

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

THE LIBERTARIAN PARTY OF KENTUCKY, <i>et. al.</i>	:	Case No. 3:15-CV-86 GFVT
Plaintiffs	:	<i>Electronically Filed</i>
v.	:	
ALISON LUNDERGAN GRIMES, <i>et. al.</i>	:	
Defendants	:	

**PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, PERMANENT INJUNCTION, AND SUMMARY JUDGMENT, WITH
DECLARATIONS OF CYRUS ECKENBERG, KEN MOELLMAN, JR., TINA
KROGDAHL, CHRISTINA TOBIN, AND RICHARD WINGER IN SUPPORT**

Plaintiff, by and through Counsel, moves this Court for an Order granting Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Summary Judgment, against enforcement of K.R.S. 118.015, K.R.S. 118.305(1)(e), K.R.S 118.305, and other Kentucky law, as well as the practices of Defendants, all constituting Kentucky’s ballot access regime, generally or facially, or, in the alternatively, “as applied” to the Plaintiffs in this matter. A Memorandum in Support is attached hereto and incorporated by reference herein. A proposed order granting the requested relief is likewise attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon all counsel of record, this 3 Day of
February, 2016, via the Court's CM/ECF system.

/s/ Christopher Wiest

Christopher Wiest (KBA 90725)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
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THE LIBERTARIAN PARTY OF KENTUCKY, *et. al.* : Case No. 3:15-CV-86 GFVT
 : *Electronically Filed*
 Plaintiffs :
 v. :
 ALISON LUNDERGAN GRIMES, :
 et. al. :
 Defendants :

PLAINTIFFS’ MEMORANDUM IN SUPPORT OF THEIR MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND SUMMARY JUDGMENT WITH DECLARATIONS OF CYRUS ECKENBERG, KEN MOELLMAN, JR., MARTHINA KROGDAHL, CHRISTINA TOBIN, AND RICHARD WINGER IN SUPPORT

Plaintiffs, by and through Counsel, seek a temporary restraining order, preliminary injunction,¹ permanent injunction, and summary judgment against enforcement of K.R.S. 118.015, K.R.S. 118.305(1)(e), and K.R.S 118.315 generally or facially, or, in the alternatively, “as applied” to the Plaintiffs, political parties that have established a modicum of public support in Kentucky and their members; and specifically, they seek an order directing that their duly nominated candidates be placed on ballots in Kentucky general elections going forward.

I. FACTS

1. Background of Kentucky’s Ballot Access Laws

¹ Depending on the Court’s schedule, it may be possible and even advisable to move to consolidate these proceedings under FRCP 65(a)(2) with a permanent injunction hearing. Plaintiffs desire certain discovery prior to a hearing on a permanent injunction if summary judgment is not appropriate, particularly if Defendants contest any of the factual testimony placed of record with this motion, but believe that all discovery could be completed under a compressed schedule, with shortened deadlines for response, within 60 days of the filing of this motion.

Kentucky law does not permit “general” ballot access for a political party unless that party receives over 2% of the vote in a Presidential race. K.R.S. 118.015, K.R.S. 118.305(1)(e), and K.R.S. 118.305. If a political party’s candidate receives over that percentage vote, that party may nominate its candidates, and place them on the general election ballot, for a period of four years, with no further steps insofar as the Commonwealth of Kentucky is concerned. *Id.* There is no other way for a political party to receive blanket ballot access – even if they run candidates in other statewide races. *Id.*

Kentucky utilizes a three tiered system for political groups and ballot access. At the top of the tier are “Political Parties.” They are defined in K.R.S. 118.015(1) as follows: “A ‘political party’ is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and whose candidate received at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for.”

Next are “Political Organizations.” They are defined in K.R.S. 118.015(8) as follows: “‘Political organization’ means a political group not constituting a political party within the meaning of subsection (1) of this section but whose candidate received two percent (2%) or more of the vote of the state at the last preceding election for presidential electors.”

Finally, there are “Political Groups.” They are defined in K.R.S. 118.015(9) as follows: “‘Political group’ means a political group not constituting a political party or a political organization within the meaning of subsections (1) and (8) of this section.”

Pursuant to K.R.S. 118.305(1)(a), (b), (c), and (d), candidates for Political Parties and Political Organizations automatically earn ballot access, and do so for a four-year period following the presidential election.

While the statutes are not specific, the Board of Elections has determined that third party candidates, such as those of the Libertarian and Constitution parties, are to be treated as “independent candidates” under K.R.S. 118.305(1)(e), and thus may individually qualify for ballot access by obtaining the number of signatures required in K.R.S. 118.315(2). For statewide office, 5,000 signatures are required; for a Congressional district, 400 signatures are required; for a state house or senate district, 100 signatures are required.

A separate petition, with signatures, is required for each candidate and there is no method for a political group to become ballot qualified across the board, except through the results of the Presidential election.² The only time and method by which a political group can become a Political Party or Political Organization, is by receiving votes in the Presidential election. There is no method to obtain, by petition or otherwise, ballot access generally, or on a blanket basis for a political group, under Kentucky law.

2. Background on the Plaintiffs in this matter

Plaintiffs in this case include the Libertarian National Committee, Inc., the Libertarian Party of Kentucky, the Constitution Party of Kentucky, and Mr. Ken Moellman, Jr., an individual voter.

As outlined in the Complaint, the Libertarian Party of Kentucky (“LPKY”), “and its members, have suffered an individualized and group harm from the acts and practices herein complained of, and, in particular, it is unable to consistently place its candidates on the ballot in Kentucky through petition or otherwise.” (Declaration Eckenberg ¶4). “As a consequence of

² There is one notable exception to this requirement – without statutory authorization -- the Kentucky Board of Elections has permitted a single petition to be submitted for two federal offices statewide (i.e. U.S. Senator and U.S. President). That practice is remarkable because it demonstrates the workability of permitting a single petition to be submitted with the requisite number of signatures for all races in a particular election year.

the Defendants actions and omissions, LPKY will and continues to suffer harm that is likely to recur in the future.” *Id.* “The LPKY typically typically fields candidates for local, state, and national elections, who will be subject to similar actions of those complained of herein.” *Id.* LPKY has just under 5,000 voters registered as Libertarians in Kentucky.³ *Id.*

Similarly, the Libertarian National Committee (“LNC”), “and its members, have suffered an individualized and group harm from the acts and practices of Defendants, both in the past and in the future.” (Declaration Eckenberg ¶7). Furthermore, the actions complained of herein will cause future harm and are likely to recur in the future, as the LNC typically fields candidates for local, state, and national elections, who will be subject to similar actions and restrictions similar to those complained of herein. *Id.* at ¶8. In particular, the LNC is significantly impaired in running its candidates for office under the restrictive ballot access laws that are the subject of this suit. *Id.*

Both the LNC and LPKY have engaged in systemic and repeated political activities in Kentucky, including fielding candidates for Presidential and other races. *Id.* at ¶9. For instance, the LNC and LPKY have each participated in signature drives placing their candidates on the ballot for President every Presidential Election Year since 1988. *Id.*

The LNC and LPKY have a significant modicum of support from Kentucky voters. *Id.* at ¶12; (Declaration Winger ¶ 24). For instance, the LNC and LPKY’s candidate in the 2014 U.S. Senate election, David Patterson, received 44,240 votes, which was 3.1% of the votes cast, despite his exclusion from statewide televised debates that would have boosted his election results. *Id.* In 2011, Ken Moellman, Jr. ran as the LPKY’s nominee for State Treasurer,

³ This is notable because the Libertarian party is not identified in Kentucky voter registration cards; instead, a Libertarian voter must specifically check the "other" box and hand write in the Libertarian party.

receiving 37,261 votes, which was 4.61% of the votes cast in that election. *Id.* LPKY and LNC fare even better in local and county races, and have actually elected Libertarian candidates to county and local office. *Id.*

And, similarly, the Constitution Party of Kentucky (“CPKY”) “and its members, have suffered an individualized and group harm from the acts and practices complained of, and in particular “it is unable to consistently place its candidates on the ballot in Kentucky through petition or otherwise.” (Declaration Krogdahl ¶4). Furthermore, the actions complained of herein will cause future harm and are likely to recur in the future, as the CPKY typically fields, or attempts to field, candidates for certain state and national elections, who will be subject to similar actions of those complained of herein.” *Id.* at ¶5.

CPKY also has a modicum of support from Kentucky voters. The CPKY qualified its candidate for President of the United States in 2008 by gathering the requisite number of signatures. *Id.* at ¶7; (Declaration Winger ¶¶ 24, 25). In 2010, CKPY ran a candidate for the 79th Kentucky House District who secured 27.4% of the vote. *Id.*

It is very ordinary for the Libertarian Party to run multiple candidates for statewide office, when such offices are up. (Declaration Winger ¶ 42). Just looking at 2014, the Libertarian Party ran a number of statewide partisan candidates around the country: Alaska 3, Arkansas 8, Colorado 5, Delaware 2, DC 5, Florida 2, Georgia 5, Hawaii 2, Illinois 6, Indiana 3, Iowa 4, Kansas 2, Maryland 2, Michigan 13, Minnesota 4, Montana 2, Nebraska 3, New York 3, North Dakota 3, Ohio 2, Oregon 2, South Carolina 2, South Dakota 6, Tennessee 2, Texas 15, Wisconsin 4, Wyoming 4. *Id.*

As for Mr. Moellman, he was and is a registered Libertarian voter, whose “rights to associate and vote for candidates from his political party are impaired by the actions and

omissions of the Defendants in this case.” (Declaration Moellman ¶3). Mr. Moellman, as an individual voter and member of the LPKY, likewise has been active in politics in Kentucky. *Id.* at ¶¶ 3,5.

3. Historical Backdrop of Third Party Electoral Results in Kentucky

Historically in Kentucky, at least for the past 100 years, with four exceptions, the only Political Parties or Political Organizations that qualified for automatic ballot access was the Democratic and Republican Parties. (Declaration Winger ¶18). The first exception was 1924 (91 years ago), when Robert La Follette received 4.72% in Kentucky under the Progressive party, which qualified that party as a Political Organization. *Id.* In 1968 George Wallace was the nominee of the American Party in Kentucky, and received 18.3% of the vote, which qualified that party as a Political Organization. *Id.* In 1980 John Anderson used the ballot label "Anderson Coalition" in Kentucky and received over 2% of the vote, so that party was a Political Organization and qualified that party for ballot access in 1981, 1982, 1983, and 1984. *Id.* In 1996 Ross Perot ran under the “Reform” party, received over 2% of the vote, qualifying that party as a Political Organization gave that party ballot access in 1997, 1998, 1999, and 2000. *Id.*

Moreover, as further evidence of the burden of Kentucky’s ballot access scheme, Kentucky is one of only 5 states that hasn’t had any ballot-qualified parties, other than from the Democratic or Republican parties, in the last 15 years. *Id.* ¶¶19, 43. The others are New Jersey, Pennsylvania, Virginia and New Hampshire. *Id.*

4. Kentucky's ballot access scheme constitutes a significant burden on minor political parties, such as the Plaintiffs
 - a. The vast majority of states – but not Kentucky -- permit a minor party to obtain ballot qualification before any particular election, usually through petition

Thirty-eight states permit a political group to transform itself into a ballot qualified party before any particular election, and before it has chosen any nominees. (Declaration Winger ¶8) This aspect of ballot access law in these 38 states is very useful for groups that wish to become qualified parties, yet who do not yet have any nominees. *Id.* For example, in 2010, a group called Americans Elect announced it intended to qualify itself as a political party in as many states as possible, and then it said it would let all the voters of the United States vote in an on-line presidential primary to determine who the Americans Elect presidential nominee would be. *Id.* Americans Elect proceeded to qualify itself as a party in 31 states during 2011 and early 2012. *Id.* But because Kentucky has no procedure for a group to become a qualified party before it has chosen its nominees, Americans Elect was unable to qualify in Kentucky.⁴ *Id.*

Of the remaining 12 states, in ten of those states, even though a group must choose nominees before it can begin to get itself and its nominees on the ballot, at least the group can become a qualified party by polling a certain share of the vote in a midterm year. *Id.* at ¶9. But Kentucky does not even allow that. *Id.* Washington and Kentucky are the only states in which it is impossible for a group to become a qualified party at any time except in November of a presidential election year. *Id.*

⁴ Ultimately, the group abandoned the effort on May 17, 2012, indicating it had decided not to run anyone for President after all.

b. Kentucky's ballot access laws are bad public policy, and are not tailored to support a state interest

Some of the most important new political parties in U.S. history were formed in midterm years. *Id.* at ¶10. The Republican Party was formed on July 6, 1854, a midterm year. *Id.* It went on to win a plurality of the U.S. House of Representatives in the fall 1854 election. *Id.* If a new important party were formed in the United States in our era, in a midterm year, such a group would not be able to become a qualified party in Kentucky for over two years. *Id.*

Mr. Richard Winger, a recognized national expert at ballot access issues, opines that Kentucky's policy of not permitting a group to become a qualified party except through polling 2% or more for President is inadvisable for two reasons: first, it makes it impossible for any party to be ballot qualified in Kentucky if that party is only interested in state political issues. *Id.* at ¶11. He notes that there are many one-state parties in the United States that only desire to influence state policy, and many of them have been successful. *Id.* The Progressive Party, in Vermont has eight state legislators, and yet never runs anyone for President. *Id.* If Vermont had Kentucky's ballot access laws, the Progressive Party could not obtain ballot qualified status. *Id.*

c. Using a Presidential election as the sole barometer for ballot access for a political party is far too restrictive, and not rooted in any state interest

Mr. Winger likewise opines that Kentucky's ballot access laws are too restrictive. *Id.* at ¶12. This is because minor parties typically do far better for all partisan offices than they do for President. *Id.* Thus, making President the only means to attaining qualified status is severely restrictive. *Id.* The Libertarian Party has elected state legislators in Alaska, New Hampshire, and Vermont, and has an additional state legislator in Nevada. *Id.* But the Libertarian Party has never polled as much as 2% for President. *Id.* Notwithstanding this fact, it has been a ballot qualified party in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut,

Delaware, DC, Florida, Georgia (for statewide office only), Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming (41 states and D.C.). *Id.* But if every state had the Kentucky definition of a ballot-qualified party, the Libertarian Party would never have been a qualified party in any state. *Id.*

Even if a state were to provide that the only way for a political group or party to achieve automatic ballot access was by means of results in a single race, the most burdensome race in which to poll is the Presidential election. *Id.* at ¶20. In all other states, except for Kentucky and Washington, there are other elections (particularly mid-term elections), or a petition mechanism, in which to put a party generally on the ballot. *Id.* Prior to 2009, the State of Washington permitted a party to obtain ballot access generally by obtaining 5% of the vote in any statewide election. *Id.* In 2009, Washington changed its law, only permitting the Presidential race to count, just like Kentucky does. *Id.* Prior to 2009, minor parties, including the Libertarian Party, could and did qualify for ballot access in statewide races in Washington. *Id.* Since 2009, no minor party has achieved statewide ballot access generally in Washington. *Id.*

- d. The requirement to obtaining separate petitions for each candidate, when a political party desires to field multiple candidates, is not feasible, far too costly, and practically impossible for major parties, much less minor parties such as the Plaintiffs

The cost – both monetary and as a time commitment associated with Kentucky’s ballot access laws, generally results in LPKY and LNC only being able to undertake one petition drive per year for one of their candidates, foreclosing them and their candidates from other opportunities. (Declaration Eckenberg ¶10; Declaration Moellman ¶4; Declaration Winger ¶21).

But for the challenged ballot access laws, LPKY and LNC would field more than one candidate, per year, for statewide and national office. (Declaration Eckenberg ¶10). Specifically, Kentucky permits the placement of an “independent” candidate on the ballot, by obtaining 5,000 signatures. *Id.*

For the CPKY, Kentucky’s ballot access regime has kept them off the ballot in every statewide race but Presidential races in the last several decades. (Declaration Winger ¶22).

Kentucky’s ballot access regime constitutes a sever burden on minor political parties’ fundamental functions as a political party – namely the ability to field candidates for office. *Id.* at ¶23.

Mr. Winger explains that 5,000 signatures may be “an acceptable alternative for an ‘independent’ candidate, but it is an extremely poor threshold and a significant burden for a political party to field a slate of candidates, or even more than one or two candidates per election cycle.” *Id.* at ¶26. This burden is why LPKY, LNC, and CPKY have never fielded more than one or two candidates in any statewide election per election cycle – Kentucky’s laws and ballot access regime make it impossible as a practical matter to do so. *Id.* at ¶27.

Of course, it is not merely enough to gather 5,000 signatures – sometimes non-registered voters sign petitions, sometimes people sign more than one, and for these, and other reasons, typically 1.5 to 1.75 times the required number is what is required as a practical matter to ensure the petition counts. (Declaration Eckenberg ¶11; Declaration Moellman ¶8; Declaration Winger ¶27). As a practical matter, 7,500 signatures are turned in, and up to 8,750 signatures may need to be obtained to ensure that a valid petition is submitted. *Id.*

Ms. Christina Tobin, an expert in petition gathering and circulation, and the President of Free and Equal, Inc., a recognized professional petitioning firm, indicates that the typically

professional petitioners are engaged to collect these signatures. (Declaration Tobin ¶ 12). Ms. Tobin only practical way to gather 5,000 or more signatures is either with (1) an extremely organized, and typically large, group of volunteers; or (2) through the use of a professional paid petitioner. *Id.* at ¶ 13. Mr. Moellman and Mr. Eckenburg explain that they can find volunteers and have the organization to obtain some of the required signatures in a statewide race, *for a single race*, in a *single election cycle* (and would need to pay a professional signature gathering organization for the rest of the signatures). (Declaration Eckenburg ¶ 15; Declaration Moellman ¶ 10; Declaration Winger ¶ 29). But as a practical matter, it is impossible to gain access for more than two candidates in a statewide race given the signature threshold (and would be a difficult task even for one of the major political parties). *Id.*

For paid petitioners, the going market rate is \$2.00 per signature for reputable firms, and is charged regardless of whether the signature is a “good” signature, or is subsequently identified as valid. (Declaration Tobin ¶ 14). Ms. Tobin likewise explains that the \$2.00 per signature amount is for a single petition – it becomes exponentially more difficult (and expensive) to have a voter sign more than one petition at a time. *Id.* at ¶¶ 15, 16. Ms. Tobin also testifies to what is essentially the law of diminishing returns on petition gathering, and explains that it is far easier to obtain 5,000 signatures for a single petition that places two or more candidates on the ballot than it is to have to gather separate petitions at the same time. *Id.* at ¶ 16.

Ms. Tobin renders her expert opinion that it is “impossible” for a minor party to field a slate of candidates for Kentucky’s Constitutional office holders, noting that “the cost alone is more than a minor party can afford, and it is not possible to engage in one single petition drive to put that many candidates on the ballot.” *Id.* at ¶ 17. For these same reasons, it would be unusual for Ms. Tobin or her company to take an engagement where they needed to circulate three or

more petitions in the same area in the same election cycle. *Id.* at ¶ 18. Nor is there cost savings to be had for people or political groups to engage a petitioner – or Ms. Tobin’s company, to circulate more than one petition, because of the effects of diminishing returns. *Id.* at ¶ 19.

Mr. Winger opines that \$1.50 to \$2.00 is the cost for signatures, and the corresponding cost to place a slate on the ballot for Kentucky’s Constitutional Office holders is \$73,500 to \$105,000 per election year. (Declaration Winger at ¶ 28). Mr. Winger notes that these costs are prohibitive for minor parties, and, to some extent, even for the major parties in Kentucky, as he cites the total amount raised by the Republican Party of Kentucky and certain Republican Party candidates for Constitutional office in the last couple election cycles. *Id.* at ¶ 30.

Both Mr. Moellman and Mr. Eckenburg confirm that the Libertarian Party candidates can raise slightly over \$100,000 in a major race, but those would be for the candidate and not the party, and that the LPKY could perhaps raise, at most \$50,000 in a particular election cycle. (Declaration Moellman ¶12; Declaration Eckenburg ¶17; Declaration Winger ¶36). Obviously, that does not include normal party functioning and costs of operation.

Ms. Krogdahl testifies that CPKY lacks financial resources to pay professional petitioners, circulates petitions themselves, and has never fielded more than one candidate in a single ballot cycle due to Kentucky’s ballot access provisions. (Declaration Krogdahl at ¶6). She confirms that it is not that CPKY lacks voter support to field candidates – but rather that voters are reluctant to sign more than one petition at a time. *Id.*

As Mr. Winger notes, minor parties typically lack significant financial resources. (Declaration Winger at ¶ 31). Furthermore, in states requiring 5,000 signatures or more, for a candidate or party, when one considers the burden of gathering *more than one petition*, the cost of signature collection alone is a burden when one considers the revenue available to the party

and effectively prevents that from obtaining ballot access. *Id.* at ¶ 32. Moreover, even where the party or candidate has sufficient resources to collect the requisite number of signatures to obtain ballot access on more than one petition, the cost of signature collection represents such a burden that they rarely have sufficient funds to conduct an effective campaign. *Id.*

Mr. Winger also discusses the state interest in avoiding a crowded or confusing ballot: his research has shown that “if a state requires at least 5,000 signatures, even if the state allowed a party petition or multiple candidates on the same petition, it will never have a crowded ballot, if ‘crowded ballot’ is defined as a ballot with more than 9 candidates for a single office.” *Id.* at ¶33.

He further notes that “[n]ationally, where as many as six (or even more) candidates have appeared on the general election ballot as candidates for statewide or federal office, which has occurred on at least 50 occasions since the principle of ‘avoiding voter confusion’ was first enunciated by the U.S. Supreme Court, there is and has been no evidence that there was any voter confusion in those elections.” *Id.* at ¶34.

Mr. Winger likewise confirms what history already shows: “it is impossible, or virtually impossible for a political party, other than the Democratic or Republican Party, to achieve general or automatic ballot access in Kentucky, by obtaining 2% or more in a Presidential race, in view of the modern political environment.” *Id.* at ¶37.

The impact of these ballot access provisions constitute a severe burden on minor political parties, and are remarkable when one considers that there is no way, other than obtaining signatures for each and every race, or receiving over 2% of the vote in a Presidential election, to establish ballot access in Kentucky for a political group. *Id.* at ¶38; (Declaration Moellman at ¶13). For instance, to field candidates for each partisan race in a given four-year election cycle

in the entire Commonwealth of Kentucky, the Republican or Democratic parties need only gather approximately 5,188 signatures state-wide; while minor parties must gather approximately 209,808 signatures.⁵ *Id.* Further adjusting these numbers to ensure access by building in an acceptable margin of safety outlined above of 1.5 to 1.75 times the signature minimum, 262,260 signatures are required. *Id.* Using simple math, the cost for a minor party to achieve this feat, using paid petitioners, is \$524,520. *Id.* That is more money than the Republican Party of Kentucky – a major party, that now holds the majority of Kentucky’s constitutional offices, and a majority in the Kentucky Senate – has raised in recent state-wide Constitutional office years. *Id.*

This analysis is contained in a chart attached to the declarations of Mr. Winger and Mr. Moellman, which Mr. Winger and Mr. Moellman prepared. (Declaration Moellman ¶14; Declaration Winger ¶39).

- e. There is significant additional evidence of the burdens of Kentucky’s ballot access scheme when applied to minor parties who desire to field more than one candidate per election cycle

As yet further evidence of the significant burden of Kentucky’s ballot access scheme, Kentucky is one of only twelve states that does not permit a political party to have a single petition be submitted for across-the-board ballot access for every partisan office in the state on a general election ballot – and the only state in the Sixth Circuit that does not permit a political party to qualify for automatic ballot access. (Declaration Winger ¶40).

Mr. Winger further notes that “[f]or Governor, the median state in the United States had 1.33 independent and minor party candidates on the ballot (on the average for each election) over the period 1990-2013.” *Id.* at ¶41. The average number of such candidates was 2.01. *Id.* But Kentucky only had .33 such candidates during that period. *Id.* Kentucky had the fewest of any

⁵ These numbers do not include partisan city offices; rather they include state-wide partisan offices at the county and state level.

state, except for Alabama, Washington, and New Mexico. *Id.* So it was the 4th worst in the country. *Id.*

These facts simply underscore the mechanisms provided for under Kentucky law, Kentucky does not treat independents and minor parties differently – rather, Kentucky does not give a minor party (i.e. a party that has failed to have its Presidential candidate achieve over 2% of the vote in a Presidential election) any practical or realistic means or mechanism to achieve ballot access. *Id.* at ¶44.

- f. Kentucky’s ballot access scheme simply does not further a state interest in any meaningful way, is not tailored to any such interest, and has less restrictive alternatives that are equal, if not better, to meeting any state interests at issue, without the corresponding burden on minor parties

Kentucky’s ballot access laws, as they are written, are not tailored towards measuring a modicum of support – they are instead keep candidates other than the Democratic and Republican candidates off the ballot, and appear designed to cause that result. *Id.* at ¶45. If Kentucky were interested in measuring public support for a candidate, group of candidates, or a political party, while preventing voter confusion or crowded ballot, they would (a) permit the circulation of a single petition to place multiple candidates of the same party on the ballot or (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle. *Id.*

Based on all of the foregoing, Kentucky’s ballot access regime, applied to non-Democratic and non-Republican parties, make it impossible to systemically place candidates on the ballot, and constitute an undue burden on minor parties, such as the Plaintiffs in this case. *Id.* at ¶46.

Ms. Tobin likewise concludes that “Kentucky’s ballot access laws, as they are written, are not tailored towards measuring a modicum of support – they are instead keep candidates

other than the Democratic and Republican candidates off the ballot, and appear designed to cause that result.” (Declaration Tobin at ¶20). If Kentucky were interested in measuring public support for a candidate, group of candidates, or a political party, they would permit the circulation of a single petition to place multiple candidates of the same party on the ballot. *Id.* Voters are significantly more likely to sign a single petition than more than one, regardless of the content of the petition. *Id.* Other than suppressing minor parties, there is no reason not to permit the circulation of a single petition to place multiple candidates on the ballot cycle. *Id.* Or, as an alternative to that, a single petition to place an entire party on the ballot for an election cycle would likewise measure public support for the party, which furthers a state interest, while not unduly and unnecessarily burdening minor parties. *Id.*

II. LAW AND ARGUMENT

A. Standard for Summary Judgment

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). On review of a summary judgment order, all evidence is construed in the light most favorable to the non-moving party. *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013). Plaintiffs submit that the evidence submitted herewith demonstrates no genuine issue of material fact, and therefore summary judgment is appropriate on their claims for declaratory relief and a permanent injunction.

B. Standard for Granting Temporary Restraining Orders, Preliminary Injunctions and Permanent Injunctions

When deciding whether to issue a temporary restraining order or preliminary injunction, the court must consider the following four factors:

- (1) Whether the movant has demonstrated a strong likelihood of success on the merits;
- (2) Whether the movant would suffer irreparable harm;
- (3) Whether issuance would cause substantial harm to others; and
- (4) Whether the public interest would be served by issuance.

Suster v. Marshall, 149 F.3d 523, 528 (6th Cir. 1998); *Northeast Ohio Coalition for the Homeless v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006). These "are factors to be balanced, not prerequisites that must be met." *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

When analyzing a motion for temporary restraining order or preliminary injunction, "the 'likelihood of success' prong is the most important [factor] and often determinative in First Amendment cases." *Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009); *see also Aristotle Pub. v. Brown*, 61 F. App'x 186, 188 (6th Cir. 2003). The standards for preliminary injunctions and permanent injunctions are essentially the same with the exception that for a permanent injunction the plaintiff must show actual success on the merits rather than the likelihood of success. *ACLU of Ky. v. McCreary County, Ky.*, 607 F.3d 439, 445 (6th Cir. 2010).

C. Kentucky's Ballot Access Laws Violate the First and Fourteenth Amendments (and Likelihood of Success on the Merits, and Success on the Merits)

The First Amendment of the U.S. Constitution provides, in relevant part, that "Congress shall make no law ... abridging the freedom of speech..." The First Amendment has been incorporated under the Fourteenth Amendment to apply to the states, including the Commonwealth of Kentucky, under *Gitlow v. New York*, 268 U.S. 652 (1925). The First Amendment likewise contains a guarantee of the freedom to associate. *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958). The Fourteenth Amendment likewise contains guarantees of liberty and equal protection.

1. Facial or as-applied?

The Sixth Circuit again had occasion to review Tennessee's ballot access regime in *Green Party of Tenn. v. Hargett*, 791 F.3d 684 (6th Cir. 2015) ("*Hargett I*"). *Hargett II* first addressed an important aspect of this challenge – whether it is facial or as-applied. The Court explained: "[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge." *Id.* at 691, citing *Citizens United v. FEC*, 558 U.S. 310, 331, (2010). "In fact, a claim can have characteristics of as-applied and facial challenges: it can challenge more than just the plaintiff's particular case without seeking to strike the law in all its applications." *Id.*, citing *John Doe No. 1 v. Reed*, 561 U.S. 186, 194, (2010). In constitutional challenges reaching beyond the plaintiff's circumstances, the plaintiff must satisfy the "standards for a facial challenge to the extent of that reach." *Id.*

For a facial challenge to a statute or court rule, the courts, and in light of risk that "enforcement of an overbroad law" may "deter[] people from engaging in constitutionally protected speech" and may "inhibit[] the free exchange of ideas," the overbreadth doctrine permits courts to invalidate a law on its face "if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *United States v. Stevens*, 130 S. Ct. 1577, 1587, 176 L. Ed. 2d 435, 443 (2010).

We submit that Kentucky's laws are unconstitutional both facially and as-applied.

2. Kentucky's laws are unconstitutional under the *Hargett* cases from the Sixth Circuit, *Williams v. Rhodes*, and *Storer v. Brown*

At the outset, and as noted by the Sixth Circuit recently in *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 539 (6th Cir. 2014) ("*Hargett I*"), "to be clear, this case does not involve Tennessee's rules regarding when a particular *candidate* may appear on the ballot; it involves

only the requirements a political *party* must meet.” Incidentally, the analysis is the same whether brought as a pure First Amendment Challenge, or an Equal Protection challenge, or both. *Obama for Am. v. Husted*, 697 F.3d 423, 430 (6th Cir. 2012).

First, “the right of individuals to associate in political organizations, and the right of citizens to cast a meaningful vote, are among the most important values in our democracy.” *Id.* at 545, citing *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 586 (6th Cir. 2006) and *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968). Furthermore, “[a]ssociational rights and voting rights are closely connected, since ‘the right to form a party for the advancement of political goals means little if a party can be kept off the election ballot.’” *Id.* But, “states may impose reasonable restrictions on ballot access to ensure that political candidates can show a ‘significant modicum of support’ from the public,” *Id.* citing *Jenness v. Fortson*, 403 U.S. 431, 442 (1971), “and to avoid ‘election- and campaign-related disorder,’” *Id.* citing *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997). As such, “State restrictions on ballot access therefore ‘are not automatically subjected to heightened scrutiny.’” *Id.*

In *Williams v. Rhodes*, 393 U.S. 23, the U.S. Supreme Court addressed Ohio’s ballot access regime. In that case, the State of Ohio required a new political *party* to submit a petition with a number of signatures equal to 15% of the votes cast in the last gubernatorial campaign. *Id.* at 25. The major parties, to remain on the ballot, needed to obtain votes equal to 10% of the last gubernatorial campaign. *Id.* And, “Ohio laws make no provision for ballot position for independent candidates as distinguished from political parties.” *Id.* The *Williams* Court was clear that “[n]o extended discussion is required to establish that the Ohio laws before us give the two old, established parties a decided advantage over any new parties struggling for existence

and thus place substantially unequal burdens on both the right to vote and the right to associate.”
Id. at 31.

Williams was likewise clear that “[t]he 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.” *Id.* “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.” *Id.* “In determining whether the State has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that ‘only a compelling state interest in the regulation of a subject within the State’s constitutional power to regulate can justify limiting First Amendment freedoms.’” *Id.*

Finding the laws unconstitutional, the Supreme Court in *Williams* directed the placement of the challenging political parties on the ballot, to the extent the state’s election machinery (i.e. printing of the ballots) was not compromised. *Id.* at 34.

Turning then to *Storer v. Brown*, 415 U.S. 724, 728 (1974), the U.S. Supreme Court observed that the “State must also provide feasible means for other political parties and other candidates to appear on the general election ballot.” Furthermore, “past experience [of electoral success] will be a helpful if not always an unerring guide.” *Id.* at 742. Moreover, “the political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other.” *Id.* at 745. As such, “the State must provide a feasible opportunity for new political organizations and their candidates to appear on the ballot.” *Id.* at 746.

Here, of course, Kentucky treats minor party candidates who do not (i) run a candidate for President; and (ii) achieve at least 2% of the vote, exactly like an independent candidate. To

be technical, applying Kentucky's laws on their face, Kentucky actually treats minor parties worse, since the laws on their face do not permit a minor party to place their candidates on the ballot period if they did not poll at least 2% in the last Presidential race. This presents a classic chicken and egg problem – the minor party cannot ever get a candidate on the ballot, and therefore cannot ever qualify to be on the ballot in the future. For purposes of a constitutionality analysis, the statute must be judged as written. *Eubanks v. Wilkinson*, 937 F.2d 1118 (6th Cir. 1991).

Taking the statutes as written, there is no way to place any candidates of the Libertarian or Constitution parties on any ballot in Kentucky. As written, they cannot ever achieve the results in the Presidential race, because they can never qualify for that access. But even putting those issues aside (which render Kentucky's ballot access scheme facially unconstitutional), the application by the Kentucky Board of Elections – Defendants in this case – of the petition requirements to minor political parties (as opposed to independent candidates), renders the statutes equally unconstitutional.

In either case, Kentucky simply does not “provide a feasible opportunity for new political organizations and their candidates to appear on the ballot.” *Storer*, 415 U.S. at 746.

Hargett I noted that the “U.S. Supreme Court articulated the contemporary standard for evaluating constitutional challenges to a state's election laws in *Anderson v. Celebrezze*, 460 U.S. 780, 788-89, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983), and again in *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992).” *Id.* at 546. “First, the court must ‘consider the character and magnitude of’ the plaintiff's alleged injury.” *Id.* Next, it “must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Id.* Finally, it must assess the “legitimacy and strength of each of those

interests," as well as the "extent to which those interests make it necessary to burden the plaintiff's rights." *Id.*

The Sixth Circuit in *Hargett I* explained that “[t]he first step in this analysis is important. When the restrictions imposed by the state are ‘severe,’ they will fail unless they are narrowly tailored and advance a compelling state interest.” *Id.* Conversely, if “the regulations are minimally burdensome and nondiscriminatory, rational-basis review applies, and the regulations will usually pass constitutional muster if the state can identify ‘important regulatory interests’ that they further.” *Id.* The Sixth Circuit then observed that “many regulations ‘fall in between these two extremes,’” in which case courts “engage in a flexible analysis, weighing the burden on the plaintiffs against the state's asserted interest and chosen means of pursuing it.” *Id.*

The Sixth Circuit then noted in *Hargett I* what is true here: “signature requirements as high as 5% are not facially invalid.” *Id.* But then the Court, in *Hargett I* went on to examine whether the Tennessee 2.5% petition requirement was unconstitutional as applied to the Plaintiffs in that case. *Id.* In *Hargett I*, the Sixth Circuit noted that “[t]o answer this question, we evaluate the effects of the signature requirement on the plaintiff political parties, keeping in mind that other aspects of Tennessee's ballot-access scheme might operate so as to make the signature requirement either harder or easier to meet.” *Id.* at 547.

Again – to be clear – Plaintiffs do not challenge the existence of a petition, requiring 5,000 signatures, to place a candidate (or party) on the ballot. Rather, Plaintiffs challenge the imposition and application of this requirement on minor parties to place more than one candidate in a given election cycle on the ballot and the inability to place the entire party on the ballot, as the major parties do, via petition.

The Sixth Circuit observed that “[w]hether a voting regulation imposes a severe burden is a question with both legal and factual dimensions.” *Id.* The Sixth Circuit likewise observed that “[i]f a restriction does not ‘affect a political party’s ability to perform its primary functions,’ such as organizing, recruiting members, and choosing and promoting a candidate, the burden typically is not considered severe.” *Id.*, citing *Blackwell*, 462 F.3d at 586.

The Sixth Circuit then held that “Tennessee’s ballot-access rules strike at the very heart of the plaintiffs’ primary functions and no doubt constrain their opportunities to effect political change. But this fact alone does not permit us to conclude that the burden is severe; we must also consider ‘the effect of the regulations on the voters, the parties and the candidates’ and ‘evidence of the real impact the restriction has on the [political] process.’” *Id.* Finding the record insufficiently developed on that point, particularly in light of recent changes to Tennessee’s ballot access laws in response to the litigation at issue, the Sixth Circuit remanded. *Id.*

The Sixth Circuit did credit the fact that “[p]ast experience will be a helpful, if not always an unerring, guide’ in evaluating the effects of a signature requirement” but noted that there was less relevance to past history given the fact that Tennessee had recently changed its ballot access scheme. *Id.* at 574-548. The Sixth Circuit then explained the kind of evidence it wanted to see to determine the constitutionality of the Tennessee ballot access scheme, including that the Plaintiffs “might survey states with ballot-access requirements similar to Tennessee’s current ones to determine whether minor parties have had success in appearing on the ballot in those states.” *Id.* at 549 fn4. Here, of course, we see Mr. Winger’s evidence that the State of Washington, which changed its ballot access scheme to a Presidential-only qualification mechanism, did not qualify any parties.

Past history in Kentucky has resulted in no ballot qualified minor parties, with four notable exceptions, over a 100-year period. The Sixth Circuit also observed that the Plaintiffs “might obtain affidavits from party organizers in other states describing the difficulties that they encounter complying with requirements similar to Tennessee’s.” *Id.* Here, Ms. Tobin, who operates nationally, explains that it is simply not possible or practical to run more than one petition at once.

The Sixth Circuit in *Hargett I* also expressed concern with the failing of the State: “we agree with the district court that the defendants have not, at least at this point, put forth compelling interests to support a signature requirement of 2.5%, rather than something lower.” *Id.* at 549.

Plaintiffs here challenge Kentucky’s ballot access laws as applied political parties other than the Democratic and Republican parties, such as the Plaintiffs (and their voters, such as Mr. Moellman), and in particular, those parties that desire to run one or more candidates in an election cycle.

The evidence submitted in support of this Motion establishes, that (a) the vast majority of states – but not Kentucky -- permit a minor party to obtain ballot qualification before any particular election, usually through petition, vindicating their state interests while not unnecessarily burdening minor party rights; (b) Kentucky’s ballot access laws are bad public policy, and are not tailored to support a state interest; (c) using a Presidential election as the sole barometer for ballot access for a political party is far too restrictive, and not rooted in any state interest; (d) The requirement to obtaining separate petitions for each candidate, when a political party desires to field multiple candidates, is not feasible, far too costly, and practically impossible for major parties, much less minor parties such as the Plaintiffs; (e) there is

significant additional evidence of the burdens of Kentucky's ballot access scheme when applied to minor parties who desire to field more than one candidate per election cycle; and (f) Kentucky's ballot access scheme simply does not further a state interest in any meaningful way, is not tailored to any such interest, and has less restrictive alternatives that are equal, if not better, to meeting any state interests at issue, without the corresponding burden on minor parties.

This case, like *Hargett II*, also involves both a First Amendment and Fourteenth Amendment challenge: "the plaintiffs argue that the ballot-retention statute denies them an equal opportunity to exercise their rights to association and political expression." *Id.* at 693. As with *Hargett II*, this Court should "start by determining the burden placed on recognized minor parties." *Id.* To maintain ballot access, the major parties (and minor parties) must achieve at least 2% in a Presidential year in Kentucky, at which point they remain on the ballot. The *Hargett II* Court noted that "a recognized minor party and a statewide political party might each receive 3% of the votes cast for gubernatorial candidates in the gubernatorial election held two years prior. The recognized minor party would lose ballot access because it did not receive the 5% retention percentage." *Id.* However, "[t]he statewide political party, in contrast, would retain ballot access because, by definition, it received at least 5% of the total votes cast for gubernatorial candidates in the most recent gubernatorial election." *Id.*

The Sixth Circuit in *Hargett II* concluded that the burden of the Tennessee ballot access regime was severe "[b]ecause recognized minor parties must obtain 5% of the total number of votes cast for gubernatorial candidates in the last gubernatorial election to retain ballot access ... considering that established major parties, which have more institutional knowledge and financial resources, are given four years to obtain the same level of electoral success." *Id.* In Kentucky, the burden is at least equal, if not worse – minor parties in Kentucky must achieve 2%

or more in a Presidential race (which Mr. Winger has testified to is the most burdensome and difficult race to poll in, as evidenced by statewide race results where the Libertarians, at least, have achieved well over the 2% threshold).

In *Hargett II*, Tennessee countered that differences in the parties justified the differing treatment, but the Sixth Circuit responded that “the differences between these two types of parties justify having less onerous burdens on recognized minor parties than statewide political parties.” *Id.* Moreover, as is the case here, “Tennessee's ballot-retention statute clearly imposes a heavier burden on minor parties than major parties by giving minor parties less time to obtain the same level of electoral success as established parties.” *Id.*

Nevertheless, “[b]ecause this statute imposes a greater burden on minor parties without a sufficient rationale put forth by the state, it violates the Equal Protection Clause. It impermissibly ‘freezes the status quo’ and does not allow ‘a real and essentially equal opportunity for ballot qualification.’” *Id.*

The same is true here. Obviously, Kentucky could, but has not, used less restrictive means of achieving any purported state interest: it could (a) permit the circulation of a single petition to place multiple candidates of the same party on the ballot; (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle; or (c) potentially utilize races, other than a Presidential race, as appropriate measures of support (though this also raises issues under *Hargett II*). In formulating any of these alternatives, Kentucky would have a fair amount of leeway (for instance, Kentucky could require 10,000 signatures for a party petition), or even require that such a petition be submitted by a particular date. But any of these alternatives are far less burdensome than the current scheme, which contains no such opportunities and prevents an impossible measure for minor parties to meet.

Either facially, or, in the event that fails, as applied, Plaintiffs have demonstrated actual success on the merits.

D. Irreparable Harm

"[T]o the extent that [the moving party] can establish a likelihood of success on the merits of its First Amendment claim, it also has established the possibility of irreparable harm as a result of the deprivation of the claimed free speech rights." *Connection Dist. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)). After all, the United States Supreme Court has repeatedly recognized, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)). The same is true of Equal Protection. *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) ("Courts have also held that a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights."). Having demonstrated likelihood of success, Plaintiffs have likewise demonstrated irreparable harm from the enforcement of the unconstitutional statutes – either facially – or as applied.

E. Harm to Others

There is no harm to others that is implicated if the state and local officials must obey the Constitution. *Mich. Chamber of Commerce v. Land*, 725 F. Supp. 2d 665 (E.D. Mich. 2010). *See, also, Foster v. Dilger*, 2010 U.S. Dist. LEXIS 95195 (EDKY 2010) (no substantial harm to others, even where registry incurred printing costs, where constitutional rights at stake); *ACLU v. McCreary County*, 96 F. Supp. 2d 679 (ED KY 2000) (no substantial harm to others).

F. Public Interest

As for the fourth factor, the public interest always strongly favors the vindication of constitutional rights and the invalidation of any state action, which infringes on those rights or chills their confident and unfettered exercise. *Mich. Chamber of Commerce v. Land*, 725 F. Supp. 2d 665 (E.D. Mich. 2010). "It is in the public interest not to perpetuate the unconstitutional application of a statute." *Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982); *see also G & V Lounge v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1999) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights.").

III. CONCLUSION

Plaintiffs have demonstrated their entitlement to (1) a temporary restraining order, preliminary injunction, and/or permanent injunction; and (2) summary judgment for declaratory and injunctive relief, directing Defendants to place Plaintiffs' duly nominated candidates on the Kentucky ballot. At a minimum, Plaintiffs have established cause for the immediate setting of a hearing to determine the merits of this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have sent a copy of the foregoing to all counsel of record via filing in the Court's CM/ECF system, which provides notice and service of same to each party of record, this 3 day of February, 2016.

/s/ Christopher Wiest
Christopher Wiest (KBA 90725)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

THE LIBERTARIAN PARTY OF KENTUCKY, et. al.	:	Case No. 3:15-CV-86 GFVT
	:	<i>Electronically Filed</i>
Plaintiffs	:	
v.	:	
	:	
ALISON LUNDERGAN GRIMES, et. al.	:	
Defendants	:	

**DECLARATION OF CYRUS ECKENBURG IN SUPPORT OF MOTION FOR
PRELIMINARY AND PERMANENT INJUNCTION**

Pursuant to 28 U.S.C. 1746, the undersigned, Cyrus Eckenburg, makes the following declaration, under penalty of perjury under the laws of the United States of America that the facts contained herein are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge:

1. My name is Cyrus Eckenburg, and I serve as the Secretary of the Libertarian Party of Kentucky (“LPKY”), and the representative of the LPKY authorized to give testimony on its behalf in the above captioned matter.
2. I am also a registered voter in the Commonwealth of Kentucky, and have been so registered at all times relevant thereto.
3. I am also registered as a Libertarian, and have been actively involved in the Libertarian Party of Kentucky and Kentucky politics generally. My rights to associate and vote for candidates from my political party are impaired by the actions and omissions of the Defendants in this case.

4. The LPKY and its members, have suffered an individualized and group harm from the acts and practices herein complained of, and, in particular, it is unable to consistently place its candidates on the ballot in Kentucky through petition or otherwise.
5. As a consequence of the Defendants actions and omissions, LPKY will and continues to suffer future harm that is likely to recur in the future. The LPKY typically fields candidates for local, state, and national elections, who will be subject to similar actions by Defendants in the future.
6. LPKY has just under 5,000 voters registered as Libertarians in Kentucky.
7. I am also authorized to speak for the Libertarian National Committee (“LNC”) as its representative insofar as this lawsuit is concerned. The LNC and its members, have suffered an individualized and group harm from the acts and practices of Defendants, both in the past and in the future.
8. Furthermore, the actions complained of will cause future harm and are likely to recur in the future, as the LNC typically fields candidates for local, state, and national elections, who will be subject to similar actions and restrictions similar to those complained of herein. In particular, the LNC is significantly impaired in running its candidates for office under the restrictive ballot access laws that this lawsuit challenges.
9. The LNC and LPKY have each engaged in repeated and systemic political activities in Kentucky, including fielding candidates for Presidential and other races. For instance, the LNC and LPKY have each participated in petition signature drives placing their candidates on the ballot for President every Presidential Election year since 1988.
10. The cost – both monetary and as a time commitment associated with Kentucky’s ballot access laws, generally results in LPKY and LNC only being able to undertake one

petition drive per year for one of their candidates, foreclosing them and their candidates from other opportunities. But for the challenged ballot access laws, LPKY and LNC would field more than one candidate, per year, for statewide and national office. Specifically, Kentucky permits the placement of an “independent” candidate on the ballot, by obtaining 5,000 signatures.

11. Of course, it is not merely enough to gather 5,000 signatures – sometimes non-registered voters sign petitions, sometimes people sign more than one, and for these, and other reasons, typically 1.5 to 1.75 times the required number is what is required as a practical matter to ensure the petition counts. 7,500 signatures are turned in, and up to 8,750 signatures may need to be obtained to ensure that a valid petition is submitted.
12. The LPKY has a significant modicum of support from Kentucky voters. For instance, the LNC and LPKY’s candidate in the 2014 U.S. Senate election, David Patterson, received 44,240 votes, which was 3.1% of the votes cast, despite being excluded from statewide televised debates that typically would boost vote results. In 2011, Ken Moellman, Jr. ran as the LPKY’s nominee for State Treasurer, achieving 37,261 votes, which was 4.61% of the votes cast. LPKY fares even better in local and county races, including partisan races, and have actually elected Libertarian candidates to county and local office. We do not fare as well in Presidential races as we do in state races, though always field candidates.
13. Kentucky does permit the placement of an “independent” candidate on the ballot, by obtaining 5,000 signatures, and the Board of Elections has permitted (perhaps without statutory authority) smaller parties to qualify on a candidate-by-candidate basis using this signature method. This may be an acceptable alternative for an “independent” candidate,

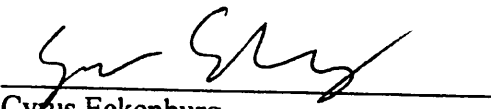
but it is an extremely poor threshold and a significant burden for a political party to field a slate of candidates, or even more than one or two candidates per election cycle. The burden of Kentucky's ballot access regime is why LPKY and LNC have never fielded more than one or two candidates in any statewide election per election cycle – Kentucky's laws and ballot access regime make it impossible as a practical matter to do so.

14. When professional petition gatherers are engaged, we have been charged at least \$2 per signature, regardless of whether or not the signature is valid. This, in turn, ends up costing at least \$17,500 per candidate, per race and election cycle. When someone runs a slate of candidates (i.e. for Governor/Lt. Governor, Auditor, Treasurer, Attorney General, Secretary of State, Commissioner of Agriculture), the total cost ends up being \$73,500 to \$105,000 per election year.
15. It is not impossible for the Libertarian Party, the third largest party in the Country, and the Commonwealth of Kentucky, to obtain these funds for a single race in a single election cycle. Too, it is not impossible to engage volunteers to gather some of these signatures for a single race in a single election cycle. While obtaining access in two races in a single election cycle is extremely difficult, it lies within the realm of possibility. But it is impossible or virtually impossible to obtain access in more than two races in any particular election cycle for any minor party, and, in many respects, it would be a difficult task even for one of the major political parties.
16. Even where the party or candidate has sufficient resources to collect the requisite number of signatures to obtain ballot access on more than one petition, the cost of signature

collection represents such a burden that they rarely have sufficient funds to conduct an effective campaign.

17. The Libertarian Party, which likely has the greatest ability to raise funds among the minor parties, could raise up or perhaps slightly over \$100,000 in a major race, for a candidate, but that would typically be for the candidate, not for the party. As a practical matter, the party could raise perhaps \$50,000 in an election cycle. These resource limitations constitute a barrier to recognition as a minor political party and to obtain ballot access for their candidates.
18. Kentucky's ballot access laws, as they are written, are not tailored towards measuring a modicum of support. If Kentucky were interested in measuring public support for a candidate, group of candidates, or a political party, while preventing voter confusion or crowded ballot, they would (a) permit the circulation of a single petition to place multiple candidates of the same party on the ballot or (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle.

Pursuant to 28 U.S.C. §1746, I declare under within the foregoing Declaration are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Executed on 1/27/16. 
Cyrus Eckenburg

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

THE LIBERTARIAN PARTY OF KENTUCKY, et. al.	:	Case No. 3:15-CV-86 GFVT
	:	<i>Electronically Filed</i>
Plaintiffs	:	
v.	:	
ALISON LUNDERGAN GRIMES, et. al.	:	
Defendants	:	

**DECLARATION OF KEN MOELLMAN, JR. IN SUPPORT OF MOTION FOR
PRELIMINARY AND PERMANENT INJUNCTION**

Pursuant to 28 U.S.C. 1746, the undersigned, Ken Moellman, Jr., makes the following declaration, under penalty of perjury under the laws of the United States of America that the facts contained herein are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge:

1. My name is Ken Moellman, Jr., a Plaintiff in the above captioned matter.
2. I am a registered voter in the Commonwealth of Kentucky, and have been a voter since turning 18.
3. I am also registered as a Libertarian, and have been actively involved in the Libertarian Party of Kentucky and Kentucky politics generally. For many years, I served as Chairman of the Libertarian Party of Kentucky, though no longer serve in that capacity. My rights to associate and vote for candidates from my political party are impaired by the actions and omissions of the Defendants in this case.
4. The cost – both monetary and as a time commitment associated with Kentucky’s ballot access laws, generally has resulted in the Libertarian Party of Kentucky (“LPKY”) and Libertarian National Committee (“LNC”) only being able to undertake one petition drive

per year for one of their candidates, foreclosing the parties and their candidates from other opportunities.

5. The LPKY has a significant modicum of support from Kentucky voters. For instance, the LNC and LPKY's candidate in the 2014 U.S. Senate election, David Patterson, received 44,240 votes, which was 3.1% of the votes cast, despite being excluded from statewide televised debates that typically would boost vote results. In 2011, I ran as the LPKY's nominee for State Treasurer, achieving 37,261 votes, which was 4.61% of the votes cast. We do not fare as well in Presidential races as we do in state races, though always field candidates. LPKY fares even better in local and county races, including partisan races, and have actually elected Libertarian candidates to county and local office.
6. But for the present ballot access restrictions, the LPKY and/or LNC would have run more candidates, more often, with greater success over time. Finally, the LNC and LPKY has also successfully placed its candidates for President on the ballot in Kentucky each Presidential election year since 1988.
7. Kentucky does permit the placement of an "independent" candidate on the ballot, by obtaining 5,000 signatures, and the Board of Elections has permitted (perhaps without statutory authority) smaller parties to qualify on a candidate-by-candidate basis using this signature method. This may be an acceptable alternative for an "independent" candidate, but it is an extremely poor threshold and a significant burden for a political party to field a slate of candidates, or even more than one or two candidates per election cycle. The burden of Kentucky's ballot access regime is why LPKY and LNC have never fielded more than one or two candidates in any statewide election per election cycle –

Kentucky's laws and ballot access regime make it impossible as a practical matter to do so.

8. Of course, it is not merely enough to gather 5,000 signatures – sometimes non-registered voters sign petitions, sometimes people sign more than one petition, sometimes valid voters sign illegibly on petitions that are excluded because they cannot be validated, and for these, and other reasons, typically 1.5 to 1.75 times the statutorily required number is what is required as a practical matter to ensure the petition counts. Thus, as a practical matter, at least 7,500 signatures are turned in, and up to 8,750 signatures may need to be obtained to ensure that a valid petition is submitted.
9. When professional petition gatherers are engaged, in Kentucky, I have never been involved where they charged less than \$2 per signature, regardless of whether or not the signature is valid. This, in turn, ends up costing at least \$17,500 per candidate, per race and election cycle. When someone runs a slate of candidates (i.e. for Governor/Lt. Governor, Auditor, Treasurer, Attorney General, Secretary of State, Commissioner of Agriculture), the total cost ends up being approximately \$105,000 per election year.
10. It is not impossible for the Libertarian Party, the third largest party in the Country, and the Commonwealth of Kentucky, to obtain these funds for a single race in a single election cycle. Too, it is not impossible to engage volunteers to gather some of these signatures for a single race in a single election cycle. While obtaining access in two races in a single election cycle is extremely difficult, it lies within the realm of possibility. But it is impossible or virtually impossible to obtain access in more than two races in any particular election cycle for any minor party, and, in many respects, it would be a difficult task even for one of the major political parties.

11. Even where the party or candidate has sufficient resources to collect the requisite number of signatures to obtain ballot access on more than one petition, the cost of signature collection represents such a burden that they rarely have sufficient funds to conduct an effective campaign.
12. The Libertarian Party, which likely has the greatest ability to raise funds among the minor parties, could raise up or perhaps slightly over \$100,000 in a major race, for a candidate, but that would typically be for the candidate, not for the party. As a practical matter, the party could raise perhaps \$50,000 in an election cycle. These resource limitations constitute a barrier to recognition as a minor political party and to obtain ballot access for their candidates.
13. The impact of these ballot access provisions constitute a severe burden on minor political parties, and are remarkable when one considers that there is no way, other than obtaining signatures for each and every race, or receiving over 2% of the vote in a Presidential election, to establish ballot access in Kentucky for a political group. For instance, to field candidates for each partisan race in a given four-year election cycle in the entire Commonwealth of Kentucky, the Republican or Democratic parties need only gather approximately 5,188 signatures state-wide; while minor parties must gather approximately 209,808 signatures.¹ Further adjusting these numbers to ensure access by building in an acceptable margin of safety outlined above of 1.5 to 1.75 times the signature minimum, 262,260 signatures are required. Using simple math, the cost for a minor party to achieve this feat, using paid petitioners, is \$524,520. That is more money than the Republican Party of Kentucky – a major party, that now holds the majority of

¹ These numbers do not include partisan city offices; rather they include state-wide partisan offices at the county and state level.

Kentucky's constitutional offices, and a majority in the Kentucky Senate – has raised in recent state-wide Constitutional office years.

14. I have attached, as **Exhibit B**, a true and accurate copy of a spreadsheet analysis that further outlines these signature requirements.

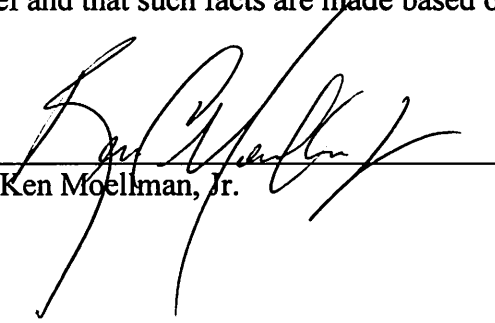
15. As yet further evidence of the significant burden of Kentucky's ballot access scheme, Kentucky is one of only twelve states that does not permit a political party to have a single petition be submitted for across-the-board ballot access for every partisan office in the state on a general election ballot – and the only state in the Sixth Circuit that does not permit a political party to qualify for automatic ballot access via a petition process.

16. These facts simply underscore the mechanisms provided for under Kentucky law, Kentucky does not treat independents and minor parties differently – rather, Kentucky does not give a minor party (i.e. a party that has failed to have its Presidential candidate achieve over 2% of the vote in a Presidential election) any practical or realistic means or mechanism to achieve general ballot access.

17. Kentucky's ballot access laws, as they are written, are not tailored towards measuring a modicum of support – instead they keep candidates other than the Democratic and Republican candidates off the ballot. If Kentucky were interested in measuring public support for a candidate, group of candidates, or a political party, while preventing voter confusion or crowded ballot, they would (a) permit the circulation of a single petition to place multiple candidates of the same party on the ballot or (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle.

Pursuant to 28 U.S.C. §1746, I declare under within the foregoing Declaration are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Executed on 1/27/16.



Ken Moellman, Jr.

Office	# Sigs Req D/R	# Sigs Req Non-D/R	2016			2018			2019			
			# Elected	# Sigs Non-D/R	# Sigs D/R	# Elected	# Sigs Non-D/R	# Sigs D/R	# Elected	# Sigs Non-D/R	# Sigs D/R	
Federal	President	2	5008	1	5008	2	0	0	0	0	0	0
	US Senator	2	5000	1	5000	2	0	0	0	0	0	0
	US House	2	400	6	2400	12	6	2400	12	0	0	0
State	Gov / LtGov	2	5000	0	0	0	0	0	0	1	5000	2
	Attny Gen	2	5000	0	0	0	0	0	0	1	5000	2
	Sec of State	2	5000	0	0	0	0	0	0	1	5000	2
	Auditor	2	5000	0	0	0	0	0	0	1	5000	2
	Treasurer	2	5000	0	0	0	0	0	0	1	5000	2
	Agriculture	2	5000	0	0	0	0	0	0	1	5000	2
	State Sen	2	100	19	1900	38	19	1900	38	0	0	0
	State House	2	100	100	10000	200	100	10000	200	0	0	0
Jud	Comm Attny	2	100	0	0	0	57	5700	114	0	0	0
	Circuit Clerk	2	100	0	0	0	120	12000	240	0	0	0
County	Judge/Exec	2	100	0	0	0	120	12000	240	0	0	0
	County Clerk	2	100	0	0	0	120	12000	240	0	0	0
	County Attny	2	100	0	0	0	120	12000	240	0	0	0
	Sheriff	2	100	0	0	0	120	12000	240	0	0	0
	Jailer	2	100	0	0	0	120	12000	240	0	0	0
	Coroner	2	100	0	0	0	120	12000	240	0	0	0
	PVA	2	100	0	0	0	120	12000	240	0	0	0
	Surveyor	2	100	0	0	0	120	12000	240	0	0	0
	Commissioner	2	100	0	0	0	45	4500	90	0	0	0
	Magistrate	2	20	0	0	0	575	11500	1150	0	0	0
	Constable	2	20	0	0	0	575	11500	1150	0	0	0
TOTAL NON-D/R			24308			155500			30000			
TOTAL D/R						254			4914			

	Non-D/R	D/R
TOTAL ACROSS DECADE 2017 – 2026	567416	14924
TOTAL ACROSS 4-YEAR CYCLE 2017 – 2020	209808	5180



CountyMagistrate

County	Formed	Seat(s)	Land Area	Population	Density	GOVT	# COM	# MAG
Adair	1802	Columbia	405	18656	46			7
Allen	1815	Scottsville	344	19956	58			5
Anderson	1827	Lawrenceburg	202	21421	106			6
Ballard	1842	Wickliffe	247	8249	33			5
Barren	1799	Glasgow	488	42173	87			7
Bath	1811	Owingsville	279	11591	42	COM	3	3
Bell	1867	Pineville	359	28691	80			5
Boone	1799	Burlington	246	118811	482	COM	3	3
Bourbon	1786	Paris	290	19985	69			7
Boyd	1860	Catlettsburg	160	49542	310	COM	3	3
Boyle	1842	Danville	180	28432	158			6
Bracken	1797	Brooksville	206	8488	41			8
Breathitt	1839	Jackson	492	13878	28			4
Breckinridge	1800	Hardinsburg	567	20059	35			6
Bullitt	1797	Shepherdsville	297	74319	250			5
Butler	1810	Morgantown	426	12690	30			5
Caldwell	1809	Princeton	345	12984	38			4
Calloway	1823	Murray	385	37191	97			4
Campbell	1795	Alexandria; Newport	151	90336	597	COM	3	3
Carlisle	1886	Bardwell	189	5104	27			3
Carroll	1838	Carrollton	129	10811	84			3
Carter	1838	Grayson	410	27720	68			5
Casey	1807	Liberty	444	15955	36			4
Christian	1797	Hopkinsville	718	73955	103			8
Clark	1793	Winchester	252	35613	141			6
Clay	1807	Manchester	469	21730	46			6
Clinton	1836	Albany	197	10272	52			6
Crittenden	1842	Marion	360	9315	26			6
Cumberland	1799	Burkesville	305	6856	22			4
Daviess	1815	Owensboro	458	96656	211	COM	3	3
Edmonson	1826	Brownsville	303	12161	40			6
Elliott	1869	Sandy Hook	234	7852	34			7
Estill	1808	Irvine	253	14672	58			3
Fayette	1780	Lexington	284	295803	1043	UCG	3	3
Fleming	1798	Flemingsburg	349	14348	41			6
Floyd	1800	Prestonsburg	393	39451	100			4
Franklin	1795	Frankfort	208	49285	237			6
Fulton	1845	Hickman	206	6813	33			4
Gallatin	1799	Warsaw	101	8589	85			4
Garrard	1797	Lancaster	230	16912	74			5
Grant	1820	Williamstown	258	24662	96			3
Graves	1824	Mayfield	552	37121	67	COM	3	3

CountyMagistrate

Grayson	1810	Leitchfield	497	25746	52			6
Green	1793	Greensburg	286	11258	39			5
Greenup	1804	Greenup	344	36910	107	COM	3	3
Hancock	1829	Hawesville	188	8565	46			4
Hardin	1793	Elizabethtown	623	105543	169			8
Harlan	1819	Harlan	466	29278	63			5
Harrison	1794	Cynthiana	306	18846	62			8
Hart	1819	Munfordville	412	18199	44			5
Henderson	1799	Henderson	437	46250	106			5
Henry	1799	New Castle	286	15416	54			6
Hickman	1822	Clinton	242	4902	20			3
Hopkins	1807	Madisonville	542	46920	87			7
Jackson	1858	McKee	345	13494	39			3
Jefferson	1780	Louisville	380	741096	1948	CLG	3	3
Jessamine	1799	Nicholasville	172	48586	282			6
Johnson	1843	Paintsville	262	23356	89	COM	3	3
Kenton	1840	Covington; Independence	160	159720	997	COM	3	3
Knott	1884	Hindman	352	16346	47			4
Knox	1800	Barbourville	386	31883	83			5
LaRue	1843	Hodgenville	262	14193	54			4
Laurel	1826	London	434	58849	136			6
Lawrence	1822	Louisa	416	15860	38			4
Lee	1870	Beattyville	209	7887	38			4
Leslie	1878	Hyden	401	11310	28			4
Letcher	1842	Whitesburg	338	24519	73			5
Lewis	1807	Vanceburg	483	13870	29			4
Lincoln	1780	Stanford	334	24742	74			4
Livingston	1799	Smithland	313	9519	30			4
Logan	1792	Russellville	552	26835	49			6
Lyon	1854	Eddyville	214	8314	39			3
Madison	1786	Richmond	437	82916	190			4
Magoffin	1860	Salyersville	308	13333	43			3
Marion	1834	Lebanon	343	19820	58			5
Marshall	1842	Benton	301	31448	104	COM	3	3
Martin	1870	Inez	230	12929	56			5
Mason	1789	Maysville	240	17490	73	COM	3	3
McCracken	1825	Paducah	249	65565	264	COM	3	3
McCreary	1912	Whitley City	427	18306	43			4
McLean	1854	Calhoun	252	9531	38			4
Meade	1824	Brandenburg	305	28602	94			6
Menifee	1869	Frenchburg	204	6306	31			5
Mercer	1786	Harrodsburg	249	21331	86			6
Metcalfe	1860	Edmonton	290	10099	35			4

CountyMagistrate

Monroe	1820	Tompkinsville	329	10963	33			5
Montgomery	1797	Mount Sterling	197	26499	134	COM	3	3
Morgan	1823	West Liberty	381	13923	37			5
Muhlenberg	1799	Greenville	467	31499	67			5
Nelson	1785	Bardstown	418	43437	104			5
Nicholas	1800	Carlisle	195	7135	37			5
Ohio	1799	Hartford	587	23842	41			6
Oldham	1824	La Grange	187	60316	322			8
Owen	1819	Owenton	351	10841	31			4
Owsley	1843	Booneville	197	4755	24			3
Pendleton	1799	Falmouth	277	14877	54			4
Perry	1821	Hazard	340	28712	85			3
Pike	1822	Pikeville	787	65024	83			6
Powell	1852	Stanton	179	12613	70			5
Pulaski	1799	Somerset	658	63063	96			5
Robertson	1867	Mount Olivet	100	2282	23			6
Rockcastle	1810	Mount Vernon	317	17056	54			5
Rowan	1856	Morehead	280	23333	83			4
Russell	1826	Jamestown	254	17565	69			5
Scott	1792	Georgetown	282	47173	167			7
Shelby	1792	Shelbyville	380	42074	111			7
Simpson	1819	Franklin	234	17327	74			4
Spencer	1824	Taylorsville	187	17061	91			5
Taylor	1848	Campbellsville	266	24512	92			6
Todd	1820	Elkton	375	12460	33			5
Trigg	1820	Cadiz	441	14339	32			7
Trimble	1837	Bedford	152	8809	58			4
Union	1811	Morganfield	343	15007	44			5
Warren	1797	Bowling Green	542	113792	210			6
Washington	1792	Springfield	297	11717	39			6
Wayne	1800	Monticello	458	20813	45			4
Webster	1860	Dixon	332	13621	41			3
Whitley	1818	Williamsburg	438	35637	81			4
Wolfe	1860	Campton	222	7355	33			3
Woodford	1789	Versailles	189	24939	132			8
TOTAL							45	575

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

THE LIBERTARIAN PARTY OF KENTUCKY, et. al.	:	Case No. 3:15-CV-86 GFVT
	:	<i>Electronically Filed</i>
Plaintiffs	:	
v.	:	
	:	
ALISON LUNDERGAN GRIMES, et. al.	:	
Defendants	:	

**DECLARATION OF MARTHINE KROGDAHL IN SUPPORT OF MOTION FOR
PRELIMINARY AND PERMANENT INJUNCTION**

Pursuant to 28 U.S.C. 1746, the undersigned, Marthine Krogdahl, makes the following declaration, under penalty of perjury under the laws of the United States of America that the facts contained herein are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge:

1. My name is Marthine Krogdahl, though I commonly go by Tina, and I serve as the Treasurer of the Constitution Party of Kentucky (“CPKY”), and the representative of the CPKY authorized to give testimony on its behalf in the above captioned matter.
2. I am also a registered voter in the Commonwealth of Kentucky, and have been so registered at all times relevant thereto.
3. I am also registered as a Constitution Party voter, and have been actively involved in the Constitution Party of Kentucky and Kentucky politics generally. My rights to associate and vote for candidates from my political party are impaired by the actions and omissions of the Defendants in this case.

of the defendant in the case.

and also for services from any business based on either of the above and otherwise.

3. I am also referred to as a Contractor (and owner and sole person), involved in the

3. I am also a referred to as a Contractor (and owner and sole person)

3. I am also a referred to as a Contractor (and owner and sole person)

from the state based on all business relationships:
this contract is for the use and subject to the rest of all other rights and powers and any other
provisions under benefit of federal under the rules of the United States of America that the
contract is to be used for the purposes of the contract makes the contract

**DECLARATION AND VERIFICATION OF THE
DISTRIBUTION OF THE STATE OF MICHIGAN IN THE STATE OF MICHIGAN FOR**

DECLARATION	:	
STATE OF MICHIGAN	:	
DECLARATION	:	
DECLARATION	:	DECLARATION
DECLARATION	:	DECLARATION

**DECLARATION OF THE
STATE OF MICHIGAN
DECLARATION OF THE STATE OF MICHIGAN**

4. The CPKY and its members have suffered an individualized and group harm from the acts and practices herein complained of, and, in particular, it is unable to consistently place its candidates on the ballot in Kentucky through petition or otherwise.
5. As a consequence of the Defendants actions and omissions, CPKY will and continues to suffer future harm that is likely to recur in the future. The CPKY attempts to field, and has fielded candidates for local, state, and national elections, who will be subject to similar actions by Defendants in the future.
6. CPKY generally lacks the financial resources to pay professional petitioners. In the last four years, the party has raised less than \$1,000 per year. As such, our members circulate petitions themselves. Fielding a single candidate for a statewide race or President is a momentous undertaking – but is possible. CPKY cannot, and has never, fielded more than a single candidate for statewide office in a given ballot cycle – the ballot access provisions challenged in this suit prevent us from doing so. It is not that we lack the support to do so, since we can gather the 5,000 signatures. It is instead that voters are reluctant to sign more than one petition, and, as a consequence, we cannot run more than one petition and signature drive in a single election cycle.
7. The Constitution Party qualified its candidate for ballot access in 2008 for the Presidential election. The Constitution Party of Kentucky would, but for the challenged ballot access laws, field candidates for state and federal office on a regular basis. In 2010, the Constitution Party of Kentucky ran a candidate for the 79th State House District, Robert Thornsberry, who secured 27.4% of the vote in that election. If the State House race counted towards qualification as a Political Organization or Political Party, it would have qualified Constitution Party Candidates for ballot access as a Political Party.

The CRKY and its members have suffered an individualized and group harm from the state and practices herein complained of and, in particular, it is unable to effectively place its candidates on the ballot in Kentucky through petition or otherwise. As a consequence of the Defendant's actions and omissions, CRKY will and continues to suffer future harm that is likely to recur in the future. The CRKY attempts to field and its fielded candidates for local, state, and national elections, who will be subject to the same actions by Defendants in the future.

CRKY generally lacks the financial resources to pay professional politicians. In the last four years, the party has raised less than \$100,000 per year. As such, our members contribute to a single candidate for a statewide race or president as a means of maintaining CRKY's name and has never fielded more than a single candidate for statewide office in a given ballot cycle - the ballot access provisions changed in this suit prevent us from doing so. It is not that we lack the support to do so since we can gather the 2,000 signatures. It is instead that we are reluctant to sign more than one petition, and as a consequence we cannot run more than one petition and signature drive in a single election cycle.

The Constitution Party qualified its candidate for ballot access in 2008 for the Presidential election. The Constitution Party of Kentucky would petition for its candidate for state and federal office on a regular basis. In 2010, the Constitution Party of Kentucky ran a candidate for the 79th State House District, Robert Thompson, who secured 27.1% of the vote in that election. If the State House race counted towards qualification as a Political Organization or Political Party, it would have qualified Constitution Party Candidates for ballot access as a Political Party.

8. The preceding paragraphs also demonstrates a significant modicum of support from Kentucky's voters (when we are able to place our candidates on the ballot).
9. Kentucky does permit the placement of an "independent" candidate on the ballot, by obtaining 5,000 signatures, and the Board of Elections has permitted (perhaps without statutory authority) smaller parties to qualify on a candidate-by-candidate basis using this signature method. This may be an acceptable alternative for an "independent" candidate, but it is an extremely poor threshold and a significant burden for a political party to field a slate of candidates, or even more than one or two candidates per election cycle. The burden of Kentucky's ballot access regime is why CPKY has never fielded more than one candidate in any statewide election per election cycle – Kentucky's laws and ballot access regime make it impossible as a practical matter to do so.
10. Kentucky's ballot access laws, as they are written, are not tailored towards measuring a modicum of support. If Kentucky were interested in measuring public support for a candidate, group of candidates, or a political party, while preventing voter confusion or crowded ballot, they would (a) permit the circulation of a single petition to place multiple candidates of the same party on the ballot or (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle.

Pursuant to 28 U.S.C. §1746, I declare under within the foregoing Declaration are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Executed on January 26 2016

Marthine Krogdahl
Marthine Krogdahl

...the receiving parties also demonstrate a significant reduction of support from Kennedy's voters (when we see this to place our candidates on the ballot). Kennedy does permit the placement of an "independent" candidate on the ballot of receiving 2,000 signatures and the board of elections has permitted (perhaps without statutory authority) similar parties to qualify on a candidate-by-candidate basis using this signature method. This may be an acceptable alternative for an "independent" candidate but it is an extremely low threshold and a significant barrier for a political party to have a slate of candidates on a ballot when there are two candidates per election cycle. The burden of Kennedy's ballot access regime is why CTRP has never failed more than one candidate in any statewide election per election cycle - Kennedy's laws and ballot access regime make it impossible as a practical matter to do so.

10. Kennedy's ballot access laws as they are written are not tailored towards measuring a minimum of support. If Kennedy were interested in measuring public support for a candidate group of candidates on a political party, which preventing voter confusion or crowded ballot they would (a) permit the election of a single election to place multiple candidates on the same party on the ballot or (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle.

Exhibit 33 of 31 V&E 1 defines under within the foregoing Declaration and the attached cover to the best of my knowledge and belief, and that each fact was made based on my personal knowledge.

Executed on _____
Marlene Kopsch

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

THE LIBERTARIAN PARTY OF KENTUCKY, et. al.	:	Case No. 3:15-CV-86 GFVT
	:	<i>Electronically Filed</i>
Plaintiffs	:	
v.	:	
	:	
ALISON LUNDERGAN GRIMES, et. al.	:	
Defendants	:	

**DECLARATION OF CHRISTINA TOBIN IN SUPPORT OF MOTION FOR
PRELIMINARY AND PERMANENT INJUNCTION**

Pursuant to 28 U.S.C. 1746, the undersigned, Christina Tobin, makes the following declaration, under penalty of perjury under the laws of the United States of America that the facts contained herein are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge:

1. My name is Christina Tobin, and I have agreed to serve as an expert witness for the Plaintiffs in the above captioned matter.
2. The terms of my engagement with the Plaintiffs in the above captioned matter are that I will be compensated \$100 per hour for all pretrial work and analysis, and \$150 per hour for all testimony, billed on the tenth of an hour.
3. My name is Christina Tobin. I am the founder and Chair of The Free & Equal Elections Foundation, and President and Chief Executive Officer of Free and Equal, Inc. I also serve on the board of the Coalition for Free and Open Elections. I have a Bachelor's degree from Saint Mary's University in Minnesota.
4. Free & Equal Elections Foundation ("FEEF") is a 501(c)(3) non-profit, non-partisan, grassroots organization, whose mission is to empower American voters through

education and advocacy of electoral reforms. During the 2008 Presidential Election, FEEF hosted a presidential debate in Washington D.C. between Independent candidate Ralph Nader, Constitution Party candidate Chuck Baldwin, and others. This debate was broadcast live on C-SPAN2 in prime time. In 2012, FEEF sponsored another debate between third party candidates Gary Johnson (Libertarian Party), Jill Stein (Green Party), Virgil Goode (Constitution Party), and Rocky Anderson (Justice Party), which was moderated by Larry King.

5. Free and Equal, Inc. is a non-partisan, full-service ballot access consulting and petitioning firm that specializes in independent and third party candidates. We do not endorse or discriminate against any particular viewpoints or parties, and, in fact, have gathered signatures for a variety of parties.
6. I began my career as a non-partisan ballot access coordinator and organizer. Among other things, I have assisted in the gathering and defense of over 1 million signatures for independents, the Green Party, Constitution Party, Republican Party, Democratic Party, Libertarian Party, and the Socialist Equality Party.
7. In 1998, I helped gather, and defend, over 60,000 signatures for James Tobin (my father), who was running for Governor of Illinois. In 2002, I personally gathered over 5,000 signatures in Illinois, over the course of many months, and then helped defend the overall petition and signature gathering effort for Cal Skinner, who was running for Governor, along with James Tobin (my father) who was running for Lieutenant Governor, for the Libertarian Party.
8. In 2004, I helped coordinate and then defended the gathering of over 29,000 signatures in Illinois for Ralph Nader, who was running as an independent for President. In 2006, I

helped coordinate and defend the gathering of 39,000 signatures for Rich Whitney, who was running for Green Party candidate for governor in Illinois.

9. In 2008, I served as Ralph Nader's national ballot access coordinator, and, in that capacity, helped collect and coordinate the collection of more than 500,000 signatures to put Ralph Nader on the ballot in the District of Columbia and 45 state presidential ballots. This effort resulted in more signatures being gathered for Mr. Nader than any other third party or independent candidate. In the same period, I organized successful petition drives in Illinois, Pennsylvania, Connecticut, and New York.
10. In an effort to prepare to testify in this matter, I reviewed various materials. Among the materials I have reviewed or relied on, without limitation, in providing my testimony, are (a) Kentucky's current laws on ballot access, (b) the factual testimony of the fact witnesses in this matter, (c) my knowledge, expertise, and experience of ballot access and signature gathering practices across the United States and in each of the states, and (d) my experience and professional background of someone who works with groups and individuals that attempt, or who actually obtain, signatures to gather ballot access.
11. The opinions rendered herein are rendered to a reasonable degree of certainty and based on the materials in the preceding paragraph, as well as my education, training, and experience.
12. While it is possible for individuals or political groups to gather signatures themselves, particularly where an individual signature threshold is 5,000 signatures or less, typically where more than 500 signatures must be gathered, candidates or political groups will engage the services of a professional petitioning company, such as my company, FE.

13. It is not possible to gather more than 5,000 signatures without the use of either an extremely organized, and typically large, group of volunteers, or the use of a professional paid petitioner.
14. Paid petitioning firms charge between \$1.50 to \$2.00 for a signature. The amount charged depends on certain factors, including the experience and reputation of the firm, and the difficulty of petitioning in certain geographical areas. Most reputable firms charge \$2.00 per signature, including my company, Free & Equal, Inc. This amount is charged regardless of whether or not the signature is a “good” signature, or is subsequently identified as valid.
15. The amounts cited above are for a single petition. It becomes exponentially more difficult to have a voter sign more than one petition at a time. Successful Petitioning is about time and an effective petitioner is someone who learns how to be fast.
16. My rule of thumb, based on years of gathering signatures for petitions, is that typically approximately 50% of the voters that are approached in any particular signature drive will sign one petition. Approximately 25% of that number will typically sign two (which means that only 12.5% of the total voters approached will sign two). Approximately 2% of the voters approached will sign three. And less than 1 in 100 voters will sign four or more. These numbers hold true, regardless of the number of issues or candidates on one petition. In other words, it is substantially easier to obtain 5,000 signatures on a single petition that places two, or more, candidates on a ballot, than it is to have to gather separate petitions at the same time.
17. When one looks at the Kentucky constitutional office holders, which are held in odd years, the burden is significant, and virtually impossible, for a minor party to field an

entire slate of candidates. The cost alone is more than a minor party can afford, and it is not possible to engage in one single petition drive effort to put that many candidates on the ballot.

18. Based on these trends, it is unusual for me, or my company to ever take an engagement where we need to circulate three or more separate petitions in the same area in the same election cycle – even one for a candidate and one for a referendum effort. That is because the effort must largely be repeated completely once a petition gatherer has to circulate three or more petitions at the same time.

19. For the same reason, there is no cost savings to be had for people or political groups who engage us for circulating more than one petition, because of the effects of diminishing returns.

20. Kentucky's ballot access laws, as they are written, are not tailored towards measuring a modicum of support – they are instead keep candidates other than the Democratic and Republican candidates off the ballot, and appear designed to cause that result. If Kentucky were interested in measuring public support for a candidate, group of candidates, or a political party, they would permit the circulation of a single petition to place multiple candidates of the same party on the ballot. As I indicated above, voters are significantly more likely to sign a single petition than more than one, regardless of the content of the petition. Other than suppressing minor parties, there is no reason not to permit the circulation of a single petition to place multiple candidates on the ballot cycle. Or, as an alternative to that, a single petition to place an entire party on the ballot for an election cycle would likewise measure public support for the party, which furthers a state interest, while not unduly and unnecessarily burdening minor parties.

Pursuant to 28 U.S.C. §1746, I declare under within the foregoing Declaration are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Executed on 1/25/16

Christina Tobin
Christina Tobin

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION**

THE LIBERTARIAN PARTY OF KENTUCKY, et. al.	:	Case No. 3:15-CV-86 GFVT
	:	<i>Electronically Filed</i>
Plaintiffs	:	
v.	:	
	:	
ALISON LUNDERGAN GRIMES, et. al.	:	
Defendants	:	

**DECLARATION OF RICHARD WINGER IN SUPPORT OF MOTION FOR
PRELIMINARY AND PERMANENT INJUNCTION**

Pursuant to 28 U.S.C. 1746, the undersigned, Richard Winger, makes the following declaration, under penalty of perjury under the laws of the United States of America that the facts contained herein are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge:

1. My name is Richard Winger, and I have agreed to serve as an expert witness for the Plaintiffs in the above captioned matter.
2. The terms of my engagement with the Plaintiffs in the above captioned matter are that I will be compensated \$125 per hour for all pretrial work and analysis, and \$200 per hour for all testimony, billed on the tenth of an hour.
3. I have significant experience with ballot access issues in the United States for the past several decades, have served as the Editor of the *Ballot Access News*, from 1985 to the present. I have been accepted as an expert by various courts, and presented testimony in various ballot access cases, including the Sixth Circuit Court of Appeals in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006), and by Courts within the Sixth Circuit, including the Middle District of Tennessee in *Green Party of Tennessee v.*

Hargett, 882 F.Supp.2d 959 (MD Tenn. 2012), and in the Eastern District of Kentucky in *Libertarian Party of Kentucky v. Ehrler*, 776 F. Supp. 1200 (EDKY 1991). I have also been published in various publications, been interviewed by national news media. A true and accurate copy of my *Curriculae Vitae* is attached hereto as **Exhibit A**.

4. In addition to the foregoing, I have been personally involved with ballot access drives, and have been consulted on strategies and efforts to obtain ballot access – typically by the so called “minor parties,” (i.e. the parties other than the Republican and Democratic parties) in the United States, including the Constitution Party, the Green Party, and the Libertarian Party. Those interactions include interactions with petitioners, and party organizers who are involved in petition drives.
5. In an effort to prepare to testify in this matter, I reviewed various materials. Among the materials I have reviewed or relied on, without limitation, in providing my testimony, are (a) election records from Kentucky for approximately the past one hundred years, which are public records in Kentucky, (b) Kentucky’s current and past laws on ballot access, (c) the factual testimony of the fact witnesses in this matter, (d) my knowledge and research of ballot access practices across the United States and in each of the states, (e) my experience as an expert who works with groups and individuals that attempt, or who actually obtain, ballot access.
6. The opinions rendered herein are rendered to a reasonable degree of certainty and based on the materials in the preceding paragraph, as well as my education, training, and experience.
7. Kentucky law does not grant automatic status as a ballot-qualified political party unless that party receives over 2% of the vote in a Presidential election. K.R.S. 118.015, K.R.S.

118.305(1)(e), and K.R.S 118.305. If a political party's candidate receives over that percentage vote, that party may nominate its candidates, and place them on the general election ballot, for a period of four years, with no further steps insofar as the Commonwealth of Kentucky is concerned. There is no other way for a political party to receive automatic ballot access – even if they run candidates in other statewide races.

8. Thirty-eight states permit a political group to transform itself into a ballot qualified party before any particular election, and before it has chosen any nominees. This aspect of ballot access law in these 38 states is very useful for groups that wish to become qualified parties, yet who do not yet have any nominees. For example, in 2010, a group called Americans Elect announced it intended to qualify itself as a political party in as many states as possible, and then it said it would let all the voters of the United States vote in an on-line presidential primary to determine who the Americans Elect presidential nominee would be. Americans Elect proceeded to qualify itself as a party in 31 states during 2011 and early 2012. But because Kentucky has no procedure for a group to become a qualified party before it has chosen its nominees, Americans Elect was unable to qualify in Kentucky.¹
9. Of the remaining 12 states, in ten of those states, even though a group must choose nominees before it can begin to get itself and its nominees on the ballot, at least the group can become a qualified party by polling a certain share of the vote in a midterm year. But Kentucky doesn't even allow that. Washington and Kentucky are the only states it in

¹ Ultimately, the group abandoned the effort on May 17, 2012, indicating it had decided not to run anyone for President after all.

which it is impossible for a group to become a qualified party at any time except in November of a presidential election year.

10. Some of the most important new political parties in U.S. history were formed in midterm years. The Republican Party was formed on July 6, 1854, a midterm year. It went on to win a plurality of the US House of Representatives in the fall 1854 election. If a new important party were formed in the United States in our era, in a midterm year, such a group would not be able to become a qualified party in Kentucky for over two years.
11. Kentucky's policy of not permitting a group to become a qualified party except through its polling 2% for President is bad policy for two reasons. First, it makes it impossible for any party to be ballot-qualified in Kentucky if it is only interested in state political issues. There have been many one-state parties formed in the United States that only desired to influence state policy, and many of them have been successful. For example, the Progressive Party of Vermont has eight state legislators, and yet it never runs anyone for President. If Vermont had a law like Kentucky's, the Progressive Party couldn't attain qualified status.
12. The other reason Kentucky's definition of a ballot-qualified party is bad policy is that it is too restrictive. Although 2% sounds low to the ear, in practice minor parties in the U.S. do far better for all partisan offices than they do for President. Therefore, making president the only office that counts for attaining qualified status is severely restrictive. The Libertarian Party has elected state legislators in Alaska, New Hampshire, and Vermont, and has a state legislator now in Nevada (Assemblyman John Moore recently switched his party membership from Republican to Libertarian). But the Libertarian Party has never polled as much as 2% for President. At one time or another,

it has been a qualified party in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, DC, Florida, Georgia (for statewide office only), Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming (41 states and D.C.). But if every state had the Kentucky definition of a ballot-qualified party, the Libertarian Party would never have been a qualified party in any state.

13. Kentucky utilizes a three tiered system for political groups and ballot access. At the top of the tier are “Political Parties.” They are defined in K.R.S. 118.015(1) as follows: “A ‘political party’ is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and whose candidate received at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for.” Next are “Political Organizations.” They are defined in K.R.S. 118.015(8) as follows: “‘Political organization’ means a political group not constituting a political party within the meaning of subsection (1) of this section but whose candidate received two percent (2%) or more of the vote of the state at the last preceding election for presidential electors.” Finally, there are “Political Groups.” They are defined in K.R.S. 118.015(9) as follows: “‘Political group’ means a political group not constituting a political party or a political organization within the meaning of subsections (1) and (8) of this section.”

14. Pursuant to K.R.S. 118.305(1)(a),(b),(c), and (d), candidates for Political Parties and Political Organizations automatically earn ballot access, and do so for a four year period following the presidential election.
15. While the statutes are not specific, the Kentucky Board of Elections has determined that third party candidates, such as those of the Libertarian and Constitution parties, are to be treated as “independent candidates” under K.R.S. 118.305(1)(e), and thus may individually qualify for ballot access by obtaining the number of signatures required in K.R.S. 118.315(2). For statewide office, 5,000 signatures are required; for a Congressional district, 400 signatures are required; for a state house or senate district, 100 signatures are required.
16. A separate petition, with signatures, is required for each candidate and there is no method for a political group to become ballot qualified across the board, except through the results of the Presidential election. The only time and method by which a political group can become a Political Party or Political Organization, and thus achieve automatic or general ballot access for a four-year period, is by receiving votes in the Presidential election.
17. One of the things that U.S. Supreme Court directs courts (and also experts in ballot access cases) to look at is the historical results of ballot access by a candidate or party. Those facts weigh heavily in favor of a finding of a severe burden in this case.
18. Historically in Kentucky, at least for the past 100 years, with four exceptions, the only Political Parties or Political Organizations that qualified for automatic ballot access for a political group or party was the Democratic and Republican Parties. The first exception was 1924 (91 years ago), when Robert La Follette received 4.72% in Kentucky under the

Progressive party, which qualified that party as a Political Organization. In 1968 George Wallace was the nominee of the American Party in Kentucky, and received 18.3% of the vote, which qualified that party as a Political Organization. In 1980 John Anderson used the ballot label "Anderson Coalition" in Kentucky and received over 2.4% of the vote, so that party was a Political Organization and qualified that party for ballot access in 1981, 1982, 1983, and 1984. In 1996 Ross Perot ran under the "Reform" party, received 6.91% of the vote, qualifying that party as a Political Organization gave that party ballot access in 1997, 1998, 1999, and 2000.

19. Moreover, as further evidence of the burden of Kentucky's ballot access scheme on minor parties, Kentucky is one of only 5 states that hasn't had any ballot-qualified **parties**, other than from the Democratic or Republican parties, in the last 15 years. The others are New Jersey, Pennsylvania, Virginia, and New Hampshire.
20. Even if a state were to provide that the only way for a political group or party to achieve automatic ballot access was by means of results in a single race, the most burdensome race in which to poll is the Presidential election. In all other states, except for Kentucky and Washington, there are other elections (particularly mid-term elections), or a petition mechanism, in which to put a party generally on the ballot. Prior to 2009, the State of Washington permitted a party to obtain ballot access generally by obtaining 5% of the vote in any statewide election. In 2009, Washington changed its law, only permitting the Presidential race to count, just like Kentucky does. Prior to 2009, minor parties, including the Libertarian Party, could and did qualify for ballot access in statewide races in Washington. Since 2009, no minor party has achieved statewide ballot access generally in Washington.

21. The cost – both monetary and as a time commitment associated with Kentucky’s ballot access laws, generally has resulted in the Libertarian Party of Kentucky (“LPKY”) and Libertarian National Committee (“LNC”) only being able to undertake one petition drive per year for one of their candidates, foreclosing the parties and their candidates from other opportunities.
22. For the Constitution Party of Kentucky (“CPKY”), Kentucky’s ballot access regime has kept them off of the ballot in every statewide race but Presidential races in the last several decades.
23. Thus, the Kentucky ballot access regime constitutes a severe burden on minor political parties fundamental functions as a political party, namely the ability to field candidates for office.
24. As an aside, both the LPKY and the CPKY have a significant modicum of support from Kentucky voters. For instance, the LNC and LPKY’s candidate in the 2014 U.S. Senate election, David Patterson, received 44,240 votes, which was 3.1% of the votes cast, despite being excluded from statewide televised debates that typically would boost vote results. In 2011, the LPKY ran Ken Moellman, Jr. as a candidate for State Treasurer, where he achieved 37,261 votes, which was 4.61% of the votes cast. In 2006, the LPKY ran Brian Houillion as a candidate for Congress in Kentucky’s 4th Congressional District, where he received 10,100 votes, which was 4.93% of the votes cast. But for the present ballot access restrictions, the LPKY and/or LNC would have run more candidates, more often, with greater success over time. Finally, the LNC and LPKY has also successfully placed its candidates for President on the ballot in Kentucky each Presidential election year since 1988.

25. The Constitution Party also has achieved a significant modicum of support – it ran a candidate for the 79th Kentucky House District in 2010, Robert Thornsberry and achieved 27.4% of the vote in that race. It has also achieved ballot access in a Presidential race in Kentucky by gathering signatures in the 2008 Presidential Race.
26. Kentucky does permit the placement of an “independent” candidate on the ballot, by obtaining 5,000 signatures, and the Board of Elections has permitted (perhaps without statutory authority) smaller parties to qualify on a candidate-by-candidate basis using this signature method. This may be an acceptable alternative for an “independent” candidate, but it is an extremely poor threshold and a significant burden for a political party to field a slate of candidates, or even more than one or two candidates per election cycle. The burden of Kentucky’s ballot access regime is why LPKY, LNC, and CPKY have never fielded more than one or two candidates in any statewide election per election cycle – Kentucky’s laws and ballot access regime make it impossible as a practical matter to do so.
27. Of course, it is not merely enough to gather 5,000 signatures – sometimes non-registered voters sign petitions, sometimes people sign more than one petition, sometimes valid voters sign illegibly on petitions that are excluded because they cannot be validated, and for these, and other reasons, typically 1.5 to 1.75 times the statutorily required number is what is required as a practical matter to ensure the petition counts. Thus, as a practical matter, at least 7,500 signatures are turned in, and up to 8,750 signatures may need to be obtained to ensure that a valid petition is submitted.
28. When professional petition gatherers are engaged, they typically charge between \$1.50 to \$2 per signature, regardless of whether or not the signature is valid. This, in turn, ends up

costing \$12,250 to \$17,500 per candidate, per race and election cycle. When someone runs a slate of candidates (i.e. for Governor/Lt. Governor, Auditor, Treasurer, Attorney General, Secretary of State, Commissioner of Agriculture), the total cost ends up being \$73,500 to \$105,000 per election year.

29. It is not impossible for the Libertarian Party, the third largest party in the Country, and the Commonwealth of Kentucky, to obtain these funds for a single race in a single election cycle. Too, it is not impossible to engage volunteers to gather some of these signatures for a single race in a single election cycle. While obtaining access in two races in a single election cycle is extremely difficult, it lies within the realm of possibility. But it is impossible or virtually impossible to obtain access in more than two races in any particular election cycle for any minor party, and, in many respects, it would be a difficult task even for one of the major political parties.
30. By any measure, the costs of ballot access are cost prohibitive for minor parties, and, to some extent, even for the major parties. For instance, Republican Mike Harmon, who in 2015 ran successfully as Kentucky's Auditor, raised \$40,582.90 and Republican Steve Knipper, who in 2015 ran unsuccessfully (though within 2% of Democrat Alison Lundergan Grimes), and raised \$43,952.49. (See, also, Campaign reports at <http://kref.ky.gov>). In 2015, the Kentucky Republican Party raised only \$230,766.66 through the general and primary election cycles; in 2011 it raised \$202,019.26. (<http://kref.ky.gov>).
31. Minor parties, of course, typically lack significant financial resources.
32. In states requiring 5,000 signatures or more, for a candidate or party, when one considers the burden of gathering more than one petition, the cost of signature collection alone is a

burden when one considers the revenue available to the party and effectively prevents that from obtaining ballot access. Moreover, even where the party or candidate has sufficient resources to collect the requisite number of signatures to obtain ballot access on more than one petition, the cost of signature collection represents such a burden that they rarely have sufficient funds to conduct an effective campaign.

33. My research has shown that if a state requires at least 5,000 signatures, even if the state allowed a party petition or multiple candidates on the same petition, it will never have a crowded ballot, if "crowded ballot" is defined as a ballot with more than 9 candidates for a single office.
34. Nationally, where as many as six (or even more) candidates have appeared on the general election ballot as candidates for statewide or federal office, which has occurred on at least 50 occasions since the principle of "avoiding voter confusion" was first enunciated by the U.S. Supreme Court, there is and has been no evidence that there was any voter confusion in those elections.
35. Therefore, it is my opinion, to a reasonable degree of certainty, that the ballot access restrictions in Kentucky, alone and in combination with Kentucky finance restrictions, is a well-crafted method to maintain the *status quo* and effectively restrain minor parties, such as the Libertarian Party of Kentucky and the Constitution Party of Kentucky from gaining a foothold in the Kentucky political landscape.
36. The Libertarian Party, which likely has the greatest ability to raise funds among the minor parties, could raise up or perhaps slightly over \$100,000 in a major race, for a candidate, but that would typically be for the candidate, not for the party. As a practical matter, the party could raise perhaps \$50,000 in an election cycle. Other minor parties

are far more limited in their ability to raise funds. These resource limitations constitute a barrier to recognition as a minor political party and to obtain ballot access for their candidates.

37. In fact, it is impossible, or virtually impossible for a political party, other than the Democratic or Republican Party to achieve general or automatic ballot access in Kentucky, by obtaining 2% or more in a Presidential race, in view of the modern political environment.
38. The impact of these ballot access provisions constitute a severe burden on minor political parties, and are remarkable when one considers that there is no way, other than obtaining signatures for each and every race, or receiving over 2% of the vote in a Presidential election, to establish ballot access in Kentucky for a political group. For instance, to field candidates for each partisan race in a given four-year election cycle in the entire Commonwealth of Kentucky, the Republican or Democratic parties need only gather approximately 5,188 signatures state-wide; while minor parties must gather approximately 209,808 signatures.² Further adjusting these numbers to ensure access by building in an acceptable margin of safety outlined above of 1.5 to 1.75 times the signature minimum, 262,260 signatures are required. Using simple math, the cost for a minor party to achieve this feat, using paid petitioners, is \$524,520. That is more money than the Republican Party of Kentucky – a major party, that now holds the majority of Kentucky’s constitutional offices, and a majority in the Kentucky Senate – has raised in recent state-wide Constitutional office years.

² These numbers do not include partisan city offices; rather they include state-wide partisan offices at the county and state level.

39. I have attached, as **Exhibit B**, a true and accurate copy of a spreadsheet analysis that further outlines these signature requirements.

40. As yet further evidence of the significant burden of Kentucky's ballot access scheme, Kentucky is one of only twelve states that does not permit a political party to have a single petition be submitted for across-the-board ballot access for every partisan office in the state on a general election ballot – and the only state in the Sixth Circuit that does not permit a political party to qualify for automatic ballot access.

41. For Governor, the median state in the United States had 1.33 independent and minor party candidates on the ballot (on the average for each election) over the period 1990-2013. The average number of such candidates was 2.01. But Kentucky only had .33 such candidates during that period. Kentucky had the fewest of any state, except for Alabama, Washington, and New Mexico. So it was the 4th worst in the country.

42. It is very ordinary for the Libertarian Party to run multiple candidates for statewide office, when such offices are up. Just looking at 2014, at the states in which the Libertarian Party was on the ballot for statewide office, and that state had more than one statewide partisan office up, we see this number of statewide offices with a Libertarian candidate running: Alaska 3, Arkansas 8, Colorado 5, Delaware 2, DC 5, Florida 2, Georgia 5, Hawaii 2, Illinois 6, Indiana 3, Iowa 4, Kansas 2, Maryland 2, Michigan 13, Minnesota 4, Montana 2, Nebraska 3, New York 3, North Dakota 3, Ohio 2, Oregon 2, South Carolina 2, South Dakota 6, Tennessee 2, Texas 15, Wisconsin 4, Wyoming 4.

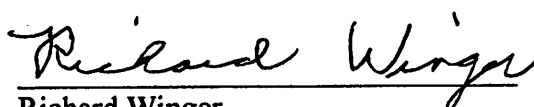
43. Kentucky is one of only five states that has not had any ballot-qualified parties, other than Democratic or Republican, in the last 15 years. The only other states for which that is true are New Hampshire, New Jersey, Pennsylvania, and Virginia.³

³ This would have included Washington state, but, again, remember that prior to 2009, Washington permitted parties to qualify based on the results of races that were not limited to only the Presidential race.

44. These facts simply underscore the mechanisms provided for under Kentucky law, Kentucky does not treat independents and minor parties differently – rather, Kentucky does not give a minor party (i.e. a party that has failed to have its Presidential candidate achieve over 2% of the vote in a Presidential election) any practical or realistic means or mechanism to achieve ballot access.
45. Kentucky’s ballot access laws, as they are written, are not tailored towards measuring a modicum of support – they are instead keep candidates other than the Democratic and Republican candidates off the ballot, and appear designed to cause that result. If Kentucky were interested in measuring public support for a candidate, group of candidates, or a political party, while preventing voter confusion or crowded ballot, they would (a) permit the circulation of a single petition to place multiple candidates of the same party on the ballot or (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle.
46. Based on all of the foregoing, Kentucky’s ballot access regime, applied to non-Democratic and non-Republican parties, make it impossible to systemically place candidates on the ballot, and constitute an undue burden on minor parties, such as the Plaintiffs in this case.

Pursuant to 28 U.S.C. §1746, I declare under within the foregoing Declaration are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Executed on 23 January 2016.


Richard Winger

These facts simply underscore the mechanism provided for under Kentucky law. Kentucky does not treat independents and minor parties differently. Kentucky does not give a minor party (i.e. a party that has failed to have its presidential candidate achieve over 5% of the vote in a presidential election) any practical or realistic means or mechanism to achieve ballot access.

Kentucky's ballot access law, as they are written, are not tailored towards measuring a minimum of support - they are instead kept candidates other than the Democratic and

Republican candidates off the ballot and often designed to cause that result. If

Kentucky was interested in measuring public support for a candidate, group of candidates or a political party, while preventing voter confusion or crowded ballot, they would (a) permit the circulation of a single petition to place multiple candidates of the same party on the ballot or (b) permit a petition to be submitted to place the party on the ballot for a four-year election cycle.

Based on all of the foregoing, Kentucky's ballot access regime applied to non-Democratic and non-Republican parties, make it impossible to systematically place candidates on the ballot, and constitute an undue burden on minor parties, such as the plaintiffs in this case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Richard Winger
Richard Winger

[Signature]
[Name]

Richard Winger Curriculae Vitae
3201 Baker Street
San Francisco, California 94123
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

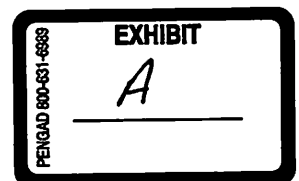
edited by Karl Trautman (1997: Praeger, Westport, Ct.)

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); Libertarian Party of Ohio v Husted, U.S. Dist. Ct., middle district, 2:13cv-935 (2014).

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): Langguth 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)

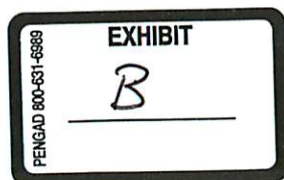
In all cases in which I was presented as an expert, the opposition accepted that designation, except in the Green Party of New York case. The U.S. District Court ruled that I qualify as an expert. See headnote #1 at page 342, and footnote nine on page 350. The 2nd circuit agreed, 389 F.3d 411 (2004),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

Office	# Sigs Req D/R	# Sigs Req Non-D/R	2016			2018			2019			
			# Elected	# Sigs Non-D/R	# Sigs D/R	# Elected	# Sigs Non-D/R	# Sigs D/R	# Elected	# Sigs Non-D/R	# Sigs D/R	
Federal	President	2	5008	1	5008	2	0	0	0	0	0	0
	US Senator	2	5000	1	5000	2	0	0	0	0	0	0
	US House	2	400	6	2400	12	6	2400	12	0	0	0
State	Gov / LtGov	2	5000	0	0	0	0	0	0	1	5000	2
	Attny Gen	2	5000	0	0	0	0	0	0	1	5000	2
	Sec of State	2	5000	0	0	0	0	0	0	1	5000	2
	Auditor	2	5000	0	0	0	0	0	0	1	5000	2
	Treasurer	2	5000	0	0	0	0	0	0	1	5000	2
	Agriculture	2	5000	0	0	0	0	0	0	1	5000	2
	State Sen	2	100	19	1900	38	19	1900	38	0	0	0
	State House	2	100	100	10000	200	100	10000	200	0	0	0
Jud	Comm Attny	2	100	0	0	0	57	5700	114	0	0	0
	Circuit Clerk	2	100	0	0	0	120	12000	240	0	0	0
County	Judge/Exec	2	100	0	0	0	120	12000	240	0	0	0
	County Clerk	2	100	0	0	0	120	12000	240	0	0	0
	County Attny	2	100	0	0	0	120	12000	240	0	0	0
	Sheriff	2	100	0	0	0	120	12000	240	0	0	0
	Jailer	2	100	0	0	0	120	12000	240	0	0	0
	Coroner	2	100	0	0	0	120	12000	240	0	0	0
	PVA	2	100	0	0	0	120	12000	240	0	0	0
	Surveyor	2	100	0	0	0	120	12000	240	0	0	0
	Commissioner	2	100	0	0	0	45	4500	90	0	0	0
	Magistrate	2	20	0	0	0	575	11500	1150	0	0	0
	Constable	2	20	0	0	0	575	11500	1150	0	0	0
	TOTAL NON-D/R			24308			155500			30000		
TOTAL D/R						254			4914			

	Non-D/R	D/R
TOTAL ACROSS DECADE 2017 – 2026	567416	14924
TOTAL ACROSS 4-YEAR CYCLE 2017 – 2020	209808	5180



CountyMagistrate

County	Formed	Seat(s)	Land Area	Population	Density	GOVT	# COM	# MAG
Adair	1802	Columbia	405	18656	46			7
Allen	1815	Scottsville	344	19956	58			5
Anderson	1827	Lawrenceburg	202	21421	106			6
Ballard	1842	Wickliffe	247	8249	33			5
Barren	1799	Glasgow	488	42173	87			7
Bath	1811	Owingsville	279	11591	42	COM	3	3
Bell	1867	Pineville	359	28691	80			5
Boone	1799	Burlington	246	118811	482	COM	3	3
Bourbon	1786	Paris	290	19985	69			7
Boyd	1860	Catlettsburg	160	49542	310	COM	3	3
Boyle	1842	Danville	180	28432	158			6
Bracken	1797	Brooksville	206	8488	41			8
Breathitt	1839	Jackson	492	13878	28			4
Breckinridge	1800	Hardinsburg	567	20059	35			6
Bullitt	1797	Shepherdsville	297	74319	250			5
Butler	1810	Morgantown	426	12690	30			5
Caldwell	1809	Princeton	345	12984	38			4
Calloway	1823	Murray	385	37191	97			4
Campbell	1795	Alexandria; Newport	151	90336	597	COM	3	3
Carlisle	1886	Bardwell	189	5104	27			3
Carroll	1838	Carrollton	129	10811	84			3
Carter	1838	Grayson	410	27720	68			5
Casey	1807	Liberty	444	15955	36			4
Christian	1797	Hopkinsville	718	73955	103			8
Clark	1793	Winchester	252	35613	141			6
Clay	1807	Manchester	469	21730	46			6
Clinton	1836	Albany	197	10272	52			6
Crittenden	1842	Marion	360	9315	26			6
Cumberland	1799	Burkesville	305	6856	22			4
Daviess	1815	Owensboro	458	96656	211	COM	3	3
Edmonson	1826	Brownsville	303	12161	40			6
Elliott	1869	Sandy Hook	234	7852	34			7
Estill	1808	Irvine	253	14672	58			3
Fayette	1780	Lexington	284	295803	1043	UCG	3	3
Fleming	1798	Flemingsburg	349	14348	41			6
Floyd	1800	Prestonsburg	393	39451	100			4
Franklin	1795	Frankfort	208	49285	237			6
Fulton	1845	Hickman	206	6813	33			4
Gallatin	1799	Warsaw	101	8589	85			4
Garrard	1797	Lancaster	230	16912	74			5
Grant	1820	Williamstown	258	24662	96			3
Graves	1824	Mayfield	552	37121	67	COM	3	3

CountyMagistrate

Grayson	1810	Leitchfield	497	25746	52			6
Green	1793	Greensburg	286	11258	39			5
Greenup	1804	Greenup	344	36910	107	COM	3	3
Hancock	1829	Hawesville	188	8565	46			4
Hardin	1793	Elizabethtown	623	105543	169			8
Harlan	1819	Harlan	466	29278	63			5
Harrison	1794	Cynthiana	306	18846	62			8
Hart	1819	Munfordville	412	18199	44			5
Henderson	1799	Henderson	437	46250	106			5
Henry	1799	New Castle	286	15416	54			6
Hickman	1822	Clinton	242	4902	20			3
Hopkins	1807	Madisonville	542	46920	87			7
Jackson	1858	McKee	345	13494	39			3
Jefferson	1780	Louisville	380	741096	1948	CLG	3	3
Jessamine	1799	Nicholasville	172	48586	282			6
Johnson	1843	Paintsville	262	23356	89	COM	3	3
Kenton	1840	Covington; Independence	160	159720	997	COM	3	3
Knott	1884	Hindman	352	16346	47			4
Knox	1800	Barbourville	386	31883	83			5
LaRue	1843	Hodgenville	262	14193	54			4
Laurel	1826	London	434	58849	136			6
Lawrence	1822	Louisa	416	15860	38			4
Lee	1870	Beattyville	209	7887	38			4
Leslie	1878	Hyden	401	11310	28			4
Letcher	1842	Whitesburg	338	24519	73			5
Lewis	1807	Vanceburg	483	13870	29			4
Lincoln	1780	Stanford	334	24742	74			4
Livingston	1799	Smithland	313	9519	30			4
Logan	1792	Russellville	552	26835	49			6
Lyon	1854	Eddyville	214	8314	39			3
Madison	1786	Richmond	437	82916	190			4
Magoffin	1860	Salyersville	308	13333	43			3
Marion	1834	Lebanon	343	19820	58			5
Marshall	1842	Benton	301	31448	104	COM	3	3
Martin	1870	Inez	230	12929	56			5
Mason	1789	Maysville	240	17490	73	COM	3	3
McCracken	1825	Paducah	249	65565	264	COM	3	3
McCreary	1912	Whitley City	427	18306	43			4
McLean	1854	Calhoun	252	9531	38			4
Meade	1824	Brandenburg	305	28602	94			6
Menifee	1869	Frenchburg	204	6306	31			5
Mercer	1786	Harrodsburg	249	21331	86			6
Metcalfe	1860	Edmonton	290	10099	35			4

CountyMagistrate

Monroe	1820	Tompkinsville	329	10963	33			5
Montgomery	1797	Mount Sterling	197	26499	134	COM	3	3
Morgan	1823	West Liberty	381	13923	37			5
Muhlenberg	1799	Greenville	467	31499	67			5
Nelson	1785	Bardstown	418	43437	104			5
Nicholas	1800	Carlisle	195	7135	37			5
Ohio	1799	Hartford	587	23842	41			6
Oldham	1824	La Grange	187	60316	322			8
Owen	1819	Owenton	351	10841	31			4
Owsley	1843	Booneville	197	4755	24			3
Pendleton	1799	Falmouth	277	14877	54			4
Perry	1821	Hazard	340	28712	85			3
Pike	1822	Pikeville	787	65024	83			6
Powell	1852	Stanton	179	12613	70			5
Pulaski	1799	Somerset	658	63063	96			5
Robertson	1867	Mount Olivet	100	2282	23			6
Rockcastle	1810	Mount Vernon	317	17056	54			5
Rowan	1856	Morehead	280	23333	83			4
Russell	1826	Jamestown	254	17565	69			5
Scott	1792	Georgetown	282	47173	167			7
Shelby	1792	Shelbyville	380	42074	111			7
Simpson	1819	Franklin	234	17327	74			4
Spencer	1824	Taylorsville	187	17061	91			5
Taylor	1848	Campbellsville	266	24512	92			6
Todd	1820	Elkton	375	12460	33			5
Trigg	1820	Cadiz	441	14339	32			7
Trimble	1837	Bedford	152	8809	58			4
Union	1811	Morganfield	343	15007	44			5
Warren	1797	Bowling Green	542	113792	210			6
Washington	1792	Springfield	297	11717	39			6
Wayne	1800	Monticello	458	20813	45			4
Webster	1860	Dixon	332	13621	41			3
Whitley	1818	Williamsburg	438	35637	81			4
Wolfe	1860	Campton	222	7355	33			3
Woodford	1789	Versailles	189	24939	132			8
TOTAL							45	575

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

THE LIBERTARIAN PARTY OF KENTUCKY, <i>et. al.</i>	:	Case No. 3:15-CV-86 GFVT
	:	<i>Electronically Filed</i>
Plaintiffs	:	
v.	:	
ALISON LUNDERGAN GRIMES, <i>et. al.</i>	:	
Defendants	:	

**ORDER GRANTING PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND
SUMMARY JUDGMENT**

The Court, being fully apprised in the premises, GRANTS Plaintiffs’ Motion for a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction and further GRANTS Plaintiffs’ Motion for Summary Judgment.

Defendants are instructed to accept any and all duly nominated candidates by Plaintiffs for inclusion on the General Election ballot, provided Plaintiffs file the nomination petitions with Defendants by the August election deadline. Furthermore, K.R.S. 118.015, K.R.S. 118.305(1)(e), K.R.S 118.305, and other Kentucky law and practices of Defendants, constituting Kentucky’s ballot access regime are hereby declared unconstitutional, as applied to minor political parties, such as the Plaintiffs, insofar as ballot access is concerned.

IT IS SO ORDERED:

Judge Van Tatenhove