

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**JEFFREY N. AMASON,  
ANDREA T. AMASON, AND  
AMASON FOR LIBERTY, INC.,  
Plaintiffs/Petitioners,**

**v.**

**LINDA FORD, SECRETARY OF  
STATE OFFICE, DIRECTOR OF  
ELECTIONS,  
Defendant.**

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**CIVIL ACTION FILE**

**NUMBER: 2014CV249517**

**AMENDED PETITION FOR WRIT OF MANDAMUS**

**COMES NOW**, Jeffrey N. Amason (hereinafter "Plaintiff Jeffrey"), Andrea T. Amason (hereinafter "Plaintiff Andrea") and Amason for Liberty, Inc. (hereinafter "Plaintiff Corporation") and files this AMENDED Petition for Writ of Mandamus to compel Defendant Linda Ford, Secretary of State Office, Director of Elections (hereinafter "Defendant") to place Plaintiff Jeffrey N. Amason on the general election ballot of November 2014 as the Libertarian Party Candidate for State Representative District 21.

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Jeffrey N. Amason is a resident and citizen of Cherokee County, Georgia residing at 407 Mill Stream Way, Woodstock, Georgia 30188, Cherokee County, Georgia.
2. Plaintiff Andrea T. Amason is a resident and citizen of Cherokee County, Georgia residing at 407 Mill Stream Way, Woodstock, Georgia 30188, Cherokee County, Georgia.

3. Plaintiff Amason for Liberty, Inc. is a Georgia non-profit corporation which was incorporated under the laws of the State of Georgia on September 18, 2013 to be the campaign committee for Jeffrey N. Amason.
4. Plaintiff Jeffrey is the incorporator and registered agent of Amason for Liberty, Inc.
5. Plaintiff Andrea holds the office of secretary for Amason for Liberty Inc.
6. Defendant Linda Ford, sued only in her capacity as Director of Elections for the Georgia Secretary of State, is subject to the jurisdiction of this Court and may be served by delivering a copy of the summons and petition to 2 Martin Luther King Jr. Drive. S.E., Suite 802, Floyd W. Tower Atlanta, Georgia 30334, Fulton County.
7. Plaintiffs have standing to bring and file this Petition pursuant to O.C.G.A. §21-2-171(c).
8. Jurisdiction and venue are proper in this Court.

#### **STATEMENT OF FACTS**

9. The Office of Secretary of State notified Plaintiff Jeffrey of the number of active voters eligible to vote in Cherokee County, Georgia as 32,272. *See Exhibit A.* The number of total signatures required on nomination petitions, for ballot access, is five percent of the number of active voters eligible to vote. *See Exhibit A.*
10. The number of signatures required for Plaintiff Jeffrey to obtain ballot access is 1,614.
11. On March 8, 2014, Plaintiff Jeffrey was nominated and confirmed as the Libertarian Candidate for State Representative District 21 by the Georgia Libertarian. *See Exhibit C.*
12. On June 23, 2014, Plaintiff Jeffrey filed the appropriate certificate and paid the qualifying fee as a candidate for State Representative, District 21. *See Exhibit B.*

13. On July 8, 2014, Plaintiff Jeffrey submitted 228 pages of petition signatures for qualification to be on the general election ballot of November 2104 as the Libertarian Party Candidate for State Representative District 21. The total number of signatures totaled over 2,650, 1,000 more than required. Mrs. Amason notarized 215 individual Nomination Petitions.
14. On July 24, 2014, Plaintiff Jeffrey officially received notice from Defendant that he presented 1,827 verified petition signatures; 213 more than required. However, Plaintiff Jeffrey was informed that he did not qualify as a candidate for State Representative District 21 as a Libertarian due to Defendant interpretation and application of O.C.G.A. §21-2-170(d) as the basis for disqualification. *See Exhibits D and E.*

### **ARGUMENT AND LEGAL AUTHORITY**

#### **When Mandamus May Issue**

O.C.G.A. § 9-6-20 provides that

All official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights; provided, however, that no writ of mandamus to compel the removal of a judge shall issue where no motion to recuse has been filed, if such motion is available, or where a motion to recuse has been denied after assignment to a separate judge for hearing

In the matter at bar, certain Nomination Petitions to place Libertarian candidate Jeffrey Amason on the November 2014 ballot were improperly disallowed by the Director of Elections, Secretary of State. The improper disallowance of these petitions prevents the candidate from appearing on the November ballot. This defect of legal justice occurs from the Director of Election's reliance upon O.C.G.A. § 21-2-170 (d) in lieu of express language of O.C.G.A. § 45-17-12; from judicial re-writing of the corporate notary statute in violation of the Constitutional separation of powers; and from the violation of equal protection and due process under the law from the application of O.C.G.A. § 21-2-170 (d) to only certain Georgia corporations, specifically the Plaintiff Corporation.

No specific remedy exists to overcome this defect of legal justice other than for this Court to GRANT Plaintiffs' Petition for Writ of Mandamus.

**Director of Elections Improperly Applied O.C.G.A. § 21-2-170(d) Despite the Direct Conflict with the Express Language of O.C.G.A. § 45-17-12 for Corporate Notaries.**

As shown above, Plaintiff Amason for Liberty, Inc. is a Georgia corporation incorporated in 2013. Plaintiff Andrea Amason was identified as an officer of the corporation. Further, Mrs. Virginia Hardwick worked with the corporation as a volunteer. Both Plaintiff Andrea Amason and Mrs. Virginia Hardwick are Georgia notaries and provided notary services for the Nomination Petitions. The Director of Elections applied O.C.G.A. § 21-2-170(d) to these two corporate notaries, disqualifying the notary signatures and subsequently disallowing the Nomination Petitions. The application of O.C.G.A. § 21-2-170(d) by the Director of Elections was improper as the proper statute for corporate notary authority is O.C.G.A. § 45-17-12.

O.C.G.A. § 21-2-170(d) states in entirety:

(d) "A nomination petition shall be on one or more sheets of uniform size and different sheets must be used by signers resident in different counties or municipalities. The upper portion of each sheet, prior to being signed by any petitioner, shall bear the name and title of the officer with whom the petition will be filed, the name of the candidate to be supported by the petition, his or her profession, business, or occupation, if any, his or her place of residence with street and number, if any, the name of the office he or she is seeking, his or her political body affiliation, if any, and the name and date of the election in which the candidate is seeking election. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination petition, and each sheet shall be numbered consecutively, beginning with number one, at the foot of each page. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, which affidavit must be subscribed and sworn to by such circulator before a notary public and shall set forth: (1) His or her residence address, giving municipality with street and number, if any; (2) That each signer manually signed his or her own name with full knowledge of the contents of the nomination petition; (3) That each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and (4) That, to the best of the affiant's knowledge and belief, the signers are registered electors of the state qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county or municipality named in the affidavit. No notary public may sign the petition as an elector or serve as a circulator of any petition which he or she notarized. Any and all sheets of a petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected."

O.C.G.A. § 45-17-12 states in entirety:

"(a) As used in this Code section, the term: (1) "Bank" or "other corporation" means a bank or other corporation organized under the laws of this or any other state or the United States. (2) "Written instrument," without limiting the generality of meaning of such words, means deeds, mortgages, bills of sale to secure debt, deeds to secure debt, deeds of trust, contracts, legal pleadings, affidavits, certificates, or any other like instruments. (b) It shall be lawful for any notary public who is a stockholder, director, officer, or

employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation. Any such notary public may act and sign as official witness to the execution by any party of any written instrument executed to or by such bank or other corporation. Any such notary public may administer an oath to any other stockholder, director, officer, employee, or agent of such bank or other corporation or may protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation, provided that it shall be unlawful for any notary public to act and sign as official witness to or take the acknowledgment of an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary would be witnessing or acknowledging his own signature as it appears on the instrument either in his capacity as an individual or in his representative capacity with the bank or other corporation or to protest any negotiable instrument owned or held for collection by such bank or other corporation where such notary is individually a party to such instrument."

(Emphasis added.)

O.C.G.A. § 21-2-170(d) and O.C.G.A. § 45-17-12 are in direct conflict based on a plain reading of the statutes. O.C.G.A. § 45-17-12 provides broad authority for a notary in a corporation or bank to "act and sign as official witness to the execution by any party of any written instrument executed to or by such bank or other corporation." The broad authority under O.C.G.A. § 45-17-12 is only limited by two explicit exceptions that a notary may not witness his or her own signature and may not protest any negotiable instrument where the notary is a party to the instrument. Neither of these exceptions applies in this matter.

O.C.G.A. § 21-2-170(d) however prohibits a notary from notarizing petitions if the notary has circulated other petitions. Applying O.C.G.A. § 21-2-170(d) to corporate notaries creates another exception not contemplated in O.C.G.A. § 45-17-12 and curtails the broad authority

provided in O.C.G.A. § 45-17-12. O.C.G.A. §21-2-170(d) and O.C.G.A. § 45-17-12 are in direct conflict based on a plain reading of the statutes.

In interpreting conflicting statutes,

we apply the fundamental rules of statutory construction that require us to construe the statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage.” While doing so, “we must seek to effectuate the intent of the legislature.” Additionally, “all statutes are presumed to be enacted with full knowledge of existing law and their meaning and effect are to be determined with reference to the constitution as well as other statutes and decision of the courts.

Georgia Transmission Corporation v. Worley, 312 Ga. App. 855, 856 (2011).

Therefore, the intent of the legislature with reference to the constitution and other statutes and court decisions must be considered when construing the above conflicting statutes.

#### O.C.G.A. §21-2-170(d) Is Not Applicable to Corporate Notaries

This notarial prohibition in O.C.G.A. §21-2-170(d) arises from a line of Georgia Supreme Court cases holding that a notary cannot notarize any of the petitions if the notary has circulated other petitions, even a single petition. “[A] person who circulates pages of a petition is a party to the petition as a whole.” Lewy v. Beazley, 270 Ga. 11, 12 (1988) (citing Poppell v. Lanier, 264 Ga. 473 (1994)). The Poppell holding provides that the notary “became more than [a] generally interested elector ... when she actively circulated a sheet of the nominating petition and obtained signatures of others.” Poppell, 264 Ga. at 474 (citing Howell v. Tidwell, 258 Ga. 246 (1988)). The Howell holding is the genesis for this line of cases in Georgia, and the resulting prohibition above.

The Howell case addresses the rejection of petitions gathered to require a recall election. Although many petitions were disqualified for false affidavits, the court found that some of the affidavits were notarized by the circulators. Citing only a single case, a Pennsylvania Supreme Court case, Citizens Committee to Recall Rizzo v. Board of Elections, 470 Pa. 1 (1976), the Georgia Supreme Court noted that "[h]aving established themselves as active officers and spokespersons for the recall effort, the [notaries] became more than generally interested electors" and thus disqualified from acting as a notary. Howell, 258 Ga. at 248.

Of particular interest for the matter at bar is the Pennsylvania Supreme Court case (Rizzo, above) singularly relied upon by the Georgia Supreme Court in Howell. In Rizzo, the Pennsylvania Supreme Court rejected notarized affidavits because the notaries had circulated other recall petitions. Sepcifically, Pennsylvania's rejection of the notarized affidavits was based entirely on Pennsylvania's statute and policy that "no bank officer or stockholder could serve as a notary public." Rizzo, 470 Pa. at 22. This Pennsylvania statute and policy is in clear contradiction and completely incompatible with long established Georgia law of granting broad notarial authority to bank officers and stockholders, among other corporate individuals. *See* O.C.G.A. § 45-17-12 above, and May v. Jones, 14 S.E. 552 (1891) and Anthony et al. v. American General Financial Services, Inc. et al., 697 S.E. 2d 166 (2010) below. Thus the genesis of the subject Georgia notary prohibition, Howell, is singularly based on Rizzo and its underlying Pennsylvania statute and policy which is completely adverse to Georgia corporate notary policy and statute.

Of particular interest, neither Lewy, Poppell or Howell addresses the broad notarial authority granted the notary when the notary is also an officer of a Georgia corporation. The



absence of any reference in this line of Georgia Supreme Court cases to the obvious conflict with O.C.G.A. § 45-17-12 and its associated cases can only occur if the Georgia Supreme Court was either unaware of O.C.G.A. § 45-17-12, ignored O.C.G.A. § 45-17-12 or did not intend to apply the prohibition to O.C.G.A. § 45-17-12. Given the extreme difference between Pennsylvania and Georgia policy and statute recognizing authority for corporate notaries, it is clear the Georgia Supreme Court did not intend to apply the prohibition to O.C.G.A. § 45-17-12.

#### O.C.G.A. § 45-17-12 Is the Proper Statute Applicable to Corporate Notaries

As shown above, O.C.G.A. § 45-17-12 gives clear and broad statutory authority to corporate notaries to “act and sign as official witness to the execution by any party of any written instrument executed to or by such bank or other corporation.” The broad authority under O.C.G.A. § 45-17-12 is only limited by two explicit exceptions: (1) a notary may not witness his or her own signature and (2) the notary may not protest any negotiable instrument where the notary is a party to the instrument. Neither of these exceptions applies in this matter. And no other exceptions are provided to the broad authority in this statute.

Georgia law provides that the express mention of one thing in an Act or statute implies the exclusion of all other things.

...

[T]he venerable principle, "Expressio unius est exclusion alterius" ("The express mention of one thing implies the exclusion of another"), the list of actions in [a statute] is presumed to exclude actions not specifically listed, and the omission of [additional actions] from [the statute] is regarded by the courts as deliberate.

Allen v. Wright, 282 Ga. 9,13-14 (2007).

Because O.C.G.A. § 45-17-12 provides two explicit exceptions to the broad authority, this short list is presumed to exclude actions not specifically listed, e.g. the exception that a corporate notary cannot notarize any of the petitions if the notary has circulated other petitions. The omission of this additional action from the statute is regarded by the courts as deliberate by the legislature. Importantly, O.C.G.A. § 45-17-12 was last revised in 2002, well after the Howell, Poppell and Lewy decisions and the last revision to O.C.G.A. § 21-2-170 in 2001. If the legislature had intended to add the additional exception to the list for corporate notaries, the legislature could have done so in 2002 or at any time since. “[A]ll statutes are presumed to be enacted with full knowledge of existing law and their meaning.” Georgia Transmission Corp., 312 Ga. App. at 856.

The Georgia Legislature has long recognized the public duty of notaries who are stockholders, directors, officers or employees of Georgia corporations. The Georgia Supreme Court recently held in Anthony et al. v. American General Financial Services, Inc. et al., 697 S.E. 2d 166 (2010) that unlike other states that believe a corporate notary cannot separate her private duty from her public duty, "our notary statutes recognize the view this Court took in May v. Jones that notaries are public officials whose duties to the public are superior to any private duties to their employers." Anthony, 697 S.E. 2d at 169. Georgia respects and has codified this separation in O.C.G.A. § 45-17-12. The Court went on to elaborate that while other states may presume a corporate notary cannot separate private from public duties:

"[D]espite numerous revisions to Georgia's notary statutes over the years, including revisions that make clear that the legislature understands that notaries may work for banks and other corporations. See OCGA § 45-17-12(b) (authorizing "any notary public who is ... [an] employee of a bank or other corporation" to engage in most notarial acts regarding the corporation). To the

contrary, our notary statutes recognize the view this Court took in *May v. Jones* that notaries are public officials whose duties to the public are superior to any private duties to their employers."

Anthony, 697 S.E. 2d at 169.

This unique perspective in Georgia that a notary who is an employee or agent of a corporation does not alter the notaries public duty is unchanged in over 100 years. In May v. Jones, 14 S.E. 552 (1891), the plaintiff brought suit for notarial misconduct and sought to involve the employer bank as having control over the notary such that the notary's actions were compromised due to acting under the authority of the bank. The Georgia Supreme Court disagreed stating that the notary answers not to the employer but to a higher control.

"[T]he notary is not a mere agent or servant of the bank, but is a public officer, sworn to discharge his duties properly. He is under a higher control than that of a private principal. He owes duties to the public which must be the supreme law of his conduct. Consequently, when he acts in his official capacity, the bank no longer has control over him, and cannot direct how his duties shall be done... That the notary is also an employee and agent of the bank does not alter the case. There is still a sharp dividing line between his duties as agent and his duties as a public officer. When his public service comes into play, his private service is, for the time, suspended.

May, 14 S.E. at 553.

Simply put, the Georgia legislature crafted O.C.G.A. § 45-17-12 to reflect that "notaries are public officials whose duties to the public are superior to any private duties to their employers" and provided two express exceptions. The Georgia legislature has found no cause to add the additional prohibition in O.C.G.A. § 21-2-170(d) to the corporate notary statute, despite its full knowledge of O.C.G.A. § 21-2-170(d), the associated Supreme Court cases, and the legislature's many opportunities to revise O.C.G.A. § 45-17-12. O.C.G.A. § 45-17-12 exists as the Georgia Legislature intends. "Under [the doctrine of separation of powers], statutory

construction belongs to the courts, legislation to the legislature. [The courts] can not add a line to the law.” Allen, 282 Ga. at 12. O.C.G.A. § 45-17-12 must stand as the full and complete authority for corporate notaries.

O.C.G.A. § 45-17-12 is the proper statute to apply in evaluating the affidavit notarization for the subject Nominating Petitions as both Plaintiff Andrea Amason and Mrs. Virginia Hardwick are corporate notaries.

**If O.C.G.A. § 21-2-170(d) Expands the Exceptions for Corporate Notaries in O.C.G.A. § 45-17-12, the Judiciary has Violated the Separation of Powers Doctrine.**

“(T)he doctrine of separation of powers is an immutable constitutional principle which must be strictly enforced.” Allen, 282 Ga. at 12. Under the doctrine of separation of powers, legislation belongs to the legislature. Id. As shown above, the Georgia legislature has demonstrated no intention (despite its many opportunities to do so and its knowledge of other statutes and case law) to revise O.C.G.A. § 45-17-12 and incorporate the additional notarial prohibition provided in O.C.G.A. § 21-2-170(d). O.C.G.A. § 45-17-12 exists as the Georgia Legislature intends.

“In our system of checks and balances, it is inappropriate for the judicial branch to encroach upon the powers of the legislature or executive branches as it would be for either of those branches to encroach upon the powers of the judicial branch.” Innovative Clinical and Consulting Services, LLC v. First National Bank of Ames, 279 Ga. 672, 674-675 (2005). “[U]nder our system of separation of powers this Court does not have the authority to rewrite statutes. ... [The courts] can not add a line to the law.” Allen, 282 Ga. at 12.

If the notarial prohibition provided in O.C.G.A. § 21-2-170(d) is judicially grafted into O.C.G.A. § 45-17-12 as an implied exception with the two express exceptions, then the Court

will effectively have added a line to the law, rewriting the long standing corporate notary statute. If such a revision should occur to any statute, including O.C.G.A. § 45-17-12, the authority to revise such a statute resides with the legislature. The legislature drafts, debates, and considers the impacts and costs of statutory revisions, additions and deletions during the legislative process. As noted above, the branches of government must be careful not to encroach upon the powers of the other branches, violating the separation of powers doctrine.

The legislative process cannot be minimized or circumvented when considering any statute, particularly O.C.G.A. § 45-17-12. The economic engine of Georgia runs on the reliability of Georgia's statutory landscape. A change to O.C.G.A. § 45-17-12, a statute key to financial institutions, banks and all corporations would certainly change Georgia's statutory landscape overnight for corporate notaries. Such a change, if needed at all, should come through the legislature after proper reflection upon all concerns.

**Defendant's Application of O.C.G.A. § 21-2-170(d) and Non-Application of O.C.G.A. § 45-17-12, Violates the Equal Protection Clause of the Georgia Constitution.**

Plaintiff Corporation and by extension Plaintiff Jeffrey were subjected to disparate treatment compared to other similarly situated political corporations due to Defendant's application of O.C.G.A. § 21-2-170(d). Plaintiff Corporation was specifically organized as the campaign committee corporation for Plaintiff Jeffrey, a Libertarian candidate for the Georgia House. Plaintiff Jeffrey relied upon the rights, benefits and protections afforded to Georgia corporations. These rights, benefits and protections were specifically desired due to the petitioning process required of third party candidates for ballot access. A critical benefit desired

by Plaintiff Jeffrey was the notary authority provided to employees and officers of corporations as provided in O.C.G.A. § 45-17-12.

The Georgia Supreme Court has consistently held that the Georgia Equal Protection Clause is "coextensive" and "substantially equivalent" with the federal Equal Protection Clause. *See Fair v. State*, 288 Ga. 244, 246 (2010), *Favorito v. Handel*, 684 S.E. 2d 257, 260 (2009). To properly plead an equal protection claim, a plaintiff need only allege that through state action, similarly situated persons have been treated disparately. *Fulton County v. Legacy Inv. Group, LLC*, 296 Ga.App. 822, 826 (2009). As shown below, the Defendant's application of O.C.G.A. § 21-2-170(d) and non-application of O.C.G.A. § 45-17-12 creates disparate treatment when compared with other political campaign corporations.

As this Court may take judicial notice, approximately fifty democratic corporation and approximately eighty republican corporations have registered at various times with the Secretary of State. Corporations for Republican or Democratic campaigns are not encumbered with ballot access petitioning and avoid the State's singular application of O.C.G.A. § 21-2-170(d). *See* O.C.G.A. § 21-2-170, *et. seq.* Thus these campaign corporations enjoy the full benefit of incorporation including the use of O.C.G.A. § 45-17-12 for notarization of any document by an employee or officer notary (considering the two exceptions in O.C.G.A. §45-17-12).

Unfortunately, a third party or independent campaign corporations are not afforded the same benefit of the Republican or Democratic campaigns corporations under O.C.G.A. § 45-17-12. The Defendant's singular application of O.C.G.A. § 21-2-170(d) without considering the implications of O.C.G.A. § 45-17-12 during the petitioning process prevents the subject third party corporation from notarizing the full spectrum of documents. This disparate treatment is

particularly burdensome as third party or independent campaign corporations, such as the Plaintiff Corporation, are the most vulnerable in the electoral process.

Upon determining that disparate treatment exists, a court must determine what analysis is it to be used. Fair v. State, 288 Ga. at 246. A statute is tested under a standard of strict scrutiny if it either operates to the disadvantage of a suspect class or interferes with the exercise of a fundamental right. Id. If neither a suspect class nor a fundamental right is affected by the statute, the statute must bear a rational relationship to some legitimate state purpose. Id.

Turning to a strict scrutiny analysis, Defendant's actions operate to interfere with Plaintiffs exercise of a fundamental right. In Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979) the United States Supreme Court noted that "[r]estrictions on access to the ballot burden two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.'" The Court went on further to note that

[t]he freedom to associate as a political party, a right we have recognized as fundamental. [citation omitted.] has diminished practical value if the party can be kept off the ballot. Access restrictions also implicate the right to vote because, absent recourse to referendums, "voters can assert their preferences only through candidates or parties or both. [citation omitted.] By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. And for reasons too self-evident to warrant amplification here, we have often reiterated that voting is of the most fundamental significance under our constitutional structure. [citation omitted.] When such vital individual rights are at stake, a State must establish that its classification is necessary to serve a compelling interest.

Id. Further the Georgia Supreme Court stated in Cox v. Barber, 275 Ga. 415, 417 (2002)(citing Lubin v. Parish, 415 U.S. 709 (1974)) that, "the right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters."

Thus, ballot access is a fundamental right invoking strict scrutiny. Therefore, Defendant's actions must be "narrowly drawn to advance a state interest of compelling importance." Favorito, 684 S.E. 2d at 260. However, the actions of the Defendant are not "reasonable, nondiscriminatory restrictions" as the Court noted in Favorito. Therefore, OCGA § 21-2-170(d) fails an equal protection analysis through strict scrutiny.

In the alternative, under rational basis scrutiny, the legislative classification must bear "a rational relationship to a legitimate end of government not prohibited by the constitution." Daniel v. Amicalola Electric Membership Corp., 289 Ga. 437, 441 (2011).

In determining the legislative classification, it is necessary to engage in a statutory construction analysis, due to the conflicting nature of the two statutes in issue. Relying upon the analysis presented earlier in this Petition (and not repeated again for brevity), it is apparent upon a plain language reading of the statutes at issue, that O.C.G.A. § 21-2-170(d) is in direct conflict with O.C.G.A. § 45-17-12 regarding corporate notary authority. The Defendant's application of O.C.G.A. § 21-2-170(d) - while neglecting O.C.G.A. § 45-17-12 - leads to the unreasonable and absurd result not contemplated by the legislature. The unreasonable and absurd result that a Georgia corporation is stripped of its critical statutory notary authority.

Georgia cannot have a legitimate governmental interest in regulating notaries in such a way to foster disparate treatment of two groups based upon political affiliation. As such, there can be no reasonable relationship to a legitimate governmental interest. Therefore, the



application of OCGA 21-2-170(d) to corporate notaries fails an equal protection analysis through rational basis scrutiny.

**Defendant's Application of O.C.G.A. § 21-2-170(d) and Non-Application of O.C.G.A. § 45-17-12 Violate the Due Process Clause.**

Plaintiff Corporation, its officer Plaintiff Andrea and by extension Plaintiff Jeffrey were denied due process under the law by Defendant's failure to investigate. Plaintiff Andrea has a property interest in her notary license. The magnitude of her property interest as a corporate office and notary is set forth in O.C.G.A. § 45-17-12, above. "[T]he Due Process Clause of the Fourteenth Amendment requires the state to afford any person due process before depriving him of his property as well as his life or liberty; since a license to engage in a profession is a property right." Wills v. Composite State Board of Medical Examiners, et al., 259 Ga. 549, 551 (1989). Plaintiff Andrea was deprived of her property (license to engage as a corporate notary) when the Defendant failed to consider O.C.G.A. § 21-2-170(d) and O.C.G.A. § 45-17-12 in concert and rejected 215 affidavits notarized by Mrs. Amason based on a singular application of O.C.G.A. § 21-2-170(d) without due process.

Further, corporations shall not be deprived of due process under the law because a corporation is a 'person.' O.C.G.A. § 1-3-3 (14). Because it is a 'person,' a corporation certainly is entitled to receive due process and equal protection from this state." Eckles v. Atl. Tech Group, Inc., 267 Ga. 801, 803 (1997).

O.C.G.A. § 21-2-171(b) provides the process for Defendant to investigate suspect affidavits. O.C.G.A. § 21-2-171(b) states in pertinent part:

"[u]pon the filing of a nomination petition, the officer with whom it is filed shall begin expeditiously to examine the petition to

determine if it complies with the law. During such examination the officer shall have the right to summon by subpoena on two days' notice and interrogate under oath the candidate named in the petition, any person who signed the petition, any person who executed or witnessed any affidavit or certificate accompanying the petition, or any other person who may have knowledge of any matter relevant to the examination. Such officer shall also have the right to subpoena on two days' notice any record relevant to the examination."

The Supreme Court of Georgia has long recognized that a notary is under a higher control than that of a private principal and the notary's duties to the public become the supreme law of his or her conduct suspending for a time, his or her private service. May, 14 S.E. at 554. Despite this recognition and the above subpoena power, Defendant did not subpoena Plaintiff Andrea or any other party to the suspect affidavits. Without following the due process available in O.C.G.A. § 21-2-171(b), Plaintiff Andrea's 215 notarized affidavits were simply rejected outright.

Defendant's failure to follow the process plainly presented in O.C.G.A. § 21-2-171(b) deprived Plaintiff Andrea of her property rights violating the Due Process Clause of the Fourteenth Amendment and the Georgia Constitution (as well as depriving Plaintiff Corporation and Plaintiff Jeffrey of due process).

## **I. CONCLUSION**

For the reasons discussed above, the Plaintiffs pray that this Honorable Court accept their petition, finding that a defect of legal justice will ensue from one or more of the following causes: Defendant's reliance application of O.C.G.A. § 21-2-171(b) in lieu of O.C.G.A. § 45-17-12 as the appropriate statute to apply to corporate notaries; that O.C.G.A. § 21-2-171(b) cannot

be grafted into the corporate notary statute; and that the application of O.C.G.A. § 21-2-171(b) to Plaintiffs violated due process and equal protection rights under the law. Plaintiffs respectfully pray that this Court issue a Writ of Mandamus to the Director of Elections to place Plaintiff Jeffrey N. Amason on the general election ballot of November 2104 as the Libertarian Party Candidate for State Representative District 21.

Submitted this the 14th day of August, 2014.

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