

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**INDIANA GREEN PARTY, LIBERTARIAN)
PARTY OF INDIANA, JOHN SHEARER,)
GEORGE WOLFE, DAVID WETTERER,)
A.B. BRAND, EVAN MCMAHON, MARK)
RUTHERFORD, ANDREW HORNING,)
KEN TUCKER and ADAM MUEHLHAUSEN,)**

Plaintiffs,

v.

**HOLLI SULLIVAN, in her official capacity)
as Indiana Secretary of State,)**

Defendant.

Case No. 1:22-cv-518

Judge:

**COMPLAINT FOR DECLARATORY AND
PERMANENT INJUNCTIVE RELIEF**

INTRODUCTION

1. Since 1984, the State of Indiana (“**Indiana**”) has denied voters their right to cast their votes effectively by enforcing a statutory scheme that guarantees ballot access to the two oldest and largest political parties at taxpayer expense, while imposing ever-greater burdens on their potential competitors. Most significant among these burdens is the cost of conducting a successful statewide nomination petition drive, which is now \$465,000 – \$565,000. This *de facto* financial barrier to participation is all but insurmountable for non-wealthy candidates and parties, and no independent or minor political party candidate for statewide office has been able to overcome it since 2000 – a period of more than 20 years. Furthermore, a minor political party cannot retain ballot access unless its candidate for Secretary of State receives at least 2 percent of the vote, but that office is not elected during presidential election years, and Indiana provides no procedure whatsoever for independent candidates to retain ballot access. Indiana’s statutory

scheme thus operates to freeze the political status quo and imposes severe burdens on the voters, candidates and parties subject to it. Further, it is not sufficiently tailored to achieve any legitimate or compelling state interest.

2. Plaintiffs, who are among the injured parties, therefore bring this action against Holli Sullivan, the Secretary of State of Indiana (the “**Secretary**”), to challenge the constitutionality of Indiana’s statutory scheme. Plaintiffs assert claims for the violation of their rights to cast their votes effectively, to speak and associate for political purposes, and to the equal protection of law, as guaranteed by the First and Fourteenth Amendments. Plaintiffs respectfully request that the Court declare the challenged provisions unconstitutional as applied separately and in combination with one another, and permanently enjoin the Secretary from enforcing them.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this case pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331, because the Plaintiffs’ claims arise under the First and Fourteenth Amendments to the United States Constitution.

4. This Court has personal jurisdiction over the Secretary because she is an elected official of Indiana, residing in Indiana.

5. Venue is proper in this Court because all Plaintiffs are residents of Indiana, Defendant’s primary office is in Indianapolis and a substantial part of the events giving rise to this action occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(1),(2).

PARTIES

6. The Indiana Green Party (“**INGP**”) is the Indiana state affiliate of the Green Party of the United States. INGP seeks to elect candidates to all levels of public office in Indiana, but it is unable to qualify for the ballot because it lacks the resources necessary to conduct a statewide petition drive. INGP is injured by the burden and expense that Indiana’s statutory scheme imposes

on INGP, which diminishes its capacity to participate effectively in Indiana's electoral process and hinders INGP's ability to grow and develop as a political party.

7. Plaintiff John Shearer is Chair of INGP. He resides in Monroe County, Indiana, where he is a registered voter and intends to remain and vote in future elections. Shearer seeks to campaign for, speak and associate with, and vote for INGP's candidates, and he is harmed by their inability to qualify for Indiana's general election ballot. Shearer is also harmed by the burden and expense that Indiana's statutory scheme imposes on INGP, which diminishes INGP's capacity to participate effectively in Indiana's electoral process and hinders its ability to grow and develop as a political party.

8. Plaintiff George Wolfe is a former Chair of INGP who has attempted to qualify for Indiana's general election ballot as INGP's candidate for Secretary of State. He resides in Delaware County, Indiana, where he is a registered voter and intends to remain and vote in future elections. In the 2018 general election, Wolfe received 848 votes as a write-in candidate for Secretary of State. Wolfe wishes to run for public office as INGP's nominee in future elections. He seeks to campaign for, speak and associate with, and vote for INGP's candidates, and he is harmed by their inability to qualify for Indiana's general election ballot. Wolfe is also harmed by the burden and expense that Indiana's statutory scheme imposes on INGP, which diminishes INGP's capacity to participate effectively in Indiana's electoral process and hinders its ability to grow and develop as a political party.

9. Plaintiff David Wetterer is INGP's Ballot Access Coordinator. He resides in Marion County, Indiana, where he is a registered voter and intends to remain and vote in future elections. Wetterer seeks to campaign for, speak and associate with, and vote for INGP's candidates, and he is harmed by their inability to qualify for Indiana's general election ballot. Wetterer is also harmed by the burden and expense that Indiana's statutory scheme imposes on

INGP, which diminishes INGP's capacity to participate effectively in Indiana's electoral process and hinders its ability to grow and develop as a political party.

10. Plaintiff A.B. Brand is a former Chair of INGP. He resides in Allen County, Indiana, where he is a registered voter and intends to remain and vote in future elections. Brand seeks to campaign for, speak and associate with, and vote for INGP's candidates, and he is harmed by their inability to qualify for Indiana's general election ballot. As a member of INGP's Disability Caucus who is legally blind, Brand is also harmed by his inability to support INGP's candidates by efficiently and effectively circulating nomination petitions on their behalf. Brand is further harmed by the burden and expense that Indiana's statutory scheme imposes on INGP, which diminishes INGP's capacity to participate effectively in Indiana's electoral process and hinders its ability to grow and develop as a political party.

11. Plaintiff Libertarian Party of Indiana ("LPIN") is the Indiana state affiliate of the Libertarian Party of the United States. LPIN seeks to elect candidates to all levels of public office in Indiana. LPIN is currently ballot-qualified but will be unable to qualify again in the event that it loses that status because it lacks the resources necessary to conduct a statewide petition drive. LPIN therefore must alter its electoral strategy to prioritize running candidates for Secretary of State, which is the only office that enables a party to remain ballot-qualified under Indiana law. LPIN is injured by the burden and expense that Indiana's statutory scheme imposes on LPIN, which diminishes its capacity to participate effectively in Indiana's electoral process and hinders LPIN's ability to grow and develop as a political party.

12. Plaintiff Evan McMahan is Chair of LPIN. He resides in Marion County, Indiana, where he is a registered voter and intends to remain and vote in future elections. McMahan seeks to campaign for, speak and associate with, and vote for LPIN's candidates, and he is harmed by LPIN's persistent need to prioritize running candidates for Secretary of State over all other offices.

McMahon is also harmed by the burden and expense that Indiana's statutory scheme imposes on LPIN, which diminishes LPIN's capacity to participate effectively in Indiana's electoral process and hinders its ability to grow and develop as a political party.

13. Plaintiff Mark Rutherford was LPIN's 2018 candidate for Secretary of State. He resides in Hamilton County, Indiana, where he is a registered voter and intends to remain and vote in future elections. Rutherford finished third in the 2018 general election for Secretary of State, and received 71,234 votes, or 3.2 percent of the total. Rutherford intends to run for office in future elections as LPIN's nominee. He would prefer to run for statewide office other than Secretary of State, but prioritizes that office because it is the only avenue by which LPIN can retain ballot access. Rutherford seeks to campaign for, speak and associate with, and vote for LPIN's candidates, and he is harmed by LPIN's persistent need to prioritize running candidates for Secretary of State over all other offices. Rutherford is also harmed by the burden and expense that Indiana's statutory scheme imposes on LPIN, which diminishes LPIN's capacity to participate effectively in Indiana's electoral process and hinders its ability to grow and develop as a political party.

14. Plaintiff Andrew Horning was LPIN's 2012 candidate for United States Senate, and is LPIN's 2022 candidate for U.S. House, District 8. He resides in Owen County, Indiana, where he is a registered voter and intends to remain and vote in future elections. Horning finished third in the 2012 general election for U.S. Senate, and received 145,282 votes, or 5.67 percent of the total. Horning intends to run for office in future elections as LPIN's nominee. Horning seeks to campaign for, speak and associate with, and vote for LPIN's candidates, and he is harmed by LPIN's persistent need to prioritize running candidates for Secretary of State over all other offices. Horning is also harmed by the burden and expense that Indiana's statutory scheme imposes on

LPIN, which diminishes LPIN's capacity to participate effectively in Indiana's electoral process and hinders its ability to grow and develop as a political party.

15. Plaintiff Ken Tucker resides in Hamilton County, Indiana, where he is a registered voter and intends to remain and vote in future elections. Tucker is an independent who sought ballot access as an independent candidate for U.S. House, District 5 in 2020, but he was unable to qualify because he lacks the resources necessary to comply with Indiana's ballot access requirements. The party with which Tucker most closely aligns is INGP, but INGP is not ballot-qualified, so Tucker sought, and obtained, LPIN's nomination as a candidate for that office. Tucker received 16,788 votes for U.S. House, District 5 in the 2020 general election, or 4.0 percent of the total. Tucker is currently seeking ballot access as an independent candidate for State House Representative, District 24, in the 2022 general election. In both 2020 and 2022, Tucker's effort to obtain petition signatures has been significantly hampered by the Covid-19 pandemic. Tucker seeks to campaign for, speak and associate with, and vote for independent candidates and those of INGP, and he is harmed by their exclusion from Indiana's general election ballot. Tucker is also harmed by the burden and expense that Indiana's statutory scheme imposes on independent candidates and INGP, which diminishes their capacity to participate effectively in Indiana's electoral process and hinders INGP's ability to grow and develop as a political party.

16. Plaintiff Adam Muehlhausen resides in Marion County, Indiana, where he is a registered voter and intends to remain and vote in future elections. Muehlhausen is an independent who seeks to run as an independent candidate for statewide or federal office, but he lacks the resources necessary to comply with Indiana's ballot access requirements. From 2016 until 2021, Muehlhausen was an active member of INGP, working directly on several INGP candidates' campaigns during that time, and serving as the party's Technology Director from 2017 until 2021. Muehlhausen left INGP in 2021 in part because the party has been unable to qualify for Indiana's

ballot. Muehlhausen seeks to campaign for, speak and associate with, and vote for independent candidates, and he is harmed by their exclusion from Indiana's general election ballot.

17. Defendant Holli Sullivan is Secretary of State of the State of Indiana. The Secretary is the State of Indiana's chief elections official and is responsible for administering and enforcing the Indiana Election Code, including the provisions challenged herein. *See* I.C. 3-6-4.2-2. The Secretary's business address is Office of the Indiana Secretary of State, 200 W. Washington St., Room 201, Indianapolis, IN 46204.

FACTUAL ALLEGATIONS

Relevant History of Ballot Access Regulation in Indiana

18. Indiana did not adopt an official state ballot, and therefore did not regulate ballot access, until 1889. *See* Session Laws of 1889, Ch. 87, p.157. The original purpose of the official state ballot was not to restrict candidate access, but to protect voter choice by including all candidates on a single ballot, so that voters could make their selections in private, free from harassment and intimidation. Thus, Indiana's 1889 law allowed any candidate for statewide office to appear on the ballot by submitting a nomination petition with only 500 signatures just 20 days before the general election. *Id.* To retain ballot access, the candidate was required to receive 1 percent of the vote in the election. *Id.*

19. In 1907, Indiana began to require that political parties that polled more than 10 percent of the vote for Secretary of State in the last election nominate by primary election. *See* Session Laws of 1907, Ch. 282, p.627.

20. Indiana did not amend its ballot access requirements for independent and minor party candidates until 1931, when it changed the deadline for filing nomination petitions to 30 days before the general election. *See* Session Laws of 1931, Ch. 132, p. 497. In 1933, Indiana increased its signature requirement for candidates for statewide office to 0.5 percent of the vote for that office

in the prior election. *See* Session Laws of 1933, Ch. 45, p. 368. The same legislation also lowered the requirement for retaining ballot access to 0.5 percent of the vote in the election. *See id.*

21. In 1947, Indiana moved its filing deadline for independent and minor party candidates' nomination petitions to September 1. *See* Session Laws of 1947, Ch. 120, Sec. 14, p. 388.

22. Indiana again amended its law in 1970, such that the Secretary of State is now elected every four years, in non-presidential election cycles, instead of every two years. The first presidential election when the Secretary of State was not up for election was 1972. As a result, Indiana is the only state in the nation where it is impossible to establish a ballot-qualified political party in a presidential election year.

23. In 1980, Indiana quadrupled its signature requirement for independent and minor party candidates to 2 percent of the previous vote for Secretary of State (an office that was then elected every two years). *See* Session Laws of 1980, Ch. 6, pp. 22-24. The same legislation also quadrupled the requirement for retaining ballot access to 2 percent of the vote in the election. *Id.* For statewide elections, the new signature requirement amendments first took effect in 1984, and the new ballot-retention requirement first applied in the 1986 general election.

24. In 1986, Indiana moved its filing deadline for independent and minor party candidates' nomination petitions to July 1, *see* Session Laws of 1986, Ch. 5, Sec. 4, p. 117, then moved it to August 1 in 1987, *see* Session Laws of 1987, Ch. 3, Sec. 118, p. 135, and then moved it to July 15 in 1988. *See* Session Laws of 1988, Ch. 10, Sec. 48, p. 502. In 2001, Indiana set the deadline at June 30, which is the current law.

Current Ballot Access Requirements Under the Indiana Code

25. Indiana has established two separate procedural pathways for candidates to qualify for the general election ballot:¹

“**Major Parties**” select and place their nominees on the general election ballot automatically, by means of taxpayer-funded primary elections, *see* I.C. 3-10-1-2; IC 3-11-6-1; IC 3-11-6-9; IC 3-11-6.5-2;

“**Minor Parties**” and “**Independents**” place their nominees on the general election ballot by submitting nomination petitions signed by qualified registered voters equal in number to 2 percent of the total vote cast for Secretary of State in the last election in the district that the candidate seeks to represent. *See* I.C. 3-8-6-1; I.C. 3-8-6-3.

As applied, these separate procedures provide Major Parties guaranteed access to the general election ballot, at taxpayer expense, but allow Minor Parties and Independents access only if they bear the expense of complying with the burdensome and costly procedures described below.

Indiana Guarantees Major Parties Ballot Access at Taxpayer Expense

26. Political parties that received at least 10 percent of the vote in the last election for Secretary of State – *i.e.*, Major Parties – nominate their candidates for federal, state, legislative and local office by primary election. IC 3-10-1-2; I.C. 3-8-2-2.

27. The primary election is held on the first Tuesday after the first Monday in May of the year in which the general election is held. IC 3-10-1-3. In 2022, the primary election will be held on May 3rd. *Id.* At such primary, the party selects its nominees for President and Vice-President, U.S. Senator, Governor, U.S. Representative, Legislative Offices and local offices. IC 3-10-1-4.

28. Candidates seeking the nomination of a Major Party must file a declaration of candidacy for nomination at primary election. IC 3-8-2-2; *see* IC 3-8-2-7 (establishing requirements for declarations of candidacy). The declaration must be filed between 118 days and

¹ For certain local offices, candidates of parties that received at least 2-percent but less than 10 percent of the vote for Secretary of State at the last election, nomination must be made at the party’s county convention. IC 3-10-2-15. Additionally, once a Minor Party becomes ballot-qualified, it can retain ballot access and nominate candidates pursuant to the procedures specified *infra* at ¶¶ 44-50.

88 days before the primary election. IC 3-8-2-4. Thus, in 2022, the declaration must be filed no later than February 4th. *Id.* Declarations for federal, state, legislative and certain local offices must be filed with the Secretary of State. IC 3-8-2-5.

29. Candidates who submit declarations of candidacy for the office of Governor or U.S. Senator must accompany their declarations with a petition signed by at least 4,500 voters of the state, including at least 500 voters from each congressional district. IC 3-8-2-8. The petition must request that the candidate be placed on the primary election ballot and must be certified by the county voter registration office where each petition signer is registered. IC 3-8-2-9. The petition may be submitted to county voter registration offices for certification during the period beginning when declarations for candidacy may be submitted and ending 91 days before the primary election. IC 3-8-2-10(a). After certification, the petitions may be returned to the candidate for filing with the Secretary of State. IC 3-8-2-10(b).

30. The voting methods, supplies and equipment used in a party's primary election are the same as those prescribed by IC 3-11 for general elections. IC 3-10-1-11. Taxpayers pay for such supplies and equipment through a combination of funds raised through local property taxes, IC 3-11-6-1; IC 3-11-6-9, as well as funds appropriated by the general assembly. IC 3-11-6.5-2.

31. The canvass of votes cast in a primary election is made in the same manner and by the same officers as the general election canvass. IC 3-10-1-29. County elections boards prepare the primary election returns showing the number of votes received by each party's candidates in the primary election, and the circuit court clerks must transmit the returns to the elections division via the computerized statewide voter registration list established by the state. IC 3-10-1-33; *see* IC 3-7-26.3 (establishing computerized statewide voter registration list). The elections division canvasses the votes and tabulates the results. IC 3-10-1-34. The candidate of a political party

receiving the highest vote total for each office is the party's nominee for that office, IC 3-8-7-1, and such nominees are placed on the general election ballot automatically. IC 3-8-7-25(1).

32. Major Parties also select their nominees for President and Vice-President by means of primary elections. IC 3-8-3-1.

33. Circuit court clerks tabulate the Major Parties' presidential primary election returns and send returns to the elections division stating the total number of votes received by each candidate in each congressional district within the county. IC 3-8-3-9. The returns may be submitted electronically using the state's computerized voter registration lists, and that submission complies with any certification requirement. IC 3-8-3-9.

34. The elections division tabulates the results of the Major Parties' presidential primary election returns and must promptly certify the results to the state chair of each party. IC 3-8-3-10. The delegates thereby selected in each congressional district must, at the party's national convention, support the presidential candidate who received the highest number of votes in the party's presidential primary election. IC 3-8-3-11.

Minor Parties and Independents Must Comply With Separate Procedures at Their Own Expense

35. Indiana does not permit a Minor Party to become ballot-qualified for all offices by submitting a petition on behalf of its entire slate of candidates. Instead, the party's candidates must file their own nomination petitions to qualify for Indiana's general election ballot, except that Indiana's nomination petition form CAN-19 allows up to three candidates from the same electoral district to be included on a single petition. IC 3-8-6-1. Independent candidates are subject to the same requirement. IC 3-8-6-1.

36. Only registered voters who are qualified to vote for a candidate may sign the candidate's nomination petition. IC 3-8-6-2; IC 3-8-6-6.

37. Nomination petitions must include the candidate's name, address, partisan affiliation or independent status and other identifying information, IC 3-8-6-5, and must be signed by voters equal in number to 2 percent of the total vote cast at the last election for secretary of state in the election district that the candidate seeks to represent. IC 3-8-6-3. In 2022, that requirement translates to 44,935 valid signatures.

38. Each voter must sign a candidate's nomination petition by hand, including the voter's signature, legibly printed name and residence address. IC 3-8-6-6.

39. Prior to submitting nomination petitions to the officer required to receive them, the county voter registration office where each voter who signed the petitions resides must certify that each voter is registered at the residential address listed on the petitions. IC 3-8-6-8. The certification must indicate that the voter is eligible to vote for the candidate and must accompany the petitions. *Id.*

40. Nomination petitions must be submitted to the county voter registration offices of each county in which the election district is located between the date on which declarations of candidacy for a primary election may be filed under IC 3-8-2-4 and noon on June 30 before the election. IC 3-8-6-10(a),(b). The county voter registration office must certify the nomination petitions and file them with the officer required to receive them by noon on July 15. IC 3-8-6-10(c). Following certification of a candidate's nomination petitions, the candidate also may file the nomination petitions with the proper authority. IC 3-8-6-10(e).

41. Nomination petitions must be filed with the person with whom a declaration of candidacy must be filed under IC 3-8-2. IC 3-8-6-12(a). The nomination petitions must be accompanied by several statements signed and initialed by the candidate, if applicable. IC 3-8-6-12(b),(c). The person receiving the nomination petitions must determine whether they include the

number of valid signatures required under IC 3-8-6-3, IC 3-8-6-12(d)(1), and certify or deny certification of the nomination petitions. IC 3-8-6-12(d)(2).

42. If a candidate's nomination petitions are denied certification, the candidate may contest such denial. IC 3-8-6-12(i). To do so, the candidate must file a statement pursuant to IC 3-8-1-2(f) not later than noon on the 74th day prior to the general or municipal election for the office the candidate seeks. IC 3-8-16-14(c),(d). Such statements are referred either to the Indiana Election Commission or to a county election board, depending on the office, and the validity of the nomination petitions must be determined not later than noon on the 60th day before the general election. IC 3-8-6-14(e).

43. A candidate's nomination petition is not effective and the candidate may not be certified for placement on the general election ballot unless it is timely filed with each document required under the provisions set forth under sections 10 and 12. IC 3-8-6-12.5.

Ballot-Qualified Minor Parties

44. A Minor Party can become ballot-qualified in Indiana, such that its candidates are entitled to appear on the general election ballot without submitting their own nomination petitions, only if its nominee for Secretary of State received at least 2 percent of the total vote cast for that office in the last election. IC 3-8-4-1. As a result, it is not possible to form a Minor Party and retain ballot access in a presidential election year, because the office of Secretary of State is only elected every four years, in non-presidential election cycles.

45. A Minor Party that complies with IC 3-8-4-1 is entitled to hold a state convention to nominate its candidates for Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General and, if it elects to do so, presidential electors and alternate presidential electors and delegates and alternate delegates to the party's national convention. IC 3-8-4-2.

46. A Minor Party must select its nominees at its state convention using ballot card systems or electronic voting systems, unless there is no contest for the office, in which case the nomination may be made by motion and acclamation. IC 3-8-4-8.

47. A Minor Party's state chair must appoint an inspector and two poll clerks to attend each voting system at the convention. IC 3-8-4-9.

48. A Minor Party's state chair and state secretary must certify each candidate nominated at the convention by submitting a certification to the Secretary of State not later than noon on July 15. IC 3-8-7-8. The certification must include each candidate's name, residence address and other information, and must be signed before a notary. IC 3-8-7-8.

49. The certificate of nomination for candidates for statewide office must be filed with the election division, and the certificate of nomination for candidates for all other offices must be filed with the person with whom a declaration of candidacy must be filed. IC 3-8-7-12. Such certifications must be filed by noon on July 15. IC 3-8-7-14.

50. Indiana does not provide taxpayer funding to pay for any costs associated with an aspiring Minor Party's or a Minor Party's efforts to comply with the foregoing provisions.

Ballot-Qualified Independents

51. Indiana does not provide any procedure by which ballot-qualified Independents may retain ballot access. Consequently, Independents must petition to qualify for the ballot in each election cycle, even if they received at least 2 percent of the vote for Secretary of State in their respective electoral district.

History of Minor Party and Independent Efforts to Qualify for Indiana's Ballot

52. In the nearly four decades since 1984, when Indiana's current 2-percent signature requirement first took effect, Minor Parties and Independents collectively have completed a total of only eight successful statewide petition drives to qualify for Indiana's ballot.

53. In each general election since 1984, there has never been more than two candidates for statewide office on Indiana's ballot, in addition to the Major Party nominees, with one exception: in 1992, there were three successful statewide petitions (LPIN, the New Alliance Party, and presidential independent Ross Perot).

54. No Minor Party or Independent has completed a successful statewide petition drive in Indiana since 2000 – a period of more than 20 years.

55. Both the Natural Law Party and Green Party presidential candidate Ralph Nader attempted to qualify for the ballot in Indiana in 2000 but failed.

56. INGP has attempted to place candidates for Secretary of State in previous elections but has never succeeded. Most recently, Plaintiff Wolfe attempted to qualify as INGP's candidate for Secretary of State in 2018. In recent election cycles, INGP's presidential candidates Jill Stein (2016) and Howie Hawkins (2020) did not undertake petition drives in Indiana, because the effort was cost-prohibitive.

The Libertarian Party of Indiana

57. The Libertarian Party of Indiana ("LPIN") became ballot-qualified in 1980, but could not retain ballot access because the Secretary of State was not elected that year. In 1982, when Indiana's previous 0.5-percent signature requirement was still in effect, LPIN qualified again. That year, LPIN qualified to retain ballot access for the 1986 election cycle by complying with the 0.5-percent ballot retention requirement then in effect. In 1986, LPIN lost ballot status because it failed to meet the new 2-percent ballot-retention requirement that was then in effect.

58. In 1986, LPIN's candidate for Secretary of State failed to meet Indiana's new 2-percent ballot retention requirement. LPIN therefore attempted to conduct a petition drive in 1988 but fell short of the 2-percent signature requirement. To comply with that requirement, LPIN was

required to submit 31,077 valid signatures. Indiana was one of only four states in which Ron Paul, the Libertarian candidate, was not on the ballot in 1988.

59. LPIN conducted a successful statewide petition drive in 1992, when the 2-percent signature requirement translated to 29,909 valid signatures. The office of Secretary of State was not on the ballot in 1992, however, and it was therefore impossible for LPIN to qualify to retain ballot access.

60. LPIN conducted another successful statewide petition drive in 1994, when the 2-percent signature requirement translated to 29,909 valid signatures. LPIN has complied with the 2-percent ballot-retention requirement in each election since then.

The New Alliance Party / Patriot Party

61. In 1988, the New Alliance Party conducted a successful statewide petition drive, when the 2-percent signature requirement translated to 31,077 valid signatures. It could not qualify to retain ballot access, however, because the office of Secretary of State was not on the ballot that year.

62. The New Alliance Party conducted another successful statewide petition drive in 1992, when the 2-percent signature requirement translated to 29,909 valid signatures, but once again it could not qualify to retain ballot access because the office of Secretary of State was not on the ballot that year.

63. The New Alliance Party re-formed as the Patriot Party and conducted a successful statewide petition drive in 1994, when the 2-percent signature requirement translated to 29,909 signatures. The Patriot Party fell short of the 2-percent ballot retention requirement and did not qualify for Indiana's ballot again.

Presidential Independent Ross Perot

64. Billionaire Ross Perot conducted successful statewide petition drives in Indiana in 1992 and 1996. The 2-percent signature requirement translated to 29,909 valid signatures in 1992 and 29,822 valid signatures in 1996.

Presidential Independent Patrick Buchanan

65. In 2000, presidential Independent Patrick Buchanan conducted a successful statewide petition drive in Indiana. To comply with Indiana's 2-percent signature requirement that year, Mr. Buchanan was required to submit 30,717 valid signatures.

66. Mr. Buchanan was the last was the last Minor Party or Independent to conduct a successful statewide petition drive in Indiana. When he did so in 2000, however, he was not subject to the June 30 filing deadline now in effect, but to the July 15 filing deadline in effect at the time. Thus, no Independent or Minor Party has ever complied with the 2-percent signature requirement and June 30 filing deadline now in effect.

The Separate Procedures That Minor Parties and Independents Must Follow Require Them to Expend a Massive Amount of Funds and Resources

67. In the 133 years since Indiana began regulating ballot access, it has not substantially updated or improved the procedures by which Minor Parties and Independents must demonstrate the requisite modicum of support to qualify. As in 1889, Minor Parties and Independents still must collect signatures in person, by hand, on paper nomination petitions. Meanwhile, the burden and expense that Indiana's statutory scheme imposes on Minor Parties and Independents has increased exponentially. That is because they must now collect a far greater number of signatures, and also because Indiana's nomination petition procedure itself is obsolete and inadequate to the task. Collecting signatures by hand is inherently time-consuming, labor-intensive and expensive. The large number of signatures that Indiana now requires Minor Parties and statewide Independents to collect therefore requires a massive expenditure of funds and resources.

68. In Indiana, a trained petition circulator working diligently under optimal conditions can collect 10 signatures per hour, on average, with a validity rate of approximately 65 percent. This translates to a total of 400 raw signatures, or 260 valid signatures, in a full-time, 40-hour work week. Based on those figures, to obtain the 44,935 valid signatures required in 2022, a Minor Party or Independent must enlist enough trained petition circulators to work approximately 6,913 hours on a statewide petition drive – not including the additional hours required to organize, review and deliver nomination petitions to each county voter registration office, as well as the time to retrieve the nomination petitions and deliver them to the Secretary’s office, and the time required for management, training and oversight of the effort.

69. Volunteer petition circulators are usually unable to work full-time on a petition drive. Instead, the most dedicated volunteers typically average between 10 and 20 hours per month, while the majority work fewer hours than that. As a result, to complete a successful statewide petition drive under Indiana’s statutory scheme as currently applied, Minor Parties and Independents must, as a practical matter, hire paid petition circulators.

70. Paid petition circulators typically charge a per-signature fee for their services. The market rate in Indiana is currently approximately \$7.50 per signature or more. Based on those rates, and including transportation, signature review and other necessary expenses, a successful statewide petition drive in 2022 will cost a Minor Party or Independent approximately \$465,000 – \$565,000.

71. The high cost of completing a nomination petition drive is a direct function of the large number of signatures that Minor Parties and Independents must obtain by hand on paper nomination petitions. At each step in the process, from collecting signatures, to reviewing and validating them, to delivering them in person to each county voter registration office before the

filing deadline, the inefficiency of the nomination petition procedure compounds the burden and increases the cost of complying with it.

72. The inherently burdensome nature of gathering signatures by hand on paper nomination petitions makes it especially difficult, if not practically impossible, for those with physical disabilities.

73. In addition, the fact that petition circulators have no practicable method of confirming, in real time, that potential signers are eligible effectively requires that Minor Parties and Independents gather far more signatures than the requirement – typically approximately 50 percent more – to ensure that they have enough valid signatures.

74. At the completion of their petition drive, Minor Parties and Independents must obtain their petitions from circulators throughout the state and then review them for compliance to ensure they have enough signatures. This involves organizing thousands of petition pages separated by county in multiple boxes. Finally, the petitions must be delivered in person to the office of voter registration in each of Indiana’s 92 counties.

75. The outbreak of the Covid-19 pandemic and the ensuing Executive Orders issued by Governor Eric J. Holcomb (“**the** Governor”) and other public safety regulations and requirements impose yet another obstacle to Minor Parties and Independents who seek to qualify for Indiana’s ballot. For example, on March 6, 2020, the Governor issued Executive Order No. 20-02, which declared a state of emergency in Indiana. In subsequent Executive Orders, the Governor: limited public events to no more than 50 people and temporarily closed food service establishments to in-person patrons (No. 20-04 (March 16, 2020)); postponed Indiana’s 2020 primary election (No. 20-07 (March 20, 2020)); issued a temporary “stay-at-home” order to all Indiana residents, except for “essential activities” (No. 20-08 (March 23, 2020)); and continued the “stay-at-home” order, ordered the closure of “non-essential” businesses, prohibited public and private gatherings

of more than 10 people, and implemented social distancing requirements pursuant to which all people were required to maintain six feet of space between themselves to the extent feasible (No. 20-18 (April 6, 2020)). The stay-at-home order was extended several times, as were the order closing non-essential businesses and the social distancing requirements.

76. On September 24, 2020, the Governor issued Executive Order No. 20-43, entitled “The New Normal During a Global Pandemic,” which outlined a plan for allowing Indiana to re-open, while maintaining the previously implemented requirements that all people exercise social distancing and wear face masks in public buildings, public transportation and public spaces. Meanwhile, the Governor’s original Executive Order declaring a state of emergency was extended multiple times, and was not rescinded until March 3, 2022. As Executive Order 21-33, which remained in effect through February 1, 2022, notes, “the virus remains in every county throughout Indiana with over 1,227,000 confirmed cases and 18,200 deaths.”

77. As a result of these circumstances, approaching strangers on public sidewalks, at their homes or anywhere else to request their hand-written signature on paper nomination petitions is more difficult and time-consuming than ever before.

Indiana’s Statutory Scheme Functions as a *De Facto* Financial Barrier Against Minor Parties and Independents Who Seek to Qualify for the General Election Ballot

78. The cost of complying with the ballot access procedures that Minor Parties and Independents must follow functions as a de facto financial barrier to their participation in Indiana’s elections.

79. Since 1984, with few exceptions if any, no Minor Party or Independent has completed a successful statewide petition drive in Indiana except by spending substantial funds. Additionally, such petition drives necessitated a massive mobilization of resources, including but not limited to volunteer labor and food, lodging and travel expenses, all of which have substantial value.

80. In 2022, a statewide petition drive in Indiana will cost at least \$465,000 – \$565,000. Such cost functions as an absolute barrier to non-wealthy Minor Parties and Independents who seek to participate in Indiana’s elections, including Plaintiffs.

Indiana’s Statutory Scheme Severely and Unequally Burdens the Constitutional Rights of Minor Parties, Independents and the Voters Who Want the Opportunity to Vote for Them, Including Plaintiffs

81. The financial barrier to entry that Indiana’s statutory scheme now imposes upon Minor Parties and statewide Independents, including Plaintiffs, is near-absolute. Plaintiffs neither possess the funds needed to comply with Indiana’s statutory scheme as currently applied, nor do they have the ability to raise such exorbitant sums. To qualify for the ballot in 2022, therefore, they have no choice but to rely on volunteer petition circulators to collect the 45,000-plus valid signatures required. In the last four decades since Indiana’s statutory scheme took effect, however, the few statewide petition drives that have succeeded necessitated a massive expenditure of resources, and no statewide petition drive has succeeded in the last 20 years.

82. By imposing a near-absolute barrier to their participation in its electoral process, Indiana’s statutory scheme severely burdens Plaintiffs’ First and Fourteenth Amendment rights to cast their votes effectively, to speak and associate for political purposes, and to the equal protection of law. Plaintiffs’ exclusion from the electoral process harms their ability to engage in political speech for purposes of influencing the public debate and prevents them from representing the interests of their voter-supporters within the electoral arena, as well as the interests of all voters who desire more meaningful choices on the general election ballot. It also denies them one of the most valuable opportunities of building voter support for their political platforms – by running candidates for public office – and dissuades voters from supporting them. Plaintiffs’ exclusion further harms their ability to raise and spend funds to promote their political goals.

83. Indiana's statutory scheme specifically injures the Minor Party Plaintiffs by restricting their ability to grow and develop as parties. Due to INGP's exclusion from the electoral process, voters who support its platform, including INGP's own members, often vote for candidates from other parties. Some INGP members defect to another party, despite their continued support for the INGP's platform. INGP's ability to recruit candidates is also harmed, because even INGP's most ardent and loyal members are often unwilling to accept its nomination because they know they will not appear on the ballot.

84. Further, because attempting to qualify for the ballot is an all-consuming and exhaustive process, Minor Parties that have succeeded like LPIN must prioritize ballot retention above all other goals. This imperative distorts their electoral strategy because it compels them to divert their limited resources from the higher-profile races for statewide offices, in which they could spread their message and build voter support most effectively, and to dedicate them instead to the race for Secretary of State, which is their only opportunity to meet the vote threshold for maintaining ballot access.

85. Indiana's statutory scheme also burdens Minor Parties by making it impossible for them to become ballot-qualified during presidential election years, because the office of Secretary of State is not up for election in those cycles.

86. Indiana's statutory scheme specifically burdens Independents by depriving them of any procedure whatsoever for retaining ballot access. As a result, Independents must conduct a new petition drive to qualify for the ballot in each election cycle, no matter how well they may have done in the prior election. Such a burden, by itself, is sufficient to dissuade Independents from pursuing a ballot access procedure that requires them to repeat the onerous and expensive process in each election cycle.

87. The very existence of Indiana’s statutory scheme chills and suppresses Plaintiffs’ exercise of their First Amendment rights, by compelling them either to forgo participation in Indiana’s electoral process altogether, or to pursue other, less effective means of furthering their political objectives.

88. The burdens imposed by Indiana’s statutory scheme ultimately fall upon voters, including Plaintiffs, who have been systematically deprived of the opportunity to vote for any new Minor Party or statewide Independent for a period of 20 years. The absence of such alternatives from Indiana’s general election ballot denies Plaintiffs’ right to cast their votes effectively and violates their freedom of association.

Indiana’s Nomination Petition Procedure Is Not Sufficiently Tailored to Serve Its Legitimate Regulatory Interests, and Less Burdensome Alternatives Are Available

89. Indiana’s nomination petition procedure is not sufficiently tailored to serve its interest in limiting ballot access to candidates who have demonstrated a modicum of public support. The procedure necessarily excludes those who lack sufficient resources to conduct a successful petition drive, even if they have substantial public support, while providing wealthy candidates and parties a means of gaining ballot access even if they lack the requisite support.

90. Indiana could substantially reduce or eliminate the severe and unequal burdens its statutory scheme imposes on Minor Parties and Independents – and specifically the financial burden of complying with its signature requirements – if it adopted more efficient electronic procedures for them to follow. In Arizona, for instance, the state has implemented a secure online platform that enables voters to sign nomination petitions online, and also confirms their eligibility and validates their signatures automatically. *See* Arizona Secretary of State Citizens Clean Elections Commission, *E-QUAL*, <http://apps.azsos.gov/equal/> (last visited March 10, 2022). Implementation of such a platform in Indiana would enable Minor Parties and Independents to demonstrate the requisite public support without obliging them to meet tens of thousands of voters

in person, to obtain their signatures by hand. It would also enable petition circulators to validate signatures automatically, further reducing the burden imposed by Indiana's nomination petition procedure.

91. The District of Columbia and Denver, Colorado have implemented a similar procedure, called eSign, which enables voters to sign nomination petitions electronically and automatically validates their signatures, by using tablets that are integrated with the city's voter rolls. Illinois and West Virginia have also adopted web-based procedures to regulate their electoral processes. Additionally, many other states adopted electronic petitioning procedures for the 2020 election cycle, as public health measure in response to the Covid-19 pandemic.

92. Indiana enables residents to register to vote online. *See* <https://indianavoters.in.gov/>. "It's easy and only takes a few steps." *Id.*

Indiana's Statutory Scheme Is Unconstitutional Under Existing Supreme Court Precedent

93. Indiana's statutory scheme operates as an exclusionary mechanism that denies voters, including Plaintiffs, the right to cast their votes for Minor Party and Independent candidates of their choosing. *See American Party of Texas v. White*, 415 U.S. 767, 794 (1974). Further, it imposes financial burdens on Minor Parties and Independents that are so great as to be patently exclusionary in character, and therefore discriminates on the basis of wealth. *See Bullock v. Carter*, 405 U.S. 134, 143 (1972). It severely burdens Plaintiffs' right to cast their votes effectively, to speak and associate for political purposes, and to the equal protection of law, and it is not reasonably tailored to further a sufficiently weighty state interest, given the availability of less burdensome alternatives. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). As applied to Plaintiffs, Indiana's statutory scheme is unconstitutional.

CAUSES OF ACTION

COUNT I

(Violation of Plaintiffs' Rights Guaranteed by the First and Fourteenth Amendments)

94. Plaintiffs reassert each preceding allegation as if set forth fully herein.

95. Indiana imposes severely burdensome requirements upon Minor Parties and Independents who seek to qualify for the general election ballot. Specifically, such parties and candidates must:

- (a) Submit nomination petitions signed by voters equal in number to 2 percent of the entire vote cast for Secretary of State in the preceding election (IC 3-8-6-3: 2);
- (b) Obtain each signature in person, by hand, on paper nomination petitions (IC 3-8-6-6);
- (c) Deliver the nomination petitions, separated by county, to the county voter registration office in each of Indiana's 92 counties by June 30th (IC 3-8-6-10(a),(b)); and
- (d) Receive at least 2 percent of the entire vote for Secretary of State to retain ballot-qualification as a political party (IC 3-8-4-1), and Indiana provides no procedure whatsoever whereby Independents can retain ballot-qualification.

96. The statutory provisions in the preceding paragraph, operating in conjunction with one another, impose substantial or severe burdens on Minor Parties and Independents, and on voters who support or may wish to support them, which are not justified by any legitimate or compelling state interest.

97. These provisions, as applied separately and in conjunction with one another, both cause injury to and violate rights guaranteed to Plaintiffs by the First and Fourteenth Amendments to the U.S. Constitution.

COUNT II

(Violation of Plaintiffs' Rights Guaranteed by the Equal Protection Clause)

98. Plaintiffs reassert each preceding allegation as if set forth fully herein.

99. Indiana's ballot access requirements for Minor Parties and Independents, and specifically those statutory provisions enumerated in Count I of this Complaint, as applied separately and in conjunction with one another, both cause injury to and violate rights guaranteed to Plaintiffs by the Equal Protection Clause of the U.S. Constitution.

PRAYER FOR RELIEF

100. WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Enter a declaratory judgment holding that Indiana's statutory scheme regulating ballot access for Minor Parties and Independents is unconstitutional as applied to Plaintiffs, and that the following statutory provisions are unconstitutional as applied separately and in conjunction with one another: IC 3-8-6-3; IC 3-8-6-6; IC 3-8-6-10(a),(b); and IC 3-8-4-1.
- B. Enter an order enjoining the Secretary of State from enforcing the foregoing provisions as applied to Plaintiffs;
- C. Award other and further relief as the Court deems proper;
- D. Award litigation costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- E. Retain jurisdiction of this action and grant the Plaintiffs any further relief which may in the discretion of the Court be necessary and proper.

Dated: March 17, 2022

Respectfully submitted,

/s/Oliver B. Hall
Oliver Hall*
(Pro Hac Vice Pending)
CENTER FOR COMPETITIVE DEMOCRACY
P.O. Box 21090
Washington, DC 20009
202-248-9294
oliverhall@competitivedemocracy.org

Mark R. Brown
(Pro Hac Vice Pending)
303 E. Broad Street
Columbus, Ohio 43215
614-236-6590
MBrown@law.capital.edu

William P. Tedards, Jr.
(*Pro Hac Vice Pending*)
1101 30th Street NW, Suite 500
Washington, DC 20007
BT@tedards.net
(202) 797-9135

Attorneys for Plaintiffs
*Counsel of Record