2004), at 421.

SPEAKING ENGAGEMENTS: Colleges and Scholarly Meetings

Panel of New York City Bar Association, 1994. Ballot access.
Amer. Political Science Assn., nat. conventions of August 1995 and August 1996. Papers.
Capital University School, law school class, Columbus, Ohio, 1996. Guest lecturer.
Cal. State U., course in political science, Hayward, 1993 and 1996. Guest lecturer.
San Francisco City College, course in political science, 1996 and 1997. Guest lecturer.
Providence College, R.I., Oct. 1997, seminar on ballot access.
Harvard U., JFK School of Gov't, Oct. 18, 1995, guest lecturer, ballot access.
Voting Integrity Project national conference, Apr. 1, 2000, speaker on ballot access.
Center for Voting & Democracy nat. conference, Nov. 30, 2003, speaker on ballot access.
Robert Dole Institute of Politics, U. of Kansas, one of 5 panel members, Oct. 25, 2007.