

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF ARKANSAS
WESTERN (LITTLE ROCK) DIVISION**

**DAVID LIBRACE, Individually,
“AND/OR as (B) CLASS REPRESENTATIVE
AND/OR BEHALF OF ALL ELIGIBLE
ARKANSAS AND NOTIONALLY UNITED
STATES REGISTERED (C) ELIGIBLE
AND/OR QUALIFIED VOTERS FOR VOTING
IN THE 2016 FIFTY STATE ELECTION
PRIMARIES AND IN THE NOVEMBER 8,
2016 GENERAL PRESIDENTIAL AND
VICE PRESIDENT 2016 ELECTIONS”**

PLAINTIFFS

VS.

NO. 4:16-CV-57-BSM-JTR

**HONORABLE MARK MARTIN
in his official capacity as
Secretary of State for the
State of Arkansas; REPUBLICAN
PARTY OF ARKANSAS EXECUTIVE
COMMITTEE; SENATOR TED CRUZ
OF TEXAS; AND SENATOR MARCO
RUBIO OF FLORIDA**

DEFENDANTS

**DEFENDANT, HONORABLE MARK MARTIN’S
ANSWER TO PLAINTIFFS’ COMPLAINT**

Comes Now, Defendant, Honorable Mark Martin, (“Defendant Secretary”), in his official capacity as Secretary of State for the State of Arkansas, for his Answer to Plaintiffs’ Complaint, and states:

1. Defendant Secretary denies that Plaintiff is who he says he is, denies that he is a suitable class representative, and denies that he is qualified to sue on behalf of “all eligible and Qualified Voters” who may vote in all 50 state caucus and primary states in 2016.

Pleading affirmatively, Defendant Secretary states that Librace is a previously convicted felon from the State of Florida; that he was convicted under the name Roy Allen Cole on October 26, 1999; and on information and belief that he has not been pardoned, nor had his felony convictions voided, expunged, or otherwise judicially nullified. The remaining allegations made in the first unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

2. Defendant Secretary states that the allegations made in the second unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Defendant Secretary denies that this Court has subject matter jurisdiction. Defendant Secretary denies that Plaintiff, or any of them, have standing. Defendant Secretary denies that this matter is ripe for adjudication.

I. DECLARATORY JUDGMENT ALLEGATIONS

3. Defendant Secretary states that the allegations made in the third unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Defendant

Secretary denies that Plaintiff has properly invoked this Court's jurisdiction for purposes of rendering a declaratory judgment.

4. Defendant Secretary states that the allegations made in the fourth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Defendant Secretary admits that there is a primary election scheduled for March 1, 2016; that absentee ballots were delivered to military and overseas voters no later than January 15, 2016 for those who timely requested them; and that early voting began on February 16, 2016. Defendant Secretary admits that he certified the names of both the Honorable Rafael Edward "Ted" Cruz, U.S. Senator from Houston, Texas, and the Honorable Marco A. Rubio, U.S. Senator from West Miami, Florida, as potential candidates for President of the United States of America on the Republican Party Primary Election Ballot to all seventy-five (75) County Boards Election Commissioners in the State of Arkansas, i.e., so that their delegates to the Republican Party Quadrennial National Convention may be apportioned, Ark. Code Ann. § 7-8-201, but denies that either one of them has yet become a candidate for President in the General Election for 2016.
5. Defendant Secretary states that the allegations made in the fifth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Defendant Secretary admits that he accepts certain candidate filings for the apportionment of delegates for President of the United States to the Quadrennial National Convention of the Republican

Party, and that each candidate files a Republican Party of Arkansas pledge and certificate of payment of the filing fee, Candidate Information Form, and Political Practices Pledges, Ark. Code Ann. § 7-7-203. For the 2016 election cycle, the filing period ended on November 9, 2015. Ark. Code Ann. § 7-7-203(c). Pleading affirmatively, no reason for the Secretary of State to withhold certification was made to Defendant Secretary before certification of names to the ballot on November 19, 2015, and the Secretary of State certified the names of both Senator Cruz and Senator Rubio in accordance with the Party Certificates and Political Practices Pledge. After certification of those names to the County Boards of Election Commissioners, Defendant Secretary lacks the power or authority to withdraw the names. *State of Arkansas v. Critenden County Board of Election Commissioners*, 300 Ark. 405, 779 S.W.2d 169 (1989).

6. Defendant Secretary states that the allegations made in the sixth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading affirmatively, Defendant Secretary states that Acts of the Arkansas General Assembly, and actions that the Secretary of State takes in his Official Capacity, are entitled to a presumption of Constitutionality. *See, Fitz v. Dolyak*, 712 F.2d 330 (8th Cir. 1983); *Branson v. Mossberg & Sons*, 221 F.3d 1064, 1065 n.4 (8th Cir. 2000).
7. Defendant Secretary states that the allegations made in the seventh unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading

affirmatively, Defendant Secretary states that allegations of fraud must be made with particularity, Fed. R. Civ. P. 9. Pleading affirmatively, Defendant Secretary states that Acts of the Arkansas General Assembly, and actions that the Secretary of State takes in his Official Capacity, are entitled to a presumption of Constitutionality. *See, Fitz v. Dolyak*, 712 F.2d 330 (8th Cir. 1983); *Branson v. Mossberg & Sons*, 221 F.3d 1064, 1065 n.4 (8th Cir. 2000).

8. Defendant Secretary states that the allegations made in the eighth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading affirmatively, Defendant Secretary states that Acts of the Arkansas General Assembly, and actions that the Secretary of State takes in his Official Capacity, are entitled to a presumption of Constitutionality. *See, Fitz v. Dolyak*, 712 F.2d 330 (8th Cir. 1983); *Branson v. Mossberg & Sons*, 221 F.3d 1064, 1065 n.4 (8th Cir. 2000). Pleading affirmatively, Defendant Secretary states that competing First Amendment rights of other voters – not parties to this action – who have already cast a ballot in the primary for the Republican Party of Arkansas, are also at issue, and that Defendant Secretary must balance the rights of other voters, and the two defendant Senators, as well.

II. THE COURT LACKS SUBJECT-MATTER JURISDICTION

9. Defendant Secretary states that the allegations made in the ninth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading affirmatively, Defendant Secretary states that the Court lacks subject matter jurisdiction.
10. Defendant Secretary states that the allegations made in the tenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.
11. Defendant Secretary states that the allegations made in the eleventh unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.
12. Defendant Secretary states that the allegations made in the twelfth unnumbered paragraph of the Complaint (including the indented sub-paragraphs purporting to be citations to authority or statute) state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading affirmatively, Defendant Secretary states that the United States Code says what it says, and that it speaks for itself.
13. Defendant Secretary states that the allegations made in the thirteenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading

affirmatively, Defendant Secretary states that the United States Code says what it says, and that it speaks for itself.

**III. PLAINTIFFS' LACK OF STANDING AND FAILURE TO MEET
DISCLOSURE REQUIREMENTS OF FEDERAL RULE OF CIVIL
PROCEDURE 16 AND 26**

14. Defendant Secretary states that the allegations made in the fourteenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.
15. Defendant Secretary states that the allegations made in the fifteenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied for Defendant Secretary's lack of information and belief. Pleading affirmatively, Defendant Secretary states that Defendant Rubio's Candidate Information Form, Political Practices Pledge, and Party Certificate of Receipt are sufficient *prima facie* proof to support Defendant Secretary's November 19, 2015, certification of his name to the County Boards of Election Commissioners in order to verify his popular support for allocation of delegates to the Republican National Convention, in accordance with Arkansas law. Ark. Code Ann. § 7-8-201; Ark. Code Ann. § 7-7-304(b); Act 4 of First Extraordinary Session of 2015, Acts of Arkansas. True and correct copies of the Candidate Information Form (Exhibit 1), Political Practices Pledge (Exhibit 2), and Party Certificate of Receipt

(Exhibit 3) for Senator Rubio are attached hereto as exhibits to Defendant Secretary's Answer.

16. Defendant Secretary states that the allegations made in the sixteenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied for Defendant Secretary's lack of information and belief. Pleading affirmatively, Defendant Secretary states that Defendant Cruz's Candidate Information Form, Political Practices Pledge, and Party Certificate of Receipt are sufficient *prima facie* proof to support Defendant Secretary's November 19, 2015, certification of his name to the County Boards of Election Commissioners in order to verify his popular support for allocation of delegates to the Republican National Convention, in accordance with Arkansas law. Ark. Code Ann. § 7-8-201; Ark. Code Ann. § 7-7-304(b); Act 4 of First Extraordinary Session of 2015, Acts of Arkansas. True and correct copies of the Candidate Information Form (Exhibit 4), Political Practices Pledge (Exhibit 5), and Party Certificate of Receipt (Exhibit 6) for Senator Cruz are attached hereto as exhibits to Defendant Secretary's Answer.

17. Defendant Secretary states that the allegations made in the seventeenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Defendant Secretary admits that Plaintiffs purport to sue Defendant Secretary in his

Official Capacity, i.e., a suit which is prohibited by the Eleventh Amendment. U.S. Const. Am. 11.

IV. VENUE

18. Defendant Secretary states that the allegations made in the eighteenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading affirmatively, Defendant Secretary states that venue is improper for any allegations concerning Defendant Cruz's or Defendant Rubio's eligibility for placement on the ballot in any other state or locality of the United States, outside of the State of Arkansas.

V. INSUFFICIENT STATEMENT OF CAUSES OF ACTION FOR DECLARATORY RELIEF

19. Defendant Secretary states that the allegations made in the nineteenth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

VI. LACK OF RIPENESS

20. Defendant Secretary states that the allegations made in the twentieth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

Pleading affirmatively, Defendant Secretary states that this matter is not ripe for review.

21. Defendant Secretary states that the allegations made in the twenty-first unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

Pleading affirmatively, Defendant Secretary states that this matter is not ripe for review.

VII. [Omitted from Plaintiffs' Pleading]

**VIII. PLAINTIFFS ERRONEOUSLY BELIEVE THAT NO RECORD OF
FACTUAL OR LEGAL ISSUES NEEDS TO BE MADE AND FURTHER
ERRONEOUSLY STATE THAT NO DISCOVERY NEEDS TO TAKE PLACE**

22. Defendant Secretary states that the allegations made in the twenty-second unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

Defendant Secretary denies the allegations made in the paragraph heading under subsection VIII of the Complaint, and pleading affirmatively, Defendant Secretary states that the matter cannot proceed without the establishment of basic, essential facts, to be

certain that the record is complete; Due Process and Equal Protection under the Constitution of the United States requires nothing less. U.S. Const. Am. 5; U.S. Const. Am. 14.

23. Defendant Secretary states that the allegations made in the twenty-third unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

Pleading affirmatively, Defendant Secretary states that none of the other Defendants needed to have filed a declaratory action and further that they would not have had standing to do so in the abstract.

24. Defendant Secretary states that the allegations made in the twenty-fourth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

25. Defendant Secretary states that the allegations made in the twenty-fifth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

Pleading affirmatively, Defendant Secretary states that none of the other Defendants needed to have filed a declaratory action and further that they would not have had standing to do so in the abstract.

**IX. DISCOVERY DISCLOSURES ARE REQUIRED PURSUANT TO RULE 26
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

26. Defendant Secretary states that the allegations made in the twenty-sixth unnumbered paragraph of the Complaint state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied.

Pleading affirmatively, Defendant Secretary states that there has been no service of process, no scheduling order, no pre-trial motions, and no exchange of any discovery materials to date, all of which are required in this case, like every other case.

27. Defendant Secretary states that the allegations made in the twenty-seventh unnumbered paragraph of the Complaint, also labeled as paragraph I, state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied for lack of sufficient information and belief on the part of Defendant Secretary.

28. Defendant Secretary states that the allegations made in the twenty-eighth unnumbered paragraph of the Complaint, also labeled paragraph II, state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Defendant Secretary admits that the Complaint on its face does not currently appear to request monetary relief.

29. Defendant Secretary states that the allegations made in the twenty-ninth unnumbered paragraph of the Complaint, also labeled paragraph III, state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those

allegations are denied. Pleading affirmatively, Defendant Secretary states this Court lacks subject matter jurisdiction over any other State, Secretary of State, Lieutenant Governor, or other election official in any other State, jurisdiction, or locality outside the State of Arkansas.

30. Defendant Secretary states that the allegations made in the thirtieth unnumbered paragraph of the Complaint, also labeled paragraph IV, state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading affirmatively, Defendant Secretary states that normal discovery rules must apply and that this case cannot proceed without basic facts appearing of record and before the trial court.

31. Defendant Secretary states that the allegations made in the thirty-first unnumbered paragraph of the Complaint, also labeled paragraph V, state legal conclusions, to which no response is required; to the extent that there are factual allegations therein, those allegations are denied. Pleading affirmatively, Defendant Secretary states this Court lacks subject matter jurisdiction over any other State, Secretary of State, Lieutenant Governor, or other election official in any other State, jurisdiction, or locality outside the State of Arkansas.

32. Defendant Secretary states that Plaintiffs are not entitled to any of the relief requested in their unnumbered paragraph where they pray for relief.

33. Defendant Secretary denies each and every factual allegation made in the Complaint, unless specifically admitted herein.

X. AFFIRMATIVE DEFENSES

34. Pleading affirmatively, Defendant states that Acts of the Arkansas General Assembly are entitled to a presumption of constitutionality, and that Plaintiffs bear the burden of proving that any Act of the Legislature is unconstitutional as applied to them, individually.
35. Pleading affirmatively, Defendant Secretary states that Plaintiffs lack standing to bring the present action because there has been no harm to Plaintiffs caused by this Defendant.
36. Pleading affirmatively, Defendant Secretary states that Plaintiffs lack standing to bring the present action because the named Plaintiff has not shown that he is a registered voter and qualified elector in the State of Arkansas, i.e., a person who has been “harmed” by Defendant Secretary’s certification of the names of the two candidates for President, Senator’s Cruz and Rubio.
37. Pleading affirmatively, Defendant Secretary states that Plaintiffs lack standing to bring the present action because they have not shown anything other than a generalized complaint, common to all voters, and not unique to them in any way.
38. Pleading affirmatively, Defendant Secretary states that there are insufficient allegations of causation as to the actions of Defendant Secretary that are the subject of Plaintiffs’ Complaint. Defendant Secretary denies that he caused any harm to Plaintiffs, or any of them.

39. Pleading affirmatively, Defendant Secretary states that there are insufficient allegations of proximate cause as to the actions of Defendant Secretary that are the subject of Plaintiffs' Complaint. Defendant Secretary denies that he proximately caused any harm to Plaintiffs, or any of them.
40. Pleading affirmatively, Defendant Secretary states that Plaintiffs' case as to future events is premature and is not ripe for review, as the names of Defendant Senators is simply for the allocation of delegates to the Republican National Convention, and Plaintiffs have not alleged or shown any harm for that occurrence. Plaintiffs are in essence seeking adjudication over future events, with completely different allegations of "future harm" that may not even occur as anticipated by Plaintiffs. Plaintiffs lack standing as a result.
41. Pleading affirmatively, Defendant Secretary states that Plaintiffs have failed to challenge any part of the Candidate Information Forms, Political Practices Pledges, Party Certificates of Receipt, and cannot prevail on their Complaint absent such challenge.
42. Pleading affirmatively, Defendant Secretary states that the Court lacks subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).
43. Pleading affirmatively, Defendant Secretary states that the Court lacks subject matter jurisdiction, and Plaintiffs lack standing. U.S. Const. Art. II, § 1, cl.2 (Electoral College); Fed. R. Civ. P. 12(b)(1).
44. Pleading affirmatively, Defendant Secretary states that the Court lacks subject matter jurisdiction, and Plaintiffs lack standing. U.S. Const. Am. XII (Congress has power to count electoral votes); Fed. R. Civ. P. 12(b)(1).

45. Pleading affirmatively, Defendant Secretary states that the Court lacks subject matter jurisdiction, and Plaintiffs lack standing. U.S. Const. Am. XX, § 3 (succession to Office of the President); Fed. R. Civ. P. 12(b)(1).
46. Pleading affirmatively, Defendant Secretary states that the Court lacks personal jurisdiction over Defendant Secretary, in anything other than his official capacity, pursuant to Federal Rule of Civil Procedure 12(b)(2).
47. Pleading affirmatively, Defendant Secretary states that venue is improper for any challenge to the placement of Defendants Rubio and Cruz on the ballot of any other jurisdiction outside of the State of Arkansas. Fed. R. Civ. P. 12(b)(3).
48. Pleading affirmatively, Defendant Secretary states that process has been insufficient in this matter, that Plaintiffs bear the burden of proof on this matter, and that Plaintiffs cannot show sufficiency of process to date. Fed. R. Civ. P. 12(b)(4).
49. Pleading affirmatively, Defendant Secretary states that service of process has been inadequate in this matter; that Defendant Secretary has not been served with process of any sort to date; that Plaintiffs bear the burden of proof on this matter; and that Plaintiffs cannot show service of process upon Defendant Secretary to date. Fed. R. Civ. P. 12(b)(5).
50. Pleading affirmatively, Defendant Secretary states that Plaintiffs' Complaint fails to state sufficient facts upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

51. Pleading affirmatively, Defendant Secretary states that Plaintiffs' Complaint should be dismissed. Fed. R. Civ. P. 12(c).
52. Pleading affirmatively, Defendant Secretary states the Court should dismiss the Complaint on the basis of sovereign immunity, pursuant to the Eleventh Amendment to the United States Constitution.
53. Pleading affirmatively, Defendant Secretary states the Court should dismiss the Complaint under the doctrine of state-court sovereign immunity, pursuant to Ark. Const. art. 5, § 20.
54. Pleading affirmatively, Defendant Secretary states the Court should dismiss the Complaint under the doctrine of sovereign immunity.
55. Pleading affirmatively, and in the alternative, Defendant Secretary states the Court should dismiss the Complaint under the doctrine of qualified immunity.
56. Pleading affirmatively, Defendant Secretary states that Plaintiffs are estopped from obtaining any of the relief they seek from this Court at this juncture, on the basis of collateral estoppel, judicial estoppel, equitable estoppel, and any other theory of estoppel recognized by state or federal law.
57. Pleading affirmatively, Defendant Secretary states that Plaintiffs are precluded from obtaining any relief from this Court at this juncture, as the relief they seek is now illegal under Arkansas law where Plaintiffs failed to make any challenge prior to the Secretary's Certification of the Defendant Senators' names to the seventy-five County Boards of Election Commissioners.

58. Pleading affirmatively, Defendant Secretary states that Plaintiffs are precluded from obtaining any relief from this Court as a result of their own laches.
59. Pleading affirmatively, Defendant Secretary states that Plaintiffs are precluded from obtaining any relief by their failure to include necessary parties, that is, County Clerks who are responsible for local, district, and county offices. Fed. R. Civ. P. 12(b)(7); Fed. R. Civ. P. 19. The absence of County Clerks prevents the Court from granting complete relief to the existing parties where Defendant Secretary is prohibited by the Arkansas Constitution (separation of powers doctrine) from protecting the interests of County Clerks. *Fort Yates Pub. Sch. Dist. v. Murphy*, 786 F.3d 662, 671 (8th Cir. 2015); Ark. Const. Art. 4, §§ 1 and 2; Ark. Const. Art. 7, § 19; Ark. Const. Am. 41.
60. Pleading affirmatively, Defendant Secretary states that Plaintiffs seek relief that is an imposition upon the First Amendment, Due Process, and Equal Protection rights of non-parties, including voters who may have already voted for either one of the Defendant Senators and now would unquestionably lose their right to vote in the Republican Party of Arkansas Primary Election purely as a result of Plaintiffs' laches and delay in seeking relief past the start of absentee voting for military and overseas voters on January 15, 2016, and early voters on February 16, 2016. There is no other entity or defendant presently in this suit to protect the interests of those who have already cast their ballots, and would lose their constitutional right to vote if Plaintiffs prevail.
61. Pleading affirmatively, Defendant Secretary pleads that Plaintiffs are precluded from obtaining relief by waiver, avoidance, and any other affirmative defense.

62. Pleading affirmatively, Defendant states that there are competing First Amendment interests at stake and that the State of Arkansas has made legitimate policy choices – within its constitutional discretion - embodied in its decision to grant ballot access to those candidates who meet state statutory requirements for the candidates at issue on the face of the Complaint as filed.
63. Pleading affirmatively, and in the alternative, Defendant Secretary states that there is no harm to Plaintiffs resulting from the certification of the names of the two Senators to the primary election ballot for allocation of delegates.
64. Pleading affirmatively, Defendant Secretary states that Plaintiffs have failed to attach to their Complaint specific allegations of harm as to any Plaintiff, and that the lack of Affidavits and other supporting documentation is fatal to their Complaint.
65. Pleading affirmatively, Defendant Secretary states that Plaintiffs have the burden of proof on every element of their Complaint, including allegations that support their claims of standing, and that Plaintiffs have failed to support their claims of standing as a matter of law.
66. Pleading affirmatively, Defendant Secretary states that Plaintiffs have the burden of proof on every element of their Complaint, including allegations that support their claims of the unconstitutional behavior of any Defendant, and that Plaintiffs have failed to support their claims of unconstitutional behavior as a matter of law.
67. Pleading affirmatively, Defendant Secretary states that Plaintiffs have the burden of proof on every element of their Complaint, including allegations that support their claims of

fraud, which allegations must be made with specificity, and that Plaintiffs have failed to support their claims of fraud as a matter of law. Fed. R. Civ. P. 9.

68. Pleading affirmatively, Defendant Secretary states that Plaintiffs have the burden of proof on all allegations that statutes or Acts of the State of Arkansas are unconstitutional, and that Plaintiffs have failed to support their claims of unconstitutionality as a matter of law.

69. Defendant Secretary of State asks the Court to dismiss the Complaint; in the alternative, to issue a Judgment in favor of Defendant on the Pleadings; in the alternative, to issue Judgment in favor of Defendant as a Matter of Law; to deny Plaintiffs any of the relief they seek against Defendant Secretary; to hold Plaintiffs to strict proof on every allegation of their Complaint; and that the Court take such additional action in favor of Defendant Secretary as is appropriate under the circumstances.

WHEREFORE, and for the foregoing reasons, Defendant Secretary of State Mark Martin, in his official capacity, prays that this Court grant Defendant the relief he seeks herein; that the Court deny Plaintiffs any of the relief they seek; that the Court dismiss the Plaintiffs' Complaint; that the Court deny Plaintiffs any declaratory relief; in the alternative, that the Court require strict proof presented by Plaintiffs; and that the Court grant Defendant such additional relief to which he may be entitled under the circumstances.

Dated this 29th day of February, 2016.

Respectfully submitted,

HONORABLE MARK MARTIN
ARKANSAS SECRETARY OF STATE

In his Official Capacity, Defendant

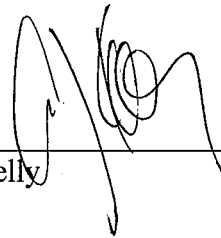
By: 

A.J. Kelly
General Counsel and
Deputy Secretary of State
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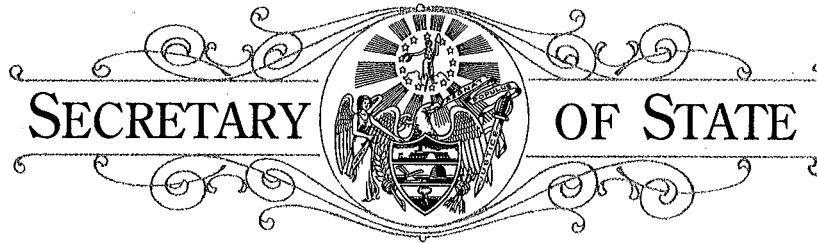
*Attorney for Defendant
Arkansas Secretary of State*

CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of February, 2016, I have served the foregoing via the electronic filing system in the Federal District Court Clerk's Office (CM/ECF) and via personal service to the named Plaintiff, in open court, during the hearing set for 12 noon today.


A.J. Kelly

STATE OF ARKANSAS



I, Mark Martin, Secretary of State of the State of Arkansas, and as such, keeper of the official records of this office, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of the

Candidate Information Form & Receipt for 2016 Election Year for Marco A. Rubio



In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 29th day of February, 2016.

Mark Martin

Mark Martin
Secretary of State

By: *[Signature]*
Josh Bridges

EXHIBIT 1

Elections Division, Room 026
State Capitol
Little Rock, Arkansas 72201

Elections Division
Phone 501-682-5070
Fax 501-682-3408

Candidate Information Form & Receipt For 2016 Election Year

FILED

NOV 02 2015

Arkansas
Secretary of State

Name of Candidate: Marco A. Rubio

Office Sought: President of the United States of America District No. n/a Division No. n/a
(If any) (If any)

Subdistrict No. n/a Position No. n/a County in which Candidate resides: Miami-Dade, Florida
(if any) (if any)

Party Affiliation: Democratic _____ Republican X Libertarian _____ Green _____
Nonpartisan Judicial / Prosecutor _____ Other _____

Phone: (877) 557-8246, ext. 3 Please put the number you want released to the public.

Permanent Address:
Marco A. Rubio
6060 SW 13th Street
West Miami, Florida 33144

Campaign Address (If different from permanent address):
Marco Rubio for President
P. O. Box 558701
Miami, Florida 33255

- 1 a. The Secretary of State has received a party certificate or other document showing Candidate's payment of filing fees, etc 1a. _____ or
b. Independent Candidate or Nonpartisan Candidate has either paid a filing fee or filed sufficient petition signatures 1b. _____
2. Candidate has completed and signed a Political Practices Pledge 2. _____
3. Candidate has been offered the opportunity to complete optional background information 3. _____
4. Candidate has received an information packet which includes: 4. _____
1. Arkansas Election Calendar 3. Campaign Finance Forms
2. Campaign Finance Rules & Regulations 4. Statement of Financial Interest

This receipt shall serve as verification that all filing procedures with the Secretary of State's office have been completed, and the above candidate is officially filed for the 20 _____ election ballot.

Mark
Candidate's Signature

Mark Martin
Elections Division Staff

**** The following information is optional ****

Marital status: Married ☐ Single ☐ Gender: Male ☐ Female ☐

Place of birth: _____ Date of birth: _____

Number of children: _____ Religion: _____ Occupation: _____

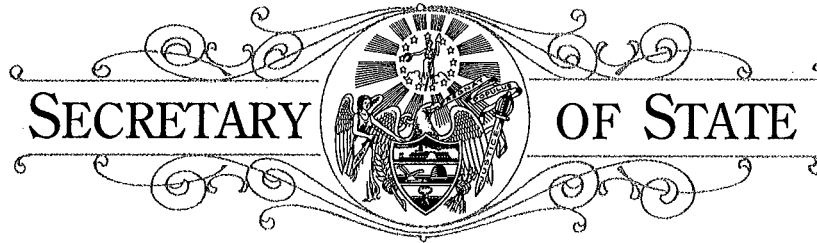
Schools attended: _____

Current office held (if any): _____

Previous public office(s) held (if any): _____

Email address: _____

STATE OF ARKANSAS



I, Mark Martin, Secretary of State of the State of Arkansas, and as such, keeper of the official records of this office, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of the

Political Practices Pledge for 2016 Election Year for Marco A. Rubio



In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 29th day of February, 2016.

Mark Martin

Mark Martin
Secretary of State

By: *[Signature]*
Josh Bridges

US Presol
160080**Mark Martin, Secretary of State**

Elections Division, Room 026

State Capitol

Little Rock, Arkansas 72201

I, **Marco A. Rubio****Political Practices Pledge**President of the
United States of America

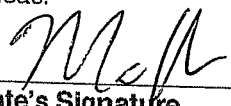
(Name of office)

District Number n/a (if any), Division Number n/a (if any), Subdistrict Number n/a (if any), Position Number n/a (if any)

hereby state that I am familiar with the requirements of Arkansas Code Annotated §§ 7-1-103, 7-1-104, 7-3-108, 7-6-101, 7-6-102, 7-6-103, and 7-6-104 and that I will in good faith comply with the provisions of the same.

Check all that are applicable:☒ **CANDIDATE FOR PARTY NOMINATION**Name of Party Republican☐ **NONPARTISAN CANDIDATE**☐ **WRITE-IN CANDIDATE**☐ **INDEPENDENT CANDIDATE**☐ **SCHOOL BOARD CANDIDATE****ALL CANDIDATES MUST COMPLETE THE FOLLOWING SECTION:**

I hereby certify that I have never been convicted of a felony in the State of Arkansas, or in any other jurisdiction outside of Arkansas.**


Candidate's Signature10-29-15
Date SignedMarco Rubio**Print your name as it is to appear on ballot**
(See Below, Ark Code Ann. § 7-7-305(c))**FILED****NOV 02 2015****Arkansas**
Secretary of StateP. O. Box 558701

Address

Miami, Florida 33255

City, State & Zip Code

****A prospective candidate for state, district, county, municipal or township office who has had a felony conviction expunged in accordance with Ark. Code Ann. §§ 16-93-301 to 303 or similar expunction statute in another state may certify that he or she has never been convicted of a felony, provided the candidate presents a certificate of expunction from the court that convicted the prospective candidate. See Ark. Code Ann. § 7-6-102(d)****7-7-305. Printing of ballots - Form.**

(c) (1) (A) A person who files for an elective office in this state may use not more than three (3) given names, one (1) of which may be a nickname or any other word used to identify the person to the voters, and may add as a prefix to his or her name the title or an abbreviation of an elective public office the person currently holds.

(B) A person may use as the prefix the title of a nonpartisan judicial office in an election for a nonpartisan judicial office only if:
(i) The person is currently serving in a nonpartisan judicial office to which the person has been elected in the last election for the office; or
(ii) The person:

- (a) Is a candidate for the office of circuit judge or district judge;
- (b) Is currently serving in the office of circuit judge or district judge as an appointee; and
- (c) Has been serving in that position for at least twelve (12) months.

(C) A nickname shall not include a professional or honorary title.

(2) The names and titles as proposed to be used by each candidate on the political practice pledge or, if the political practice pledge is not filed by the filing deadline, then the names and titles that appear on the party certificate shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for state and district offices and by the county board of election commissioners for county, township, school, and municipal offices.

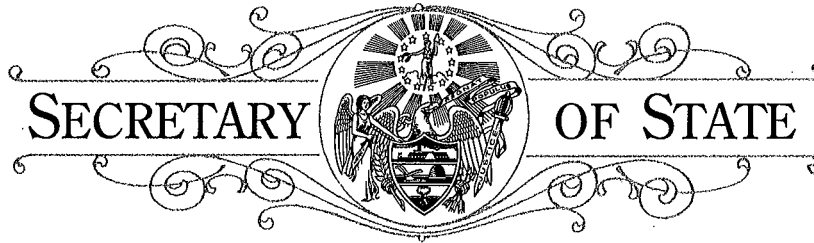
(3)(A) The name of every candidate shall be printed on the ballot in the form as certified by either the Secretary of State or the county board.

(B) However, the county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners shall immediately notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(4) A candidate shall not be permitted to change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

STATE OF ARKANSAS



I, Mark Martin, Secretary of State of the State of Arkansas, and as such, keeper of the official records of this office, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of the

Certificate of Receipt from the Republican Party of Arkansas for Marco A. Rubio



In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 29th day of February, 2016.

Mark Martin

Mark Martin
Secretary of State

By: *[Signature]*
Josh Bridges

EXHIBIT 3



Republican Party of Arkansas

THE REPUBLICAN PARTY OF ARKANSAS

"CERTIFICATE OF RECEIPT"

FILED

NOV 02 2015

**Arkansas
Secretary of State**

The Republican Party of Arkansas certifies that:

Marco Rubio has completed all necessary requirements
(Name, with title, as it is to appear on the ballot)

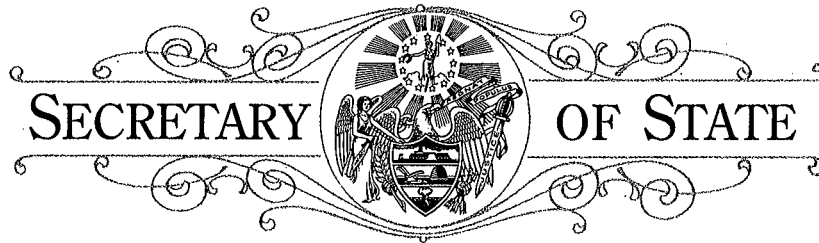
to file as a candidate for the office of President of the United States of America in the primary election to be held on the 1st day of March, 2016. This certifies that the candidate has paid all required filing fees of the Republican Party of Arkansas.

Witness my hand this 2nd day of November, 2015

Doyle Webb

Doyle Webb
Chairman

STATE OF ARKANSAS



I, Mark Martin, Secretary of State of the State of Arkansas, and as such, keeper of the official records of this office, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of the

Candidate Information Form & Receipt for 2016 Election Year for Rafael Edward "Ted" Cruz



In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 29th day of February, 2016.

Mark Martin

Mark Martin
Secretary of State

By: *[Signature]*
Josh Bridges

EXHIBIT 4

Elections Division, Room 020
State Capitol
Little Rock, Arkansas 72201

Elections Division
Phone 501-682-5070
Fax 501-682-3408

Candidate Information Form & Receipt For 2016 Election Year

45 Preso1
160114
FILED
NOV 02 2015

**Arkansas
Secretary of State**

Name of Candidate: Rafael Edward "Ted" Cruz

Office Sought: President of the United States District No. _____ Division No. _____
(If any) (If any)

Subdistrict No. _____, Position No. _____, County in which Candidate resides: Harris
(If any) (If any)

Party Affiliation: Democratic _____ Republican X Libertarian _____ Green _____
Nonpartisan Judicial / Prosecutor _____ Other _____

Phone: (713) 353-4330 Please put the number you want released to the public.

Permanent Address:	Campaign Address (If different from permanent address):
<u>3333 Allen Pkwy, Apt. 1906</u>	<u>24 Greenway Plaza, Suite 725</u>
<u>Houston, TX 77019</u>	<u>Houston, TX 77046</u>

- 1 a. The Secretary of State has received a party certificate or other document showing Candidate's payment of filing fees, etc 1a. _____ or
b. Independent Candidate or Nonpartisan Candidate has either paid a filing fee or filed sufficient petition signatures 1b. _____
2. Candidate has completed and signed a Political Practices Pledge 2. _____
3. Candidate has been offered the opportunity to complete optional background information 3. _____
4. Candidate has received an information packet which includes: 4. _____
- | | |
|---|------------------------------------|
| 1. Arkansas Election Calendar | 3. Campaign Finance Forms |
| 2. Campaign Finance Rules & Regulations | 4. Statement of Financial Interest |

This receipt shall serve as verification that all filing procedures with the Secretary of State's office have been completed, and the above candidate is officially filed for the 20 16 election ballot.

 Candidate's Signature	 Elections Division Staff
--	--

**** The following information is optional ****

Marital status: Married ☐ Single ☐ Gender: Male ☐ Female ☐

Place of birth: _____ Date of birth: _____

Number of children: _____ Religion: _____ Occupation: _____

Schools attended: _____

Current office held (if any): _____

Previous public office(s) held (if any): _____

Email address: _____

STATE OF ARKANSAS

SECRETARY OF STATE

I, Mark Martin, Secretary of State of the State of Arkansas, and as such, keeper of the official records of this office, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of the

Political Practices Pledge for 2016 Election Year for Rafael Edward "Ted" Cruz



In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 29th day of February, 2016.

Mark Martin

Mark Martin
Secretary of State

By: *[Signature]*
Josh Bridges

EXHIBIT 5

Political Practices Pledge

I, Rafael Edward "Ted" Cruz a candidate for the Office of President of the United States
(Name of office)

District Number _____, Division Number _____, Subdistrict Number _____, Position Number _____
(if any) (if any) (if any) (if any)

hereby state that I am familiar with the requirements of Arkansas Code Annotated §§ 7-1-103, 7-1-104, 7-3-108, 7-6-101, 7-6-102, 7-6-103, and 7-6-104 and that I will in good faith comply with the provisions of the same.

Check all that are applicable:

☒ **CANDIDATE FOR PARTY NOMINATION** Name of Party Republican
☐ **NONPARTISAN CANDIDATE** ☐ **WRITE-IN CANDIDATE**
☐ **INDEPENDENT CANDIDATE** ☐ **SCHOOL BOARD CANDIDATE**

ALL CANDIDATES MUST COMPLETE THE FOLLOWING SECTION:

I hereby certify that I have never been convicted of a felony in the State of Arkansas, or in any other jurisdiction outside of Arkansas.**


Candidate's Signature

October 26, 2015
Date Signed

FILED

NOV 02 2015

Arkansas
Secretary of State

Ted Cruz

Print your name as it is to appear on ballot
(See Below, Ark Code Ann. § 7-7-305(c))

3333 Allen Pkwy, Apt. 1906

Address

Houston, TX 77019

City, State & Zip Code

****A prospective candidate for state, district, county, municipal or township office who has had a felony conviction expunged in accordance with Ark. Code Ann. §§ 16-93-301 to 303 or similar expunction statute in another state may certify that he or she has never been convicted of a felony, provided the candidate presents a certificate of expunction from the court that convicted the prospective candidate. See Ark. Code Ann. § 7-6-102(d)**

7-7-305. Printing of ballots - Form.

(c) (1) (A) A person who files for an elective office in this state may use not more than three (3) given names, one (1) of which may be a nickname or any other word used to identify the person to the voters, and may add as a prefix to his or her name the title or an abbreviation of an elective public office the person currently holds.

(B) A person may use as the prefix the title of a nonpartisan judicial office in an election for a nonpartisan judicial office only if:

- (i) The person is currently serving in a nonpartisan judicial office to which the person has been elected in the last election for the office; or
- (ii) The person:
 - (a) Is a candidate for the office of circuit judge or district judge;
 - (b) Is currently serving in the office of circuit judge or district judge as an appointee; and
 - (c) Has been serving in that position for at least twelve (12) months.

(C) A nickname shall not include a professional or honorary title.

(2) The names and titles as proposed to be used by each candidate on the political practice pledge or, if the political practice pledge is not filed by the filing deadline, then the names and titles that appear on the party certificate shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for state and district offices and by the county board of election commissioners for county, township, school, and municipal offices.

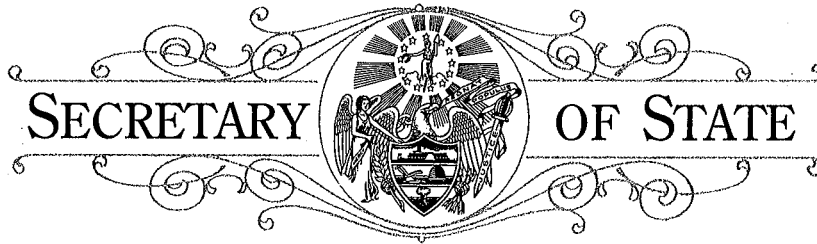
(3)(A) The name of every candidate shall be printed on the ballot in the form as certified by either the Secretary of State or the county board.

(B) However, the county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners shall immediately notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(4) A candidate shall not be permitted to change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

STATE OF ARKANSAS



I, Mark Martin, Secretary of State of the State of Arkansas, and as such, keeper of the official records of this office, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of the

Certificate of Receipt from the Republican Party of Arkansas for Ted Cruz



In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 29th day of February, 2016.

Mark Martin

Mark Martin
Secretary of State

By: _____

Josh Bridges

Josh Bridges

EXHIBIT 6



Republican Party of Arkansas

THE REPUBLICAN PARTY OF ARKANSAS

"CERTIFICATE OF RECEIPT"

FILED

NOV 02 2015

**Arkansas
Secretary of State**

The Republican Party of Arkansas certifies that:

Ted Cruz has completed all necessary requirements
(Name, with title, as it is to appear on the ballot)

to file as a candidate for the office of President of the United States of America in the primary election to be held on the 1st day of March, 2016. This certifies that the candidate has paid all required filing fees of the Republican Party of Arkansas.

Witness my hand this 2nd day of November, 2015

Doyle Webb

Doyle Webb
Chairman