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 Action No. 14-322-PB

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO DEFENDANT'S MOTION TO DISMISS

NOW COMES the Plaintiff, the Libertarian Party of New Hampshire, by and through counsel, and objects to Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for the reasons articulated in the memorandum of law below.

INTRODUCTION

Plaintiff has filed this action seeking a declaratory judgment that a recent amendment to RSA 655:40-a is unconstitutional and an injunction barring its enforcement. The discrete section of this statute that Plaintiff challenges is the last sentence, which restricts the time a political organization has to collect signatures to file nomination papers with the State to the year of the general election only. RSA 655:40-a.

On May 29, 2009, the United States District Court for the District of Rhode Island struck down a nearly identical law that prohibited political parties from collecting voter signatures to gain access to the ballot until January 1 of the election year as violative of the First and Fourteenth Amendments to the United States Constitution. Block v. Mollis, 618 F. Supp. 2d

142, 150-154 (D.R.I. 2009). The District Court determined the "State has come forward with no legitimate regulatory interest whatsoever that would necessitate placing this enormous speed-bump 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)." Id. at 151. The Court not only determined that a January 1 start date to collect signatures impermissibly narrowed the time frame to collect signatures, but that the law forced third parties to sit on the sidelines in "off" years and collect signatures in the run up to an election when it should be engaged in electioneering activity like the two major political parties. Id. at 151-153. Given the forceful language of the opinion, not surprisingly, the State of Rhode Island did not appeal the District Court's decision.

Nevertheless, in 2014, the New Hampshire Legislature adopted a nearly identical law prohibiting third parties, such as the Libertarian Party, from collecting 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. Verified Complaint at ¶¶ 1-2. These types of laws are highly unusual. See Exhibit A.[1] Despite the severe restrictions imposed by the law, it was described by its sponsors as a "housekeeping" bill and was passed with little discussion by voice vote and without any evidence presented as to why these substantial burdens were necessary. Id. at ¶¶ 4, 29. The limited justification for the law—namely, the alleged ease on the State in checking fresh signatures gathered closer to an election rather than "stale" signatures collected in a year prior to the election—was the same justification specifically rejected by the district court in Block. 618 F. Supp. 2d at 152. Additionally, like the State of Rhode Island, the New

[1] We appreciate that so-called extrinsic evidence may not be considered at the motion to dismiss stage. However, the Verified Complaint alleges the burdensome nature of the law, and Block, a case heavily relied upon by the Plaintiff, describes the Rhode Island law as one of the most "onerous" in the nation. 618 F. Supp. 2d at 151 n. 11. Accordingly, the Fifty State Survey is fairly incorporated into our pleadings. Even if the Court does not consider the survey, the Verified Complaint alleges more than sufficient facts to state a claim upon which relief may be granted.

Hampshire Secretary of State and Attorney General have not produced in response to pre-litigation records requests any 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 increases if nomination papers are collected before January 1 of the general election year. Verified Complaint at ¶ 32; Block, 618 F. Supp. 2d at 152.

Despite the similarities between the Rhode Island and New Hampshire laws and the purported justifications for the laws, the State has moved to dismiss the action, claiming that the Plaintiff's Verified Complaint fails to state a claim upon which relief can be granted. To the contrary, Plaintiff's Verified Complaint has stated a cognizable claim for relief. Indeed, despite the State's contention that it is applying the traditional Rule 12(b)(6) standard in its Motion, what the Motion actually asks this Court to do is ignore the Plaintiff's factually-supported and verified allegations that the law will—as evidenced by the Libertarian Party's own experiences in obtaining ballot access during the 2000 and 2012 elections—impose a severe burden on its ability to obtain ballot access in future elections. Moreover, the State's Motion asks the Court to blindly accept, without the benefit of full discovery and despite the decision in Block, the State's purported justification for the law—a request that is not only inappropriate in a Rule 12(b)(6) motion, but is particularly striking given the fact that the State could not produce a single document explaining why this law was necessary in pre-litigation discovery. As the First Circuit Court of Appeals has explained, where the government claims that a ballot access restriction is appropriately tailored to its asserted interests, the government must "come forward with proof" and whether the government "can succeed in this endeavor is a sufficiently open question that we cannot conclude, on the pleadings, that no set of facts exists under which the [plaintiff] might

prevail." Cruz v. Melecio, 204 F.3d 14, 22 (1st Cir. 2000). The Court added: "That clinches the matter." Id. Here, especially in light of Block, it hardly can be said, based solely on the pleadings, that there is no set of facts under which the Plaintiff might prevail. As in *Cruz*, this "clinches the matter," and the State's Rule 12(b)(6) Motion should be summarily denied.

PERTINENT FACTS

The Libertarian Party seeks to become an officially recognized political party in New Hampshire. To accomplish this, the Party must either satisfy certain vote thresholds following the petitioning process or be nominated by a sufficient percentage of registered voters. The latter method is impacted by the portion of the statute at issue in this case. The Party may place candidates on the ballot if it can submit the requisite number of verified nomination papers signed by registered voters, which is 3% of the total votes cast in the previous general election. RSA 655:42, III. The amendment the Party challenges here would require those signatures to be gathered in the year of the election itself; collection of nominating papers could not begin prior to January 1 of that year. For example, for the November 2016 election, the Party could not begin collecting signatures until January 1, 2016. Because this language severely hinders the Party's constitutional right to participate in the political process, it filed this action seeking declaratory and injunctive relief. The Party filed a factually detailed, Verified Complaint and incorporates the facts contained in the Complaint as if fully set forth herein.

The Verified Complaint explains how requiring the Party to collect such a substantial amount of signatures would put it at a significant disadvantage compared to the two major parties, which may campaign, raise money, and otherwise prepare for participation in the next election *before* the year in which the election occurs. Verified Complaint, ¶ 3. By contrast, the Party must sit on the sidelines until January 1 of the general election year. Then, the Party is

hindered in its ability to campaign and fundraise during the general election year, as it must instead spend its time going through the process of collecting nomination papers. Once the Party completes this process by early August, the Party is further disadvantaged due to the drastically shortened time frame for campaigning. Id. ¶ 2. The result is to foreclose the Party from meaningfully participating in the general election, substantially burden ballot access, and therefore violate the Party's constitutional rights. Id. ¶¶4-5.

The Defendant seeks to dismiss the Verified Complaint on the basis of failure to state a claim for relief, ostensibly because it points to what it claims are valid state interests behind the change. However, the facts alleged under oath in the Verified Complaint sufficiently state a cause of action, are entitled to deferential review by this Court, and require denial of this motion.

I. STANDARD OF REVIEW

When deciding a motion to dismiss for failure to state a claim per Fed. R. Civ. P 12(b)(6), this Court applies a deferential standard of review to the complaint, accepting all well-pleaded facts as true and drawing all reasonable inferences in favor of the plaintiff. Gray v. Evercore Restructuring, LLC, 544 F.3d 320, 324 (1st Cir. 2008). The Court assesses whether the plaintiff's factual allegations "state a claim for relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547 (2007)). A claim is facially plausible when it pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Ashcroft, 556 U.S. at 678 (citations omitted); see also Sarah's Hat Boxes, L.L.C. v. Patch Me Up, L.L.C., No. 12-cv-399-PB, 2013 U.S. Dist.

LEXIS 52976, at *28-30 (D.N.H. Apr. 12, 2013) (Barbadoro, J.) (stating motion to dismiss standard).

II. LEGAL ARGUMENT

A. The State's Motion Asks This Court to Decide Factual and Legal Issues that Go Beyond the Analysis Required to Decide a Rule 12(b)(6) Motion.

A motion for failure to state a claim prompts a limited analysis—whether, assuming the facts alleged by Plaintiff to be true, the facts in the complaint state a plausible claim for relief. Ashcroft, 556 U.S. at 663. Thus, this Court is focused on the facts that are alleged in the complaint as opposed to the legal balancing test—namely, rational basis review versus strict scrutiny review—that may eventually be applied to decide the ultimate issues in the case under Anderson v. Celebrezze, 460 U.S. 780, 789-90 (1983). Because discovery has not yet occurred, the Court simply does not have the evidence before it to make a final determination about the gravity of the burden on the Party's ballot access and whether rational basis review or strict scrutiny applies. Instead, the question before the Court is limited to whether the Verified Complaint plausibly articulates facts that could entitle the Plaintiff to legal relief.[2] Under any standard of review, this question should be answered in the affirmative, especially where those facts were presented by the Plaintiff in detail and under oath.

Viewing the facts Plaintiff alleges as true for purposes of this motion, as this Court must, the Verified Complaint establishes that HB 1542 added a requirement that nomination papers for candidates to appear on the ballot in the general election must be signed and dated in the year of the election. Verified Complaint, ¶¶ 1-2. The new language prevents the Libertarian Party from

[2] All but one of the cases cited on pages 6 and 7 of the State's Motion were decided after the motion to dismiss stage, further indicating that this motion is premature. See American Party of Texas v. White, 415 U.S. 767 (1974) (after trial); Jenness v. Fortson, 403 U.S. 431 (1971) (decision after motion for summary judgment); Barr v. Galvin, 626 F.3d 99 (1st Cir. 2010) (after motion for summary judgment); and Libertarian Party of Florida v. Florida, 955 F. Supp. 2d 886 (N.D. Ill. 2013) (decided at preliminary injunction stage, where factual evidence would need to have been presented to establish elements of injunctive relief, such as likelihood of success on the merits of the claim).

gathering nominating papers before January 1 of any election year. Id. ¶ 2. To appear as a political organization with candidates on a ballot, the Party must obtain verified nomination papers signed by 3% of the total number of votes cast in the previous election—which could mean collecting more than 13,600 verified signatures from registered voters to obtain ballot access for the 2016 general election. Id. (quoting RSA 655:42, III). These facts demonstrate that the Plaintiff has very little time in which to collect a large number of signatures, thereby establishing that a burden on its rights plainly exists as a result of the addition of this language to the statute. But the burden imposed by the law is far more than having a compressed 7-month time frame to collect thousands upon thousands of signatures. The law unnecessarily places this compressed time frame squarely during the general election year, effectively precluding the Party from meaningfully engaging in recruiting, fundraising, and electioneering during an election year like the major parties. Id. ¶ 17. The State ignores this burden entirely.

Regardless of the standard this Court applies later in the case, the Plaintiff also has alleged through verified evidence that this portion of the statute bears no rational relationship to any legitimate state interest, which is sufficient to prevail on a Rule 12(b)(6) motion where the Court must credit the Plaintiff's factual allegations as true. The State argues that its primary interest is ensuring that the signatures collected are valid and current, and contends that "Plaintiff's argument . . . is based on the false premise that all invalid signatures will be identified by the supervisors of the checklists during the certification process." State's Memo. of Law at p. 8. However, as alleged in the Complaint, the State has presented no evidence (verified or otherwise) of its own in response to pre-litigation records requests indicating that the supervisors had difficulty verifying signatures during the 2000 and 2012 petitioning process, and

no evidence that proves that the January 1 date would improve the process at all.[3] In any event, this is an inappropriate argument at the motion to dismiss stage. If anything, the implication that the supervisors of the checklist may have difficulty verifying signatures indicates that the parties need to engage in discovery so that the merits of the State's contention can be fully weighed. Given that the Plaintiff has more than sufficiently alleged a constitutional violation, the Plaintiff is entitled to test the State's interests in discovery, and this Court cannot, as the State asks, blindly rely on any interest asserted by the State at this stage. What the State really asks this Court to do is truncate these proceedings and reach the merits of Plaintiff's underlying claims without allowing Plaintiff's to produce any further evidence as to how this law burdens its activities. In deposition and at trial, Plaintiff will explain in detail the substantial burdens that this law places on its efforts to meaningfully engage in elections.

The case law is clear that this inquiry is factually driven, and not to be decided at the motion to dismiss stage. Numerous factors can influence the outcomes of cases involving ballot access. Compare Jenness v. Fortson, 403 U.S. 431, 442 (1971) (upholding a 5% signature requirement) with McLain v. Meier, 637 F.2d 1159, 1163-64 (8th Cir. 1980) (disapproving a 3.3% signature requirement). Indeed, the limited case law on time constraints suggests that the focus is most often on the closing date for submission of petitions—wherein a state asserts that it needs time to certify signatures and prepare a ballot—and not on the opening date of the time window. See, e.g., McLain, 637 F.2d at 1164 ("North Dakota's filing deadline of June 1, more than ninety days before the primary election and more than one hundred fifty days before the general election is particularly troublesome."). Limitations on the starting date for signature

[3] Indeed, "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" as a result of a shortened time frame. Verified Complaint, ¶ 32.

collection are unusual. See Exhibit A. And the one case expressly addressing a nearly-identical start date limitation—namely, Block—struck down the start date as unconstitutional.

As the McLain Court noted, "the time at which nominating petitions are filed can have an equal if not greater impact [than other types of restrictions] on the viability of third party candidacy." Id. at 1164. The cases cited by the State are also distinguishable from this case. For example, in Libertarian Party of Florida v. Florida, the Party did not challenge the start date but rather the number of signatures required, and other aspects of the law. 710 F.2d 790 (11th Cir. 1983). In Jenness, the crux of the Socialist Workers Party's claim was that the party should not have to collect signatures at all because candidates of the two major parties did not need to collect signatures. 403 U.S. 441.[4] What this demonstrates is that the decisions reached by various courts in these cases involve different legal arguments and turn on the facts specific to each one. Accordingly, factual development through discovery is required to assess the severity of the burden on the Party's rights and the importance of the State's purported justifications.

The constitutional issues involved in this case mandate a weighing of "the character and magnitude of the asserted injury" to the Plaintiff with the "precise interests put forward by the State as justifications for the burden imposed." Barr v. Galvin, 626 F.3d 99, 109 (1st Cir. 2010) (internal citations and quotation marks omitted). This requires a detailed analysis of the burdens this restriction places on the Libertarian Party and the specific interests asserted by the State which simply cannot occur at this premature stage of the litigation.[5] As the U.S. Supreme Court itself explained in Anderson, "only after weighing *all these factors* is the reviewing court in a

[4] The State's reliance on Barr v. Galvin, 626 F.3d 99 (1st Cir. 2010) is also misplaced. In Barr, there was no challenge to the start date for the plaintiff to collect signatures, which was not imposed by statute but was triggered by the date of the plaintiff's nomination at the third-party's nominating convention. Moreover, Barr, unlike this case, addressed the ability of the plaintiff, as nominee of the third party, to be substituted on the ballot and replace a member of his party that collected enough signatures but was not the party's nominee.

[5] See also Stumpf v. Garvey (In re TyCom Ltd. Sec. Litig.), No. 03-CV-1352-PB, 2005 U.S. Dist. LEXIS 19154, at *46 (D.N.H. Sept. 2, 2005) (" . . . such a determination is a matter of proof after discovery, either at summary judgment or trial, and is not to be decided here on a Rule 12(b)(6) motion to dismiss.") (Barbadoro, J.).

position to decide whether the challenged provision is unconstitutional." 460 U.S. 780, 789 (1983) (emphasis added). The fact-specific nature of the analysis obviates a resolution of this case on the basis of the complaint alone, and the State's motion must therefore be denied.

B. Should the Court Analyze the Applicable Level of Constitutional Scrutiny Required—Which It Need Not Do—the Verified Complaint States Facts that Support Plaintiff's Argument that the Amendment Fails under Either Level of Review.

If the Court decides it must reach the issue of rational basis review versus strict scrutiny to evaluate the motion to dismiss—which it need not—the Verified Complaint contains sufficient facts from which a fact finder could determine that the amendment at issue does not withstand any level of scrutiny.

1. The Balancing Test

Courts use a sliding-scale approach to evaluate the burdens, if any, placed on a plaintiff's constitutionally protected rights, followed by an evaluation of the state's justifications for those burdens. Anderson, 460 U.S. at 789. If a regulation places severe restrictions on a plaintiff's First and Fourteenth Amendment rights, the regulation must be narrowly drawn to advance a "state interest of compelling importance." Norman v. Reed, 502 U.S. 279, 289 (1992). By contrast, when a state election law imposes only reasonable, nondiscriminatory restrictions upon First and Fourteenth Amendment rights, the State need only have a legitimate regulatory interest at stake. Burdick v. Takushi, 504 U.S. 428, 434 (1992). While this analysis will govern the ultimate outcome of this case, it must not be undertaken in the context of a Rule 12(b)(6) motion to dismiss, where the Plaintiff's allegations are taken as true.

2. Because This Regulation, As Alleged, Places a Severe Burden on the Party's Constitutional Rights, It Must Be Narrowly Drawn to Advance Compelling State Interests, Which It Is Not.

As Plaintiff clearly alleges, the restriction at issue in this case has the effect of severely burdening the Party's access to the ballot, which should trigger strict scrutiny. Verified Complaint at ¶¶ 25-28. The State improperly discounts these well-pled allegations. As the United States Court of Appeals for the First Circuit explained in a ballot access case:

> [C]ourts must view severe restrictions on party ballot access skeptically, affording exacting scrutiny to such restrictions. See Norman v. Reed, 502 U.S. 279, 288-89 (1992). Here, the complaint alleges facts which, if true, tend to support the appellants' claims that the notarization requirement and seven-day deadline unduly burden ballot access. If, for example, the appellants can prove that notarization is prohibitively expensive or otherwise difficult to achieve (as the complaint avers), then the Commission will have to show that the notarization requirement is narrowly drawn to advance a compelling governmental interest. See id. This showing requires the Commission to come forward with proof. Whether it ultimately can succeed in this endeavor is a sufficiently open question that *we cannot conclude, on the pleadings, that no set of facts exists under which the appellants might prevail*.

Cruz v. Melecio, 204 F.3d 14, 22 (1st Cir. 2000) (emphasis added). This is the exact situation confronting the Court in this case—there is a restriction on ballot access that must be strictly scrutinized by the Court for the reasons explained by the Cruz court.

A January 1 start date would only give the Party approximately 210 days (many of which are during the severe winter months in New Hampshire) to collect the over 13,000 verified signatures that likely will be necessary for the 2016 election, which it would have to do in lieu of campaigning and fundraising during the general election year. For 2014, the verified signature requirement was far higher—21,330. Verified Complaint at ¶ 27. This process would be occurring while the Republicans and Democrats are already actively campaigning and fundraising. Id. ¶ 17. In a similar case, the court held that the "unconstitutionality of these statutes is particularly evident . . . . The combination of the short time allowed for petitioning,

the large number of signatures required, the prevention of the party's effective solicitation of signatures, and the unusually inclement weather during the petitioning period resulted in a deprivation of these plaintiffs' constitutional rights." Libertarian Party of Okla. v. Okla. State Bd. of Elections, 593 F. Supp. 118, 122 (W.D. Okla. 1984).

Here, the Plaintiff has alleged facts that, if true, tend to support its claims that severely curtailing the time period for collecting nominating papers likely could prevent it from placing candidates on a ballot in any given election, which is a very heavy burden on its rights. Thus, the State will have to do more than simply provide unverified allegations that the restriction, for example, helps ensure validity of signatures. It will need to produce evidence to support this theory, establish that its interest is compelling, and prove that the January 1 restriction is narrowly tailored to advance that interest. The Plaintiff submits that the State will be unable to meet this burden. But, as was the case in Cruz, it is impossible for this Court to reach a conclusion one way or another about the legitimacy of that argument in light of the allegations in Plaintiff's Verified Complaint, and therefore the motion to dismiss must be denied.

3. The Law Is Not Rationally Tailored to the Purported Interests Under Any Level Of Review.

As Plaintiff alleges in detail, regardless of the weight the Court ultimately assigns to the burden on Plaintiff's rights and the State's asserted interests here, the restriction on the time to collect signatures does not bear a rational relationship to those interests, let alone be deemed a narrowly-drawn effort to advance those interests. Verified Complaint at ¶¶ 29-34. Under any standard, the law fails.

This is the conclusion the Block court reached when assessing the nearly identical Rhode Island law. Block, 618 F. Supp. 2d 142. There, the Moderate Party of Rhode Island challenged, *inter alia*, a January 1 start date for collecting signatures to qualify for the ballot. Id. at 144.

That start date would have given the party just 201 days[6] to gather the required 23,588 signatures of registered voters, which prompted the party to bring a declaratory judgment action similar to this one. Id. at 147. As the court noted, "[r]estrictions on access to the ballot and party recognition trigger two fundamental rights: 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.'" Id. at 148 (quoting Williams v. Rhodes, 393 U.S. 23, 30 (1968)). The issue then becomes the balancing of those fundamental rights with the state's interest in the regulation of elections, for which the Supreme Court applied the sliding scale analysis set forth in Anderson, *supra*. Id. at 149.

Applying this analysis, the Block court determined that "*under any level of scrutiny*, the State has come forward with no legitimate regulatory interest whatsoever that would necessitate placing this enormous speed bump on the path to party recognition." Id. at 151 (emphasis added).

The state presented a sole justification for the January 1 start date—"its interest in ensuring that petition signatures are valid; for example, that the signatories are not voters who have moved or died." Id. In Rhode Island, the state performs a voter registration "clean up" in which it deletes or adds names of voters who have changed address or their registration status. Id. at 151-152. The State claimed allowing collection of signatures in an off-year would result in a third party "working off the outdated list—so the likelihood that signatures are invalid is increased." Id. at 152. The Court correctly characterized this justification "nonsensical":

> First, what is described as the so-called State interest is really a Moderate Party interest—if anyone is to be harmed by use of a 'stale' voter list in the collection

[6] The "Rhode Island scheme is probably the most onerous in the nation," Block 618 F. Supp. 2d at 151 n. 11, and nearly identical, 201 versus 210 days, to the time frame subsequently adopted by New Hampshire. See also Exhibit A (indicating that the New Hampshire law is among the most burdensome in the nation concerning the start date for obtaining access to the ballot, along with laws in Texas and Wisconsin).

> process prior to January 1, 2010, it is putative party seeking the signatures. If an organization wishes to work off data that may not be current, it does so at its own risk. Moreover, using the old list simply means some greater margin may be needed to cover the potentially larger number of invalid signatures. But that is the party's problem, not the Board of Elections'. And. Most importantly, the benefit of additional time for collecting signatures more than outweighs the marginal burden to the party of collecting a few more signatures. In other words, the process is self-regulating: if the new party is worried that it will get stale signatures by starting too early, then it will wait. It does not need an artificial statutory date to make it do so.

Id.

Similarly, the severity of the restriction imposed by the law in this case is an "enormous speed bump" for the Plaintiff. It should trigger strict scrutiny because it would effectively prevent any third party from putting candidates on the ballot. But even if this Court were to employ a rational basis review, this measure still fails because it is not at all rationally related to the interests cited by the state—ensuring valid signatures, avoiding "clogging the election machinery," and addressing supposed voter confusion. The Plaintiff pleads these facts with particularity.

The State's attempt to distinguish Block is unavailing. The State claims because New Hampshire law requires verification of checklists once every 10 years, it is more likely that supervisors will be unable to verify the validity of signatures that could be as much as two years old. See Defendant's Memorandum of Law at 9-10. First, this argument falls outside of the four corners of the Complaint and should not be considered on a motion to dismiss. Second, during the limited consideration of the bill and in pre-suit discovery, the State of New Hampshire, like the State of Rhode Island, did not and could not cite to any "evidence, statistical or otherwise … to support the proposition that the percentage on invalid signatures obtained by petition somehow decreases if signatures are collected after the voter database is updated." Block, 618 F. Supp. 2d at 152. Third, the State's argument simply makes no sense. For example, the voter

registration list was last purged before the 2012 election. Assuming the law was in effect for the upcoming 2014 election, nomination papers would be compared with a list nearly two years old regardless of whether names were collected in 2013 or 2014. Additionally, even under the State's theory, political parties collecting signatures in 2016, 2018, and 2020 will see their nominating papers compared to a list that has not been purged for 4, 6 and 8 years respectfully. There is no legitimate state interest in restricting the process of gathering signatures for a compressed period of 7 months each election year because the State chooses to purge its voter registration list only once every ten years. Put another way, the extrinsic interest asserted by the State has little to do with whether the signatures collected are stale, but rather has to do with whether the voter list is stale. Even if this asserted interest made sense (which it does not), the more tailored approach would be to update the voter list more frequently, rather than saddle non-major political parties with burdens that effectively preclude them from meaningfully participating in the democratic process.[7]

The January 1 deadline does nothing to ensure validity of signatures, avoid voter confusion, or prevent clogging of election machinery. The January 1 deadline is an arbitrary construction, as there is no proof that signatures collected on July 1, 2015 would tend to be any less valid than signatures collected on or after January 1, 2016. As the Block court pointed out, any risk of inaccuracies or invalid signatures impacts the Party, not the state. The Party would suffer the consequences. These arguments failed in Block, and they should meet the same fate

[7] By refusing to allow signatures before January 1 of even-numbered years, the current New Hampshire scheme operates to ban completely the formation or recognition of a political party in any odd-numbered year. A similar situation was challenged under Arkansas law and found unconstitutional in Green Party of Arkansas v. Priest, 159 F. Supp. 2d 1140 (E.D. Ark. 2001), where the plaintiffs sought recognition to participate in a special election in an odd-numbered year, but were precluded from doing so.

here. The State cannot establish any basis for this restriction in the face of the Plaintiff's verified allegations in the Complaint, and this Court should deny its motion.

CONCLUSION

For the reasons articulated above, this Court should deny the State's motion to dismiss.

Respectfully submitted,

LIBERTARIAN PARTY OF NEW HAMPSHIRE,

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

/s/ William E. Christie
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

Courtney Michalec Hart (*pro hac vice* application pending)
SHAHEEN & GORDON, P.A.
199 Main Street
Saco, ME 04072
Tel.: 888.387.1841
cmhart@shaheengordon.com

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

Dated: October 23, 2014

CERTIFICATE OF SERVICE

I, William E. Christie, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

.

/s/ William E. Christie
William E. Christie