

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

_____	)
LIBERTARIAN PARTY OF NEW	)
HAMPSHIRE,	)
	)
Plaintiff,	)
	)
v.	)
	)
WILLIAM M. GARDNER, Secretary of	)
State of the State of New Hampshire, in his	)
official capacity,	)
	)
Defendant	)
_____	)

Civil Case No. \_\_\_\_\_

**VERIFIED COMPLAINT**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is a civil action seeking injunctive and declaratory relief filed, in part, pursuant to the Declaratory Judgments Act, 28 U.S.C. § 2201, and the Civil Rights Act of 1871, 42 U.S.C. § 1983. This action seeks resolution of the constitutional rights of Plaintiff Libertarian Party of New Hampshire (the “Libertarian Party”). In particular, the Libertarian Party facially challenges the sentence recently added to RSA 655:40-a by the New Hampshire General Court in House Bill 1542 (“HB 1542”) stating that “[n]omination papers shall be signed and dated in the year of the election.” This sentence, which becomes effective today (July 22, 2014), is unconstitutional.

2. HB 1542’s added language to RSA 655:40-a prohibits the Libertarian Party from collecting the nomination papers necessary to qualify as a political party before January 1 of the general election year for which the Party is seeking placement on the ballot. HB 1542 places substantial burdens on the Libertarian Party—a party constantly struggling for recognition in our

two-party system—that will make it difficult, if not impossible, for the Party to qualify as a political party under RSA 655:40-a in future general elections. Just as it did during the 2000 and 2012 general election cycles, the Libertarian Party plans to nominate a slate of candidates for statewide and/or legislative office in future general elections pursuant to RSA 655:40-a, and to have those candidates appear on the general election ballot. For the Libertarian Party to appear on the general election ballot as a political organization with the ability to run a full slate of candidates, the Libertarian Party must collect and submit “the names of registered voters equaling 3 percent of the total votes cast at the previous state general election.” *See* RSA 655:42, III. Under this process, using the 2016 general election as an example, the Libertarian Party may be required to submit in excess of 13,600 certified nomination papers.

3. Such an artificial January 1 trigger for collecting nomination papers under HB 1542 puts the Libertarian Party at a distinct disadvantage compared to the “major” parties in New Hampshire because it has no way to effectively participate in and contribute to the statewide election during both the odd-numbered year prior to the general election, as well as the year of the general election itself. This is the case because, using the 2016 general election as an example, the Libertarian Party must under HB 1542 “sit on the sidelines” for all of 2015 before the nomination-collection period commences on January 1, 2016. If allowed to collect nominations during 2015, the Libertarian Party would hope to achieve party status and be able to fundraise and spend accordingly when it counts—in the months leading to the 2016 general election. However, as it currently stands under HB 1542, the Libertarian Party will be collecting nomination papers well into the summer months during this crucial time period preceding the 2016 general election; by the time the Party obtains all the nomination papers it needs (if it, in fact, can do so under this compressed time frame), it will be too late to do significant recruiting,

fundraising, and electioneering prior to the 2016 election. These burdens exist in future general elections beyond 2016.

4. In the face of these substantial burdens, the State also has no legitimate regulatory interest in the law. Just as the United States District Court for the District of Rhode Island held in a case striking down a nearly identical law, the State here “has come forward with no legitimate regulatory interest whatsoever that would necessitate placing this enormous speedbump on the path to party recognition (much less shown any such interest is of ‘compelling importance’ or that the January 1 start date is the most narrowly tailored means available to protect that interest).” *Block v. Mollis*, 618 F. Supp. 2d 142, 151 (D.R.I. 2009). Indeed, the legislature—in response to the Secretary of State’s request that it pass HB 1542 as a “housekeeping” matter—approved HB 1542 with little discussion by voice vote and without any evidence presented as to why these substantial burdens placed on third parties were even necessary. HB 1542 is far more than a “housekeeping” bill. It represents an unconstitutional effort to place substantial burdens on ballot access for third parties in New Hampshire.

5. Resolution of this issue is critical not only because the Libertarian Party’s essential rights of voting, free speech, association, and due process are at stake, but also because of the assurance of a fair system of representative government. As the United States Supreme Court has noted, third parties have played a “significant role ... in the political development of the Nation.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-186 (1979). “Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success.” *Id.* The Libertarian Party of New Hampshire is no different. Thus, where “an election campaign is a means of disseminating ideas as well as attaining political office[,] ... [o]verbroad restrictions on ballot access jeopardize this form of political expression.” *Id.* As the

*Block* Court similarly explained, “[s]ociety is best served when political parties outside the two existing major parties play an active, ‘robust’ role in the entire campaign process—not simply appear on the final election ballot.” *Id.* at 153-54. HB 1542, however, prevents the Libertarian Party from playing such a “robust” role in subsequent general elections.

6. The Libertarian Party therefore brings this action against William M. Gardner, the Secretary of State of the State of New Hampshire, in his official capacity, who is in charge of administering New Hampshire’s election laws.

### **THE PARTIES**

7. The Libertarian Party is a political organization comprised of New Hampshire citizens who seek to associate and express their political views, as well as to nominate candidates for elective office as an officially-recognized political party in New Hampshire. The Libertarian Party has a mailing address at P.O. Box 5293, Manchester, NH 03108-5293.

8. William M. Gardner is the Secretary of State of the State of New Hampshire. He is named in his official capacity only. He is in charge of administering New Hampshire’s election laws. His office is located at State House, Room 204, Concord, NH 03301.

9. Secretary Gardner, personally and through the conduct of his agents, servants, and employees, acted under color of state law at all times relevant to this action.

### **JURISDICTION AND VENUE**

10. This action arises under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983. This Court therefore has subject matter jurisdiction under 28 U.S.C. § 1331.

11. Declaratory relief is authorized by 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

12. Venue in the District of New Hampshire is based on 28 U.S.C. § 1391(b).

## FACTS

### **I. The Third-Party Recognition Process in New Hampshire**

13. The Libertarian Party desires to become an officially-recognized political party under the laws of the State of New Hampshire, with a view towards engaging in further political activity relating to future general elections. Gaining access to the ballot as a recognized political party in New Hampshire has real and substantial advantages, as it allows the party to run an entire slate of candidates without each individual third-party candidate needing to collect the number of nomination papers necessary under RSA 655:42 and RSA 655:40.

14. In New Hampshire, a political organization can become a recognized political party for ballot access purposes in two ways.

15. The first method—which is applicable to this lawsuit—is nomination by organization, or, in other words, by a third party. Under this process, “[a] political organization may have its name placed on the ballot for the state general election by submitting the requisite number of nomination papers, in the form prescribed by the secretary of state, pursuant to RSA 655:42, III.” RSA 655:40-a. RSA 655:42, III, in turn, provides: “It shall require the names of registered voters equaling 3 percent of the total votes cast at the previous state general election to nominate by nomination papers a political organization.” However, even if an organization succeeds in becoming a recognized political party under RSA 655:40-a, such recognition terminates unless the political party nominates a candidate for governor or United States Senate who receives at least 4 percent of the vote for such office in the election cycle for which the party was recognized. *See* RSA 652:11.

16. The second method is by satisfying certain vote thresholds following the independent candidate petitioning process. RSA 652:11 defines “party” as “any political

organization which at the preceding state general election received at least 4 percent of the total number of votes cast for any one of the following: the office of governor or the offices of United States Senators.” Major parties—namely, the Democratic and Republican Parties—traditionally satisfy this 4 percent threshold during each general election cycle, thereby allowing these parties to run a slate of candidates during the next general election who are nominated by the party through a primary process. A third party, however, can aim to satisfy this criteria by having an individual candidate secure the 3,000 nomination papers necessary to run on the ballot for governor or the U.S Senate under RSA 655:40 and RSA 655:42, with the hope that this candidate will then meet this 4 percent threshold during the general election. If this 4 percent threshold is met, the party of the independent candidate will be formally recognized during the next general election and be able to nominate a slate of candidates after holding a primary. Once again, such party recognition terminates after the general election in which the party is recognized unless the political party nominated a candidate for governor or U.S. Senate who satisfied the 4 percent threshold during the general election.<sup>1</sup>

17. This second method of obtaining third-party ballot access through an independent third-party candidate cannot be equated with the first method that enables a third party to engage in non-election-year party recognition and participation under RSA 655:40-a—a method which, as explained below, HB 1542 substantially hinders by compelling third parties to engage in a compressed nomination-collection process rather than recruiting, fundraising, and electioneering

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<sup>1</sup> Under this second method, the Libertarian Party held “party” status during the general elections of 1992 (during the 1990 gubernatorial election, Libertarian Miriam Luce achieved 4.8% of the vote), 1994 (during the 1992 gubernatorial election, Libertarian Miriam Luce achieved 4.0% of the vote), and 1996 (during the 1994 gubernatorial election, Libertarian Steven Winter achieved 4.4% of the vote). At the time of the 1990, 1992, and 1994 general elections when the Libertarian achieved “party” status for the subsequent general elections, the “party” threshold was 3 percent instead of 4 percent under RSA 652:11. As explained in more detail below, RSA 652:11 was amended in 1997 in such a way as to prevent third parties from obtaining ballot access under this method in the future.

during an election year.<sup>2</sup> Indeed, the process under RSA 652:11 and RSA 655:40 (the second method) is not comparable to RSA 655:40-a (the first method) because RSA 655:40-a provides the only mechanism by which an organization can gain recognition and reap the undeniable benefits of official party status *before an election*. As the United States District Court for the District of Rhode Island has explained, “[h]istorically, so much of the value of a minor party lies in what it can do *before an election*: spark debate, introduce new ideas, educate voters, and challenge the status quo.” *Block v. Mollis*, 618 F. Supp. 2d 142, 153-54 (D.R.I. 2009) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983)) (emphasis added).

## II. The History of the Libertarian Party

18. The Libertarian Party opposes any government action interfering in the personal, family, and business decisions of New Hampshire citizens. In essence, the Party believes that all persons in New Hampshire should be free to live their lives and pursue their interests as they see fit so long as they do no harm to their fellow citizens. This philosophy can best be described as “live and let live.”

19. The Libertarian Party has a demonstrated history of engaging in political activity in New Hampshire and is, by far, the most active and well known third party in the state. The Libertarian Party has run candidates in New Hampshire for more than four decades, and is affiliated with the national Libertarian party (which coordinates national efforts and publishes a platform describing its positions on numerous issues of public concern). The Libertarian Party

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<sup>2</sup> The existence of the party primary process under RSA 652:11 (the second method) as an alternative means for the Libertarian Party to gain access to the ballot separate and apart from the process under RSA 655:40-a (the first method) does not insulate HB 1542’s amendment to RSA 655:40-a from constitutional scrutiny. As the *Block* Court explained: “[T]he details of a petition process added as an ‘alternative’ do not circumvent constitutional scrutiny just because they exist in addition to other ballot access provisions that may be constitutional in their own right. Pointing the [challenging third party] in a different direction in this case would, in essence, allow the State to take away with one hand what it provided with the other .... The validity of the petition process should stand or fall on its own constitutional merits ....” *Block v. Mollis*, 618 F. Supp. 2d 142, 154 (D.R.I. 2009).

holds regular meetings with its members, hosts conventions just like major parties, and sends members to the New Hampshire legislature to testify on pending bills. The Libertarian Party also communicates with its constituents and with the public through an established website at <http://lpth.org/>. Further, the Libertarian Party supports its candidates financially through direct contributions and purchasing advertisements.

20. The Libertarian Party was particularly active during the 2000 and 2012 general elections in New Hampshire when the Party successfully complied with the nomination process that is required for a third party to be recognized on the ballot as a “party” under RSA 655:40-a (the first method described above).

21. During the 2000 general election cycle, the Libertarian Party collected in excess of the approximately 10,000 certified nomination papers necessary to exceed 3 percent of the total votes cast during the 1998 general election. As a result, the Party was able to run a slate of candidates, including the following:

- Harry Browne/Art Olivier [President/Vice President]: 0.5% (2,757 votes)
- John Babiarz [Governor]: 1.1% (6,446 votes)
- Dan Belforti [Congress District 1]: 2.0% (5,713 votes)
- Brian Christeson [Congress District 2]: 2.2% (6,118 votes)
- Rosalie Babiarz [Executive Council District 1]: 16.3% (15,896 votes)
- Bob Multer [Senate District 11]: 3.7% (843 votes)
- Eric Postpischil [Senate District 13]: 3.8% (595 votes)
- James K. Wallack [Senate District 14]: 3.4% (757 votes)
- James S. Vogt [Senate District 15]: 3.1% (728 votes)
- Kenneth E. Blevens [Senate District 16]: 3.4% (871 votes)

22. Similarly, during the 2012 general election cycle, the Libertarian Party collected in excess of the approximately 13,600 certified nomination papers necessary to exceed 3 percent of the total votes cast during the 2010 general election. As a result, the Party was able to run a slate of candidates, including the following:

- Gary Johnson/Jim Gray [President/Vice President]: 1.2% (8,212 votes)

- John Babiarz [Governor]: 2.8% (19,251 votes)
- Brendan Kelly [Congress District 1]: 4.2% (14,521 votes)
- Hardy Macia [Congress District 2]: 4.4% (14,936 votes)
- Howard Wilson [Executive Council District 1]: 4.8% (6,403 votes)
- Michael J. Baldassarre [Executive Council District 3]: 4.5% (6,182 votes)
- Kenneth E. Blevens [Executive Council District 4]: 4.7% (5,705 votes)
- Richard Kahn [Senate District 14]: 5.9% (1,466 votes)
- Rich Tomasso [Senate District 16]: 3.3% (921 votes)

23. The nomination paper-collection process engaged in by the Libertarian Party in 2000 and 2012 was tremendously burdensome. In fact, to comply with the requirements under RSA 655:40-a, the Party had to start collecting nomination papers well before January 1 of the election year. For example, during the 2000 general election cycle, the Libertarian Party began collecting nomination papers in approximately April 1999. During the 2012 general election cycle, the Libertarian Party began collecting nomination papers in approximately August 2011.

24. The Libertarian Party would likely not have been able to obtain the necessary nomination papers to get on the ballot in 2000 and 2012 under RSA 655:40-a had the Party been prohibited from collecting nomination papers prior to January 1 of the election year.

### **III. HB 1542 and its Impact on the Libertarian Party**

25. In HB 1542, the New Hampshire General Court recently added to RSA 655:40-a the following language: “Nomination papers shall be signed and dated in the year of the election.” This sentence becomes effective today, on July 22, 2014. In short, HB 1542 prohibits third parties from collecting nomination papers necessary to qualify as a political party before January 1 of the election year for which they are seeking recognition. Traditionally, nomination papers must be submitted for certification to the Supervisors of the Checklist in each town or city where each signatory is registered for review by early August—an arduous process that requires third parties to disaggregate nomination papers by municipality and then drop off (and later pick

up) the papers at the offices of any one of New Hampshire's 221 towns and 13 cities.<sup>3</sup> Thus, under HB 1542, third parties like the Libertarian Party only have approximately seven months—from January 1 to approximately early August—to collect the necessary nomination papers. As is obvious, given New Hampshire's harsh winter months, this time period for collection is, in reality, much shorter.

26. Having to collect the required number of nomination papers in this limited time window permitted by law, and not being able to commence that process until January 1 of the election year, creates an arbitrary, unjustifiable, and ultimately impermissible burden that makes the task far more difficult, if not impossible, to accomplish in future general elections—thereby chilling the Libertarian Party's pre-election efforts to associate. These burdens are especially significant because the Libertarian Party, just as it did in 2000 and 2012, plans on going through the nomination process specified under RSA 655:40-a during future general elections, which will include collecting nomination papers from members of the public. Successfully going through this process will enable the Party to nominate candidates for statewide and/or legislative office in future general elections, and to have those candidates appear on the general election ballot.

27. Using the 2016 general election as an example, if HB 1542 continues to remain in effect, the Libertarian Party very well may be precluded from collecting the number of nomination papers necessary under RSA 655:40-a and RSA 655:42, III. If voter turnout in 2014 mirrors voter turnout in 2010, then the Libertarian Party will be required to submit in excess of 13,600 certified nomination papers to get on the ballot as a party in 2016—an amount which, indisputably, is substantial.<sup>4</sup> As a practical matter, assuming a validity rate of 75%, the

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<sup>3</sup> Municipal supervisors usually must have nomination papers certified for political organizations by the last week of August. Political organizations then pick up the certified nomination papers from the municipal supervisors and then file the papers with the Secretary of State by the first week of September.

<sup>4</sup> In 2010, 456,588 people voted in the New Hampshire general election. Three percent of this figure is 13,698.

Libertarian Party likely would need to collect approximately 18,000 nomination papers to compensate for any nomination papers that municipal Supervisors of the Checklist may discard due to alleged irregularities or technical errors. Had HB 1542 been in effect in 2013, a minor party seeking to get on the ballot for the 2014 general election through the nomination process under RSA 655:40-a would have been prohibited from collecting any of the 21,330 certified nomination papers necessary to gain access to the ballot until January 1, 2014.<sup>5</sup>

28. Hence, even though the Libertarian Party is already in existence and plans on commencing the process of obtaining official recognition for future general elections, it cannot, under HB 1542, even begin the arduous and time-consuming process of collecting the necessary thousands of nomination papers until January 1 of the general election year. Any nomination papers collected prior to January 1 of the general election year would be considered invalid under this statutory scheme. Thus, HB 1542 operates to suppress the number of recognized political parties, candidates on the ballot, and voter choices.

#### **IV. There Is No State Interest Justifying The Onerous Restrictions Imposed By HB 1542**

29. The State cannot present a legitimate regulatory interest—let alone a compelling one—justifying the onerous restrictions imposed by HB 1542. Indeed, the House and Senate approved HB 1542 with little discussion by voice vote and without any evidence presented as to why these substantial burdens placed on third parties were even necessary.

30. HB 1542 was recommended “ought to pass” by a vote of 15 to 1 by the House of Representatives Election Law Committee on February 14, 2014. According to the House record documenting this vote, “[t]his bill was requested by the secretary of state. It requires that nominating petitions for a political organization seeking placement on the ballot for the state

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<sup>5</sup> 710,972 New Hampshire domiciliaries voted for the presidency during the 2012 election. Three percent of this figure is 21,330.

general election shall be signed and dated in the year of the election, beginning January 1 of the political cycle. This will reduce the number of invalid signatures, due to death or relocation, which might arise if signatures are submitted earlier.” In April 2, 2014 testimony before the Senate Public and Municipal Affairs Committee introducing HB 1542, one of the House sponsors of the bill characterized HB 1542 as a “housekeeping” bill requested by the Secretary of State. She testified as follows: “The reason for this is when a third party would try to achieve nominating papers, they would start right after the election. So you would have signatures that may be two years old but were very difficult to verify. So having it in the same year of the election makes it easier to verify. It does limit that time frame, but it allows for verification.”<sup>6</sup> These justifications fail for two principal reasons.

31. First, if anyone is to be harmed by use of “invalid” nomination papers “due to death or relocation” collected during the time frame before January 1 of the election year, it is the third party seeking the nomination papers—not the State. If an organization, like the Libertarian Party, wishes to collect nomination papers during the odd-numbered year before a general election, it does so as its own risk. Moreover, using “old” nomination papers simply means some greater margin may be needed to cover the potentially larger number of invalid nomination papers. But that is the third party’s problem—not the problem of the State or the Supervisors of the Checklist in each town or city verifying the nomination papers. And, most importantly, the benefit of additional time for collecting nomination papers more than outweighs the marginal burden to the third party of collecting a few more nomination papers. In other words, the process is self-regulating: if the third party is worried that it will get stale nomination

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<sup>6</sup> The House of Representatives passed HB 1542 by voice vote on February 19, 2014. By a vote of 4-0, the Senate Public and Municipal Affairs Committee recommended that HB 1542 “ought to pass.” The Senate then passed HB 1542 by voice vote on April 17, 2014. The Governor signed HB 1542 into law on May 23, 2014, with an effective date of July 22, 2014.

papers by starting too early, then it will wait. It does not need an artificial statutory date to make it do so.

32. Second, the State already has a regulation directly aimed at this issue: the check on the validity of nomination papers by the Supervisors of the Checklist in each town or city where each signatory was registered at the time of the signing. Moreover, in response to right-to-know requests submitted by the New Hampshire Civil Liberties Union to the Secretary of State's Office and the Attorney General's Office, the State has provided no contemporaneous evidence (statistical or otherwise) prepared in conjunction with HB 1542's passage supporting the proposition that the percentage of invalid nomination papers obtained by petition somehow decreases if nomination papers are collected before January 1 of the general election year. Simply put, the State cannot provide an adequate justification for a January 1 start date that needlessly hampers the ability of a third party to compete in a meaningful way in a general election year leading up to the actual election date.

33. HB 1542 is just one of many acts by the New Hampshire legislature restricting third-party ballot access over the decades. For example, in 1997, the legislature amended RSA 652:11 (which addresses the second method for party recognition discussed above) by raising from 3 percent to 4 percent the number of votes a third-party gubernatorial candidate needs to obtain in a general election for that third party to become officially recognized for the next general election. Though this amendment also added elections for the U.S. Senate where this percentage threshold could be met to obtain party recognition, this increase in threshold was designed to decrease third-party ballot access. Though the Libertarian Party had reached the 3 percent threshold during the gubernatorial elections of 1990, 1992, and 1994 under the prior version of RSA 652:11, the Libertarian Party—or any third party for that matter—has been

unable to qualify as a “party” under RSA 652:11 since the threshold was raised to 4 percent in 1997.<sup>7</sup> Moreover, in April 2014—at around the same time the Senate Public and Municipal Affairs Committee recommended without any dissent that the Senate approve the burdens imposed on third parties by HB 1542—that same Committee voted 4-0 to recommend that the Senate kill HB 1322. HB 1322, which had been passed by the House by voice vote, would have expanded ballot access to third parties by amending RSA 652:11 to lower the threshold from 4 percent back to 3 percent.<sup>8</sup> On April 17, 2014, by a vote of 13-11, the Senate voted to kill HB 1322.

34. To be absolutely clear, this lawsuit does not challenge the 3 percent nomination-paper requirement with which the Libertarian Party seeks to comply to obtain access to the ballot in future elections under RSA 655:40-a. This lawsuit only challenges the time frame imposed by HB 1542 for complying with this nomination-paper requirement which, together with the 3 percent threshold, “work[s] an immediate injustice to [the Libertarian Party’s] rights not only to gain a ballot spot, but to accrue important benefits of official status during, if not prior to, an election year.” *Block v. Mollis*, 618 F. Supp. 2d 142, 154 (D.R.I. 2009).

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<sup>7</sup> Even though a Libertarian Candidate for U.S. Senate, Kenneth E. Blevens, received 4.5% of the vote in 1996, the 1997 amendment to RSA 652:11 was made effective January 1, 1999, thereby preventing the Libertarian Party from obtaining access to the ballot during the 1998 general election. This change to the effective date is one of many examples of the New Hampshire legislature’s intentional efforts to prevent third parties from gaining access to the ballot.

<sup>8</sup> The Secretary of State’s Office provided testimony to the Senate Public and Municipal Affairs Committee concerning HB 1322. In this testimony, the Office suggested that, if the threshold is reduced from 4 percent to 3 percent, then the legislature should also strip away U.S. Senator as an office in which, if this threshold is met, a party could obtain ballot access. Such a suggestion would have, of course, watered down the bill in an effort to limit ballot access to third parties.

**CLAIM FOR RELIEF**

**Count I**

**(First and Fourteenth Amendments to the U.S. Constitution, as enforced by 42 U.S.C. § 1983)**

35. The Libertarian Party realleges and incorporates by reference the allegations contained in the preceding paragraphs.

36. The Libertarian Party and its individual constituents desire to seek recognition in future general elections, but will now be hindered in doing so because of the artificial impediment in the statutory scheme against collecting any nomination papers prior to January 1 of the year of the general election. Hence, there exists a ripe and justiciable controversy concerning the Libertarian Party's ability to qualify for recognition as a political party in light of the statutory scheme and in light of the Libertarian Party's conflicting constitutional rights to freedom of association, free speech, due process, and access to the ballot. As a consequence, this action involves an actual and ripe controversy within the meaning of the Declaratory Judgments Act, 28 U.S.C. § 2201.

37. The Libertarian Party has standing to sue because it is adversely affected by the unconstitutional constraints of RSA 655:40-a. Specifically, with respect to future elections, the Libertarian Party is arbitrarily and unnecessarily impeded in its efforts and desire to form a recognized political party, and faces unfair and impermissible barriers in the statutory scheme, all in violation of its constitutional rights.

38. For example, just as it did during the 2000 and 2012 general election cycles, the Libertarian Party plans to collect the necessary nomination papers for recognition in future general elections, but now would be forced to wait until the statutory time period commences on January 1 of the general election year before collecting nomination papers. With respect to these

future elections, the Libertarian Party is thereby prejudiced in that it is unjustly forced to compete in the political arena at a distinct political and financial disadvantage when compared to major political parties.

39. The provision of RSA 655:40-a relating to the January 1 commencement date for collection of nomination papers violates the rights guaranteed to the Libertarian Party by the First and Fourteenth Amendments to the U.S. Constitution, as enforced by 42 U.S.C. § 1983.

40. The Libertarian Party is irreparably harmed by the unjustified burden caused by the unconstitutional time constraints present in the statutory scheme governing recognition for political parties, and will continue to be so harmed absent injunctive relief lifting those constraints. The Libertarian Party enjoys a reasonable likelihood of success on the merits of this claim.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

a) Declare the sentence in RSA 655:40-a stating that “[n]omination papers shall be signed and dated in the year of the election” unconstitutional and in derogation of the First and Fourteenth Amendments to the U.S. Constitution, insofar as said statute prohibits Plaintiff from collecting nomination papers to qualify as a political party before January 1 of the general election year for which it is seeking recognition.

b) Temporarily, preliminarily, and permanently restrain and enjoin the State of New Hampshire from enforcing the provision of RSA 655:40-a relating to the January 1 commencement date for collection of nomination papers, or from otherwise precluding the recognition of a prospective political party on grounds that the prospective political party obtains the nomination papers of registered qualified voters before January 1 of the year of the general

election.

- c) Award Plaintiff attorneys' fees in this action pursuant to 42. U.S.C. § 1988(b);
- d) Award Plaintiff its costs of suit; and
- e) Grant such other and further relief as this Court deems just and proper in the

circumstances.

Respectfully submitted,

LIBERTARIAN PARTY OF NEW HAMPSHIRE,

By and through its attorneys affiliated with the New  
Hampshire Civil Liberties Union Foundation,



Gilles R. Bissonnette (N.H. Bar. No. 265393)

NEW HAMPSHIRE CIVIL LIBERTIES UNION

18 Low Avenue

Concord, NH 03301

Tel.: 603.224.5591

[Gilles@nhclu.org](mailto:Gilles@nhclu.org)

William E. Christie (N.H. Bar. No. 11255)

SHAHEEN & GORDON, P.A.

107 Storrs Street

P.O. Box 2703

Concord, NH 03302

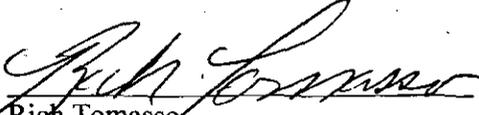
Tel.: 603.225.7262

[wchristie@shaheengordon.com](mailto:wchristie@shaheengordon.com)

Dated: July 22, 2014

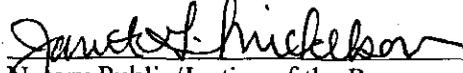
**VERIFICATION**

I, Rich Tomasso, as Chair of the Libertarian Party of New Hampshire, and as a person with personal knowledge of the facts which form the basis of the above-captioned action, being duly sworn, hereby state under oath that I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and can verify that the facts set forth therein are true and correct to the best of my knowledge.

  
Rich Tomasso

STATE OF NEW HAMPSHIRE  
COUNTY OF Hillsborough

On this 19 day of July 2014, before me, personally appeared Rich Tomasso and swore that the within instrument is true to the best of his/her knowledge and belief.

  
Notary Public/Justice of the Peace  
My commission expires: JANET G. MICKELSON, Notary Public  
My Commission Expires May 11, 2016

