IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-13277

FAYE COFFIELD, JASON CROWDER and BEATRICE WILLIAMS,

Plaintiffs-Appellants,

v.

KAREN C. HANDEL, in her Official Capacity as Georgia Secretary of State and Chairperson of the Georgia State Election Board,

Defendant-Appellee.

On Appeal from the United States District Court
For the Northern District of Georgia
Atlanta Division

BRIEF OF PLAINTIFFS-APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to F.R.A.P. 26.1 and 11th Cir. R. 26.1, plaintiffs-appellants submit t--he following list of persons and entities known to them to have an interest in the outcome of the case or appeal.

Baker, Thurbert E. - Georgia Attorney General

Chandler, Walker Lawrence - local counsel for plaintiffs in the district court

Coffield, Faye - plaintiff-appellant

Crowder, Jason - plaintiff-appellant

Handel, Karen C. - defendant-appellee (Georgia Secretary of State)

Ritter, Stefan - Georgia Senior Assistant Attorney General

Sinawski, Gary - attorney for plaintiffs-appellants

Williams, Beatrice - plaintiff-appellant

Vining, Robert L., Jr. - district judge, Northern District of Georgia

/s/ *Gary Sinawski*
Gary sinawski

STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants do not desire oral argument.

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STATEMENT OF JURISDICTION

The basis for this Court's jurisdiction is 28 U.S.C. § 1291. The basis for the district court's jurisdiction was 28 U.S.C. §§ 1331 and 1343.

The appeal is from an order of the district court entered on May 26, 2009 granting defendant's motion to dismiss and dismissing as moot plaintiffs' motion for summary judgment, and from a judgment of the district court entered on May 26, 2009 dismissing the action. The notice of appeal was filed on June 24, 2009.

STATEMENT OF THE ISSUES

The issue presented for this Court's review is whether the district court erred in declining to rule that Georgia's 5% petition signature requirement for independent candidates for public office other than statewide office is unconstitutional.

STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS AND DISPOSITIONS IN THE COURT BELOW

The plaintiffs-appellants (hereinafter, the "plaintiffs") commenced this action on August 29, 2008 by filing a complaint (Doc 1) seeking declaratory and injunctive relief from the requirement of O.C.G.A. 21-2-170(b) that an independent candidate for a public office other than a statewide office who seeks

access to the Georgia ballot must submit a petition containing a number of signatures equal to five percent of the number of registered voters eligible to vote in the preceding election for the office sought. Defendant-appellee (hereinafter, "defendant") moved to dismiss (Doc 3), and plaintiffs moved for summary judgment (Doc 14). By order entered on May 26, 2008 the district court (Robert L. Vining, Jr., J.) granted defendant's motion to dismiss and dismissed as moot plaintiffs' motion for summary judgment. By judgment entered on May 26, 2008 the district court clerk dismissed the action.

B. STATEMENT OF FACTS

Plaintiff Faye Coffield sought access to the ballot for the November 4, 2008 general election as an independent candidate for the United States House of Representatives from Georgia's fourth congressional district. Doc 14 - Att 1 - ¶ 1.

In April, 2008 the plaintiffs and others began circulating a nomination petition with a view toward gaining access to the November 2008 general election ballot for plaintiff Coffield. Id., ¶ 2. On or about July 5, 2008 Coffield tendered some 2,000 nomination petition signatures to defendant's representatives. Id., ¶ 4. Defendant's representatives refused to accept Coffield's nomination petition on the ground that it contained fewer signatures than were required by law, i.e., fewer signatures than "... 5 percent of the total number of registered voters eligible to

vote in the last election for the filling of the office the candidate is seeking ...." Id., ¶ 5; O.C.G.A. § 21-2-170(b).

The number of petition signatures required of an independent candidate for the United States House of Representatives from Georgia's fourth congressional district in 2008 was 15,061. Id., ¶ 6. No independent candidate for the United States House of Representatives in any state has ever overcome a petition requirement greater than 12,919 signatures. Id., ¶ 8.[1]

Prior to 1943, independent and minor party candidates for public office could attain access to the Georgia ballot without obtaining any petition signatures whatsoever. Id., ¶ 9; 1922 Ga. Laws ch. 530 p. 100. The "5%" petition signature requirement now found in O.C.G.A. § 21-2-170(b) was first enacted in 1943. Id., ¶ 10; 1943 Ga. Laws ch. 415 p. 292.

Georgia is one of only two states which require an independent candidate for the United States House of Representatives to obtain a number of petition signatures in excess of three percent of the number of registered voters in the congressional district in question in order to obtain access to the ballot. Id., ¶ 11.

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[1]Based on applicable voter registration figures, the number of nomination petition signatures required to obtain access to the ballot for an independent candidate for the United States House of Representatives from Georgia's fourth congressional district in the November 2010 election will be 18,032. Id., ¶ 8.

The other such state is North Carolina, which requires a number of petition signatures equal to four percent of the number of registered voters in the congressional district in question. Id., ¶ 12.

No independent candidate for the United States House of Representatives has met Georgia's 5% petition signature requirement since 1964. Id., ¶ 13. No minor party candidate for the United States House of Representatives has ever met Georgia's 5% petition signature requirement. Id., ¶ 14.

For the November 2008 election, the number of signatures required of an independent candidate for the United States House of Representatives in the 435 congressional districts in the United States varied from a low of zero signatures to a high of 20,131 signatures in North Carolina's fourth congressional district. The median number of signatures required was 2,750. The signature requirement was less than 5,000 in 318 districts; between 5,000 and 9,999 in 62 districts; and 10,000 or more in 55 districts, including all of Georgia's congressional districts. Id., ¶ 15.

C. STANDARD OF REVIEW

The district court's denial of plaintiffs' motion for summary judgment is subject to *de novo* review. See, e.g.. Schrader v. Blackwell, 241 F.3d 783, 787 (6th Cir. 2001).

SUMMARY OF ARGUMENT

Georgia law requires an independent candidate for any office other than a statewide office to submit a petition that contains signatures equaling 5% of the number of voters qualified to vote in the preceding election for that office. O.C.G.A. § 21-2-170(b). Plaintiffs were unable to meet the "5%" requirement, which was 15,061 signatures in Georgia's fourth congressional district in 2008. Doc 14 - Att 1 - ¶ 6. As a consequence, they were denied access to the November 2008 ballot.

Under the standards enunciated in Anderson v. Celebrezze, 460 U.S. 780 (1983) and its progeny, Georgia's "5%" requirement is unduly burdensome and must be subjected to strict scrutiny. The undue burden imposed by the requirement is manifest in the historical record: No independent candidate for the United States House of Representatives has met the requirement since 1964. Id., ¶ 13. No minor party candidate for the United States House of Representatives has ever met the requirement. Id., ¶ 14. No independent candidate for the United States House of Representatives has ever overcome a petition requirement greater than 12,919 signatures. Id., ¶ 8.

Jenness v. Fortson, 403 U.S. 431 (1971) upheld Georgia's ballot access framework, including the 5% requirement. However, the plaintiffs in that case did

not adduce information about how often candidates succeeded in meeting the requirement. The plaintiffs in the present case have adduced such information and have invoked the Supreme Court's admonition in Storer v. Brown, 415 U.S. 724 (1974) that

> " ... to assess realistically whether the law imposes excessively burdensome requirements upon independent candidates it is necessary to know other critical facts * * * [from which] there will arise the inevitable question for judgment: ... could a reasonably diligent independent candidate be expected to satisfy the signature requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot?

Id. at 738, 742. The record demonstrates that in Georgia a reasonably diligent independent candidate will only rarely, if ever, succeed in getting on the ballot.

Georgia has sought to justify the burden imposed by the 5% requirement by citing its interest in requiring independent candidates to demonstrate a significant modicum of public support as a precondition for ballot access. However, in light of the historical record, neither this nor any other state interest can justify the burden. For this reason, the 5% requirement is unconstitutional.

ARGUMENT

Georgia law requires an independent candidate for statewide office to submit a petition containing signatures equaling one percent of the number of registered voters eligible to vote in the preceding election for the office sought,

and requires an independent candidate for any other office to submit a petition containing signatures equaling five percent of the number of registered voters eligible to vote in the preceding election for the office sought. Specifically, O.C.G.A § 21-2-170(b) provides in relevant part:

> A nomination petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. A nomination petition of a candidate for any other office shall be signed by a number of voters equal to 5 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking ....

Plaintiffs assert that their First Amendment speech and associational rights were violated by defendant's rejection of plaintiff Coffield's nomination petition on account of Georgia's "5%" petition signature requirement applicable to candidates for the United States House of Representatives. The rejection of Coffield's petition and the 5% signature requirement are unconstitutional because the burdens they impose on plaintiffs' rights cannot be justified by a sufficient state interest.

I. THE STANDARDS FOR ADJUDICATING THE CONSTITUTIONALITY OF BALLOT ACCESS RESTRICTIONS

The Supreme Court has cautioned that while the administration of the

election process is largely entrusted to the states, they may not infringe on basic constitutional protections. Kusper v. Pontikes, 414 U.S. 51, 57 (1974), citing Dunn v. Blumstein, 405 U.S. 330 (1972).

Williams v. Rhodes, 393 U.S. 23, 30 (1968) (holding that Ohio's election laws making it virtually impossible for a minor party to access the presidential election ballot were unconstitutional), the first case in which the Supreme Court addressed the constitutional status of state ballot access restrictions, considered the nature of the rights implicated by such restrictions. The Court noted that such restrictions

> place burdens on two different, although overlapping, kinds of rights -- the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms.

Many ballot access restrictions are, of course, justified by the state's legitimate regulatory interests. "[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974).

The Supreme Court has described the trial court's task in evaluating a constitutional challenge to a state-imposed restriction on access to the ballot as

follows:

> It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged [restriction] is unconstitutional.

Anderson v. Celebrezze, 460 U.S. 780, 789 (1983) (holding that Ohio's March filing deadline for independent presidential candidate petitions was unconstitutionally burdensome).[2]

In a subsequent ballot access decision, Burdick v. Takushi, 504 U.S. 428, 433-34 (1992) (upholding Hawaii's prohibition against write-in voting in the context of a regulatory framework providing for easy access to the ballot) the Supreme Court endorsed the Anderson methodology and examined the

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[2]The Anderson Court based its analysis on the First and Fourteenth Amendments generally and did not explicitly engage in a separate equal protection analysis. The Court stated, however, that it "rel[ied] ... on the analysis in a number of our prior election cases resting on the Equal Protection Clause of the Fourteenth Amendment," id. at 786 n. 7, and indicated that those cases had been correctly decided. The earlier cases to which the Court referred all employed traditional equal protection analysis but with varying levels of scrutiny. See Williams v. Rhodes, supra; Jenness v. Fortson, 403 U.S. 431 (1971); Storer v. Brown, supra; American Party of Texas v. White, 415 U.S. 767 (1974), rehearing denied, 417 U.S. 926; Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979).

circumstances in which different levels of scrutiny should be applied, stating:

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects -- at least to some degree -- the individual's right to vote and his right to associate with others for political ends [citing Anderson at 788]. Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest ... would tie the hands of States seeking to assure that elections are operated equitably and efficiently.
> * * *
> * * *
> Under [the "more flexible standard" applied in Anderson], the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." Norman v. Reed, 502 U.S. ___, ___, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992). But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions [citing Anderson at 788] ....

The Eleventh Circuit has characterized the Anderson approach, as informed by Burdick,, as "a balancing test that ranges from strict scrutiny to a rational-basis analysis, depending upon the factual circumstances in each case." Duke v. Clelland, 5 F.3d 1399, 1405 (11th Cir. 1993), citing Fulani v. Krivanek, 973 F.2d 1539, 1543 (11th Cir. 1992).

Here, plaintiffs employ the Anderson/Burdick form of analysis: They

evaluate the injuries to plaintiffs' constitutional rights caused by Georgia's "5%" requirement; the state interest that has been asserted to justify those injuries, *viz.*, requiring an independent candidate to demonstrate substantial community support as a precondition for access to the ballot; and in light of these considerations, the constitutionality of the 5% requirement.

A. THE INJURIES TO PLAINTIFFS' RIGHTS

Plaintiffs' First and Fourteenth Amendment rights to cast their votes effectively and to associate for the advancement of political ideas were seriously impaired. Foreclosing Coffield from the ballot unnecessarily limited the choices available to her voter-supporters and other Georgia voters. Their rights to associate for the advancement of political ideas and to cast their votes effectively in furtherance of those ideas are among the most fundamental in our society. By denying Coffield access to the ballot the defendant, applying the 5% restriction, undermined the political speech and associational rights secured to plaintiffs by the First and Fourteenth Amendments.

The plaintiffs in this action assert the "different, although overlapping kinds of rights," cf. Williams v. Rhodes, supra at 30, of candidates for public office and their voter-supporters. By foreclosing Coffield from access to the ballot the defendant, together with the requirements of Georgia election law, thoroughly

undermined the First and Fourteenth Amendment rights of both categories of plaintiffs.

As for the rights of Coffield's voter-supporters, the Supreme Court observed in Anderson at 787-88 that

> ... voters can assert their preferences only through candidates or parties or both. "It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." [Citation omitted.] The right to vote is "heavily burdened" if that vote may be cast only for major-party candidates at a time when other parties or other candidates are "clamoring for a place on the ballot." [Citations omitted.] The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for likeminded citizens.

The severity of the injuries to the instant plaintiffs' rights means that the standard of review to be applied here is strict scrutiny; the state must demonstrate that the restriction at issue is "... narrowly drawn to advance a state interest of compelling importance." Norman v. Reed, 502 U.S. 279, 289 (1992).

B. THE STATE INTEREST PUT FORWARD TO JUSTIFY PLAINTIFFS' INJURIES

Under the Anderson/Burdick test, "[o]nce a plaintiff has identified the interference with the exercise of her First Amendment rights, the burden is on the state to 'put forward' the 'precise interests' ... [that are] justifications for the burden imposed by its rule." Fulani v. Krivanek, supra at 1544, citing Anderson at 789.

The state interest put forward to justify the burdens on plaintiffs' rights imposed by the 5% requirement is Georgia's interest in requiring candidates to demonstrate a significant modicum of voter support as a condition for ballot access.[3] The state additionally could have (but did not) put forward its interest in ensuring the integrity and orderly administration of its electoral process and its interest in administering the election processes as it sees fit. None of these state interests, plaintiffs submit, justify the burdens imposed by the 5% requirement.

II. THE 5% PETITION REQUIREMENT CANNOT BE JUSTIFIED

Jenness v. Fortson, 403 U.S. 431 (1971) upheld Georgia's ballot access framework. Of particular relevance to the case at bar, the Jenness Court stated that "Georgia's election laws ... do not operate to freeze the political status quo. In this setting we cannot say that Georgia's 5% petition requirement violates the Constitution." Id. at 438.

However, Jenness was decided in an evidentiary vacuum. The Court conceded that "[t]he 5% figure is, to be sure, *apparently* somewhat higher than the percentage of support required to be shown in many States as a condition for

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[3]A state may legitimately require parties "to make a preliminary showing of substantial support in order to qualify for a place on the ballot, because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates," Anderson at 789 n. 9.

ballot position," citing Williams v. Rhodes, supra at 47 n. 10 (Harlan, J., concurring in result) (emphasis added). The Jenness plaintiffs apparently did not present the Court with any information on the basis of which it could determine how frequently (if at all) independent candidates succeeded in meeting the 5% requirement. In fact, to date no independent candidate has met the 5% requirement since 1964.[4]

The Court's concern with past successes in meeting petition-signature requirements was addressed three years after Jenness was decided, in Storer v. Brown, supra:

> ... [California's five-percent petition requirement], as such, does not appear to be excessive, see Jenness v. Fortson, supra, but to assess realistically whether the law imposes excessively burdensome requirements upon independent candidates it is necessary to know other critical facts which do not appear from the evidentiary record in this case.
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> * * *
>
> [O]nce [such critical facts are ascertained], there will arise the inevitable question for judgment: in the context of California politics, *could a reasonably diligent independent candidate be expected to satisfy the signature requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot? Past experience will be a helpful, if not always an unerring, guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter*

[4]Although Billy McKinney qualified as an independent candidate for U.S. House in 1982, candidates in that year enjoyed a waiver of the normal 5% petition, in the fourth and fifth congressional districts only, due to late redistricting in those two districts. No minor party candidate for U.S. House has ever met the 5% petition requirement since that standard was created in 1943. Doc 14 - Att 4 - ¶ 8.

> *if they have not*. We note here that the State mentions only one instance of an independent candidate's qualifying for any office under [the statute in question], but disclaims having made any comprehensive survey of the official records that would perhaps reveal the truth of the matter.

Id. at 738, 742 (emphasis added).

In contrast to the parties in Jenness v. Fortson and Storer v. Brown, the plaintiffs in the instant case have provided information about the frequency with which independent candidates for Congress in Georgia have succeeded in attaining access to the ballot, along with information about how Georgia's 5% requirement compares with other states. For example, plaintiffs point out that no independent candidate for the United States House of Representatives has met Georgia's 5% requirement since 1964, Doc 14 - Att 1 - ¶ 13; that no minor party candidate for the United States House of Representatives has ever met Georgia's 5% requirement, Id., ¶ 14; that no independent candidate for the United States House of Representatives in any state has ever overcome a petition requirement greater than 12,919 signatures (the requirement in plaintiff Coffield's district in 2008 was 15,061 signatures), Id., ¶ 8; that Georgia is one of only two states which require an independent candidate for the United States House of Representatives to obtain a number of signatures in excess of three percent of the number of

registered voters in the congressional district in question, Id., ¶ 11;[5] that in 2008 the nationwide median signature requirement for independent candidates for the United States House of Representatives was 2,750, and that the requirement was less than 5,000 in 318 congressional districts, between 5,000 and 9,999 in 62 districts, and 10,000 or more in 55 districts, including all of Georgia's congressional districts, Id., ¶ 15.

In short, experience shows that Georgia's 5% requirement *does*"operate to freeze the political status quo," Jenness at 438. Independent candidates for the United States House of Representatives have not qualified for the ballot in Georgia with any regularity. To the contrary, plaintiffs' evidence demonstrates that such independent candidates will only rarely, if ever, satisfy the 5% signature requirement and succeed in getting on the ballot in Georgia. Under the circumstances, it is extremely doubtful that Georgia's 5% petition requirement can be justified by any state interest which the state could profer.

III. WRITE-INS ARE NO SUBSTITUTE FOR BALLOT ACCESS

In support of its decision in Jenness v. Fortson, the Supreme Court noted that "[t]here is no limitation whatever, procedural or substantive, on the right of a

[5]The other such state is North Carolina, which requires a number of petition signatures equal to four percent of the number of registered voters in the congressional district in question, Id., ¶ 12.

voter to write in on the ballot the name of the candidate of his choice and to have that write-in vote counted." 403 U.S. at 434. Indeed, as defendant points out, plaintiff Coffield qualified as an eligible write-in candidate. Doc 21 - Att 1 - ¶ 1.

However, more than a decade after deciding Jenness, the Court scrutinized the adequacy of write-in voting as an alternative to ballot access in Anderson v. Celebrezze, supra. The Court stated:

> It is true, of course, that Ohio permits "write-in" votes for independents. We have previously noted that this opportunity is not an adequate substitute for having the candidate's name appear on the printed ballot.
>
> > " * * * The realities of the electoral process ... strongly suggest that 'access' via write-in votes falls far short of access in terms of having the name of the candidate on the ballot .... [A candidate] relegated to the write-in provision, would be forced to rest his chances solely upon those voters who would remember his name and take the affirmative step of writing it on the ballot." [Citation omitted.] Indeed, in the 1980 Presidential election, only 27 votes were cast in the State of Ohio for write-in candidates. [Citation omitted.]

Id. at 800 n. 26.

IV. THIS CONTROVERSY IS NOT MOOT

For the reasons articulated by the Supreme Court in Storer v. Brown, 415 U.S. 724, 737 n. 8 (1974), this case is not moot:

> The 1972 election is long over, and no effective relief can be provided to the candidates or voters, but this case is not moot, since the issues properly presented, and their effects on independent candidacies, will persist as the California statutes are applied in future elections. This is, therefore, a case where the controversy is 'capable of repetition, yet evading

> review.' [Citations omitted.] The 'capable of repetition, yet evading review' doctrine, in the context of election cases, is appropriate when there are 'as applied' challenges as well as in the more typical case involving only facial attacks. The construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held.

V. THE 5% REQUIREMENT UNNECESSARILY CURTAILS POLITICAL OPPORTUNITY

The federal judiciary's ballot access jurisprudence has evolved since the Supreme Court decided Jenness v. Fortson in 1971. Greater weight is given to experiential data of the kind that the instant plaintiffs brought to the district court's attention. The goal remains, of course, to maximize political opportunity for candidates, voters and parties while preserving the integrity of states' electoral processes so long as they do not unduly undermine that opportunity. The Supreme Court stated in Anderson, supra, that

> [o]ur ballot access cases . . . focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens 'the availability of political opportunity. [Citations omitted.]

As the Eleventh Circuit noted in Cartwright v. Barnes, 304 F.3d 1138 (11th Cir. 2002), "[t]he power to create procedural regulations does not, however, 'provide States with license to exclude classes of candidates from federal office,'" quoting

from U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 832-33 (1995).

Plaintiffs submit that Georgia's 5% petition requirement effectively precludes independent candidates from running for the United States House of Representatives, thereby unnecessarily burdening the availability of political opportunity to such candidates and to the electorate. For that reason, the 5% requirement is unconstitutional.

CONCLUSION

For the foregoing reasons, this Court should reverse the Order of the district court granting defendant's motion to dismiss and dismissing as moot plaintiffs' motion for summary judgment; declare Georgia's "5%" signature requirement unconstitutional; and permanently enjoin enforcement of the 5% requirement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 17, 2009 I served the within Brief by sending a true copy thereof by prepaid United States mail to Stefan Ritter, Senior Assistant Attorney General, 40 Capitol Square, S.W., Atlanta, GA 30334-1300.

Dated: August 17, 2009

b

/s/ *Gary Sinawski*
Gary Sinawski