IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IOWA LIBERTARIAN PARTY, and JAKE PORTER, Plaintiffs, v. PAUL D. PATE, in his official capacity as Iowa Secretary of State, Defendant.	Case No. 4:19-cv-00241-SMR-HCA **BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiffs ask this Court to declare Iowa Code section 44.4, as amended by Iowa House File 692, effective July 1, 2019, unconstitutional and enjoin its enforcement. Plaintiff's argue that the mid-March filing deadline created by House File 692 violates the First and Fourteenth Amendments to the United States Constitution.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The Iowa Libertarian Party ("ILP") is a "nonparty political organization" under Iowa Code § 44.1. Compl. ¶ 2; Joint App. 1.

2. Paul Pate is Iowa's Secretary of State. As Secretary of State, he is the Iowa Commissioner of Elections with oversight of Iowa's election laws. Iowa Code § 47.1; Compl. ¶ 4; Joint App. 2.

3. A nonparty political organization such as ILP may nominate candidates for election by holding a caucus or convention pursuant to Iowa Code chapter 44 or collecting

the requisite number of nomination petition signatures for the office sought pursuant to Iowa Code chapter 45.

4. During the 2019 legislative session, the Iowa Legislature passed amendments to election code sections requiring nominations by nonparty political organizations of candidates for the general election ballot must be filed no "later than 5:00 p.m. on the eighty-first day before the first Tuesday after the first Monday in June in each even-numbered year." Iowa Code §§ 44.4; 45.4; Compl. ¶ 9; Joint App. 2-3.

5. The March deadline does not apply to any presidential nominee by the ILP. Redpath dep. P.12 Ls.7-11; Joint App. 40.

6. Prior to these amendments, the deadline for nonparty political organizations to nominate general election candidates had been seventy-three days before the general election. Compl. ¶ 11; Joint App. 3.

7. Plaintiff Jake Porter was not the ILP nominee for U.S. Senate in the 2020 general election. Rather, Rick Stewart ran as the ILP nominee. Iowa Official Canvass, https://sos.iowa.gov/elections/pdf/2020/general/canvsummary.pdf.

8. The ILP nominated Bryan Jack Holder as its candidate for U.S. House District 3. Iowa Official Canvass, https://sos.iowa.gov/elections/pdf/2020/general/canvsummary.pdf.

III. APPLICABLE LAW

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The freedom of speech and religious exercise guaranteed by the First Amendment are incorporated against the states through the due process clause of the Fourteenth Amendment according to United States Supreme Court decisions in *Gitlow v. New York*, 268 U.S. 652 (1925), and *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

The Fourteenth Amendment to the United States Constitution provides, among other things, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV. ARGUMENT

The United States Supreme Court has developed a test for challenges to state regulation of elections under the federal constitution. Known as *Anderson-Burdick*,[1] the federal test balances a state's interest in a challenged law against the burden the law imposes. Under *Anderson-Burdick*, "severe restrictions" on a constitutional right survive only if "narrowly drawn to advance a state interest of compelling importance." *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (quotations omitted). Regulations that impose "more-than-minimal" but "less-then-severe" burdens require a

[1] *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).

"flexible" analysis that weighs the burden against the state's asserted interest and chosen means. *Id.* (quotations omitted). "Minimally burdensome and nondiscriminatory regulations," on the other hand, "are subject to a less-searching examination closer to rational basis and the State's important regulatory interests are generally sufficient to justify the restrictions." *Id.* (quotations omitted). The test "generally defers to the states' authority to regulate the right to vote" because "[c]ommon sense, as well as constitutional law, compels the conclusion that [there] ... must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Id*. (citing *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)).

a. Iowa's pre-primary filing deadline is minimally burdensome

Under Iowa law, a "political party" is a party that received at least two percent of the total vote cast in the most recent general election for president of the United States or for governor. Iowa Code § 43.2(1)(b). Candidates running for office as members of a political party must file nomination papers not later than the eighty-first day before the date of the primary election. Iowa Code § 43.11(2). A political organization that did not qualify as a political party in the most recent general election is known as a "nonparty political organization." Iowa Code § 44.1. Nonparty political organizations gain access to the ballot by convention. For a statewide office the convention must be attended by "a minimum of two hundred fifty eligible electors including at least one eligible elector from each of twenty-five counties." Iowa Code § 44.1. For a congressional race, the convention must include "a minimum of fifty eligible electors who are residents of the congressional district including at least one eligible elector from each of at least one-half of the counties of the congressional district." Iowa Code § 44.1. Candidates may also access the ballot by

submitting a nomination petition signed by 1,500 eligible electors from at least ten counties for statewide office and signed by at least 375 eligible electors who are residents of the district for congressional races. Iowa Code § 45.1(1)-(2).

Prior to July 1, 2019, candidates representing nonparty political organizations or independents were required to submit caucus or convention nominations or nominations by petition not later than the seventy-third day prior to the general election, some time in mid-August. In 2019, the legislature changed the deadline for nominations under chapters 44 and 45 to the eighty-first day before the date of the primary election, some time in mid-March, the same deadline as for political party nominations. *See* 2019 Ia. Legis. Serv. Ch. 146 (H.F. 692) § 37. That change is the subject of this action. Plaintiffs argue that the new deadline burdens nonparty political organizations by preventing them from "reacting to later breaking changes in the political landscape," and "hamper[ing] the recruitment of convention and caucus participants." Complaint ¶ 12; Joint App. 3. They also argue that the new deadline is burdensome because volunteers are more difficult to recruit and media coverage is more difficult to secure early in the election season. Complaint ¶ 12; Joint App. 3. Finally, they argue that they are burdened by being "locked into the candidates they nominate in March" despite state and national developments that arise later. Complaint ¶ 12; Joint App. 3.

Federal courts have upheld filing deadlines that occur on the day of the major party primary or before the primary on many occasions. *See, e.g.*, *Swanson v. Worley*, 490 F.3d 894, 905-06 (11th Cir. 2007) (concluding that the combination of Alabama's deadline on the primary election date and three percent signature requirement imposed only a minimal burden); *Lawrence v. Blackwell*, 430 F.3d 368, 375 (6th Cir. 2005), cert. denied, 547 U.S.

1178 (2006) (upholding Ohio's filing deadline for independent candidates on the day before the primary election date, which is as early as March in presidential election years, with a one-percent signature requirement); *Wood v. Meadows*, 207 F.3d 708, 713–14 (4th Cir. 2000) (analyzing Virginia's June filing deadline on the primary election date "in conjunction with" its signature requirement of 0.5% of registered voters and concluding that its election scheme "taken as a whole" is constitutional); *Council of Alternative Political Parties v. Hooks*, 179 F.3d 64, 76–77 (3d Cir. 1999) (concluding that the combination of New Jersey's deadline on the primary election date and signature requirement of up to 1,000 signatures imposed only a minimal burden); *Rainbow Coal. of Okla. v. Okla. State Election Bd.*, 844 F.2d 740, 747 (10th Cir. 1988) (holding that a May 31 filing deadline is not unconstitutional "even in conjunction with the relatively high [five-percent] signature requirement").

In *McClain v. Meier*, the Eighth Circuit upheld North Dakota's election statutes requiring independent candidates to obtain 7,000 signatures at least fifty-five days prior to the June primary. 851 F.3d 1045, 1049-51 (8th Cir. 1988). In its decision, the Eighth Circuit remarked that the burdens associated with the pre-primary filing dealing were "significantly abate[d]" by the state's decision to reduce the signature requirement from 15,000 to 7,000. *Id*. at 1050-51. It described 7,000 signatures as a "relatively small number." *Id.* at 1050. In Iowa, independent candidates or candidates representing nonparty political organizations who submit nominating petitions need only obtain signatures from 1,500 eligible electors for statewide office and 375 for congressional races. Iowa Code § 45.1(1)-(2).

In *Anderson v. Celebrezze*, the United States Supreme Court struck a March filing deadline for independent candidates in Ohio, but critical to the decision in that case was the fact that the deadline included candidates for president of the United States. 460 U.S. at 795. The Court explained that, "the State has a less important interest in regulating Presidential elections than statewide or local elections ...." *Id.* The filing deadline challenged in this case does not apply to presidential candidates. Depo. William Repath P.12 Ls.7-11; Joint App. 40. The Eleventh Circuit struck down an April filing deadline in *New Alliance Party v. Hand*, but did so prior to the clarification of the federal standard in *Burdick*, instead using a strict scrutiny framework requiring the state to "adopt the least drastic means to achieve its ends." 933 F.2d 1568, 1576 (11th Cir. 1991). As explained in *McClain*, the precise date for a deadline "would probably be impossible to defend … as either compelled or least drastic." 851 F.3d at 1050 (quotation omitted). "A litigant could always point to a day slightly later that would not significantly alter a state's interests … ." *Id.*

Iowa's signature requirement is much lower than others that have been upheld elsewhere. *See, e.g. Jenness v. Fortson*, 403 U.S. 431 (1971), (5% requirement upheld); *Storer*, 415 U.S. 724 (5% requirement upheld); *Rainbow Coalition*, 844 F.2d 740 (5% requirement upheld); *Hall v. Simcox*, 766 F.2d 1171 (7th Cir.1985) (2% requirement upheld); *Libertarian Party of Florida v. State of Fla.*, 710 F.2d 790 (11th Cir.1983) (3% requirement upheld). In addition, Iowa law requires only that signers be "eligible electors." They need not even be registered voters. And no provision of the law limits the time period for collecting those signatures. *See Swanson*, 490 F.3d at 909 ("Given the unlimited petitioning window, a diligent independent or minor party candidate could meet the filing

deadline by collecting signatures many months before the June primary deadline."). Indeed, Plaintiffs do not challenge the number of signatures required, only the date by which they must be collected. Nor do they contest the number of attendees necessary to nominate a candidate by convention. Depo. of Richard Winger P.9 L.19 – P.10 L.13; Joint App. 20-21. Because the new deadline is minimally burdensome considered with the context of Iowa's low signature requirement, this Court need not apply heightened scrutiny. *See Husted*, 834 F.3d at 627 ("[m]inimally burdensome and nondiscriminatory regulations are subject to a less-searching examination closer to rational basis and the State's important regulatory interests are generally sufficient to justify the restrictions.").

b. The state's interests are sufficient to justify the minimal burden of the new deadline

In the second step of the analysis, a court turns to the state's interests. "If the burden on the plaintiffs' constitutional rights is 'severe,' a state's regulation must be narrowly drawn to advance a compelling state interest," satisfying strict scrutiny. *Stone v. Bd. of Election Comm'rs for City of Chicago*, 750 F.3d 678, 681 (7th Cir. 2014) (citation omitted). But "[i]f the burden is merely 'reasonable' and 'nondiscriminatory,' by contrast, the government's legitimate regulatory interests will generally carry the day." *Id.* (citation omitted). Under this flexible analysis, "[l]esser burdens . . . trigger less exacting review." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997), and "minimally burdensome and nondiscriminatory regulations" in particular "are subject to a less-searching examination closer to rational basis." *Husted*, 834 F.3d at 627 (citations omitted). And, critically, a justification's sufficiency is generally a "legislative fact" that must be accepted if reasonable, not an "adjudicative fact[ ]" subject to courtroom testing. *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014) (*Frank I*); *see also Crawford v. Marion Cnty.*

Election Bd., 553 U.S. 181, 194-97 (2008) (opinion of Stevens, J.); *Husted*, 834 F.3d at 632.

The United States Supreme Court has recognized that, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). In regulating elections, "the State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections." *Id*. at 732. The Court has also recognized that states are allowed to pass laws that prevent "sore losers" of major party primaries from later filing to run as independents or minor party candidates. *Id.* at 735 ("The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds. The provision against defeated primary candidates running as independents effectuates this aim, the visible result being to prevent the losers from continuing the struggle and to limit the names on the ballot to those who have won the primaries and those independents who have properly qualified.").

"The most obvious state interest justifying any pre-election filing deadline is the need to provide a decent interval for administrative processing and for voter education." *Cromer v. South Carolina*, 917 F.2d 819, 825 (4th Cir. 1990). A representative for Defendant testified that the new filing deadline for nonparty political organizations in Iowa promotes uniformity with the filing deadline for political parties and allows the Secretary of State's office to accomplish review of the filing period "in just one 3-week period" instead of having to do so twice. Depo. of Molly Widen P.14 Ls.5-13; Joint App. 13. The

state also has judicially recognized interests "in protecting the integrity of their political processes from frivolous or fraudulent candidacies, in ensuring that their election processes are efficient, in avoiding voter confusion caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections." *McClain*, 851 F.2d at 1051 (quotation omitted). The *McClain* court held that it was "unable to conclude that requiring third parties to obtain 7,000 signatures fifty-five days before their June primary in order to appear on the ballot as a third party is an unreasonable effort by North Dakota to advance these interests." *Id.* This Court should not conclude that Iowa's requirements for nonparty political organizations represent unreasonable efforts to advance the same interests.

V. CONCLUSION

For the foregoing reasons, summary judgment is appropriate in favor of Defendant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2021, a true and correct copy of the foregoing was filed electronically via the Court's ECF system which will notify each of the following participants:

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