NO. 19-_____

In the Supreme Court of the United States

ROQUE DE LA FUENTE, Rocky,

Petitioner,

v.

ALEX PADILLA, California Secretary of State;
STATE OF CALIFORNIA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has long recognized that States may require an independent presidential candidate to collect a sufficient number of signatures on election petitions to demonstrate that the candidate has a "modicum of support" in the community to secure ballot access to protect a State's legitimate interest in preventing ballot clutter and the resulting threat of voter confusion. This case presents the following question:

When evidence is adduced that signature collection requirements to secure ballot access for independent presidential candidates exceed what is necessary to protect a state's compelling interest against ballot clutter and voter confusion, can excessive signature requirements outweigh the national interest in presidential elections and evade constitutional review absent a full analysis of each prong of this Court's *Anderson-Burdick* framework to evaluate the constitutionality of ballot access restrictions?

PARTIES TO THE PROCEEDING

Petitioner

- ROQUE DE LA FUENTE, who also goes by the nickname "Rocky"

Respondents

- Alex Padilla, Secretary of State for California, in his official capacity
- The State of California

LIST OF PROCEEDINGS

United States District Court for the Central District of California

Civ. No. CV-16-3242-MWF (GJS)

Roque "Rocky" De La Fuente v.
State of California and Alex Padilla.

Decision Date: October 4, 2017

United States Court of Appeals for the Ninth Circuit

No. 17-56668

Roque De La Fuente, Rocky, Plaintiff-Appellee, v. *Alex Padilla, California Secretary of State; State of California*, Defendant-Appellant.

Decision Date: July 19, 2019

TABLE OF CONTENTS

Page

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

JUDICIAL RULES

TABLE OF AUTHORITIES—Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioner Roque "Rocky" De La Fuente respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, dated July 19, 2019, is published at 930 F.3d 1101 (9th Cir. 2019). (App.1a). The district court's opinion, dated October 4, 2017, is reported at 278 F.Supp.3d 1146 (C.D. Ca. 2017). (App.9a).

JURISDICTION

The judgment of the court of appeals was entered on July 19, 2019. (App.1a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitution provides in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . .

or the right of the people peaceably to assemble. . . . " (App.30a).

Section 1 of the Fourteenth Amendment to the United States Constitution provides: "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." (App.30a).

RELEVANT STATUTORY PROVISIONS

California Election Code § 8400 provides in pertinent part: "Nomination papers for a statewide office for which the candidate is to be nominated shall be signed by voters of the state equal to not less in number than 1 percent of the entire number of registered voters of the state at the time of the close of registration prior to the preceding general election. . . . " Cal. Elec. Code. § 8400. (App.30a).

California Election Code § 8403 provides in relevant part: "For offices for which no filing fee is required, nomination papers shall be prepared, circulated, signed and delivered to the county elections officials for examination no earlier than 193 days before the election and no later than 5 p.m. 88 days before the election." Cal. Elec. Code § 8403(a)(2). (App.30a).

INTRODUCTION

Petitioner files the petition for a writ of certiorari requesting a remand of this case to the Ninth Circuit so that court can conduct a proper analysis of the constitutionality of California's signature collection requirements for independent presidential candidates under this Court's *Anderson-Burdick* framework.

No independent presidential candidate has appeared on California's general election ballot since 1992. The facts, law and much of the evidence in this action are indistinguishable from *Green Party of Georgia v. Kemp*, 171 F.Supp.3d 1314 (N.D. Ga. 2016), striking down under a deferential standard, Georgia's requirement that independent and third-party presidential candidates collect signatures equal to 1% of Georgia's registered voters to secure ballot access because the court determined Georgia's interest failed to out-weigh the national interest implicated by a presidential election. *Green Party of Georgia*, 171 F.Supp.3d 1367-68. In truth, the facts presented to the Ninth Circuit present an even clearer record that California's ballot access restrictions impair both the constitutional rights of Petitioner and the national interest implicit in the conduct of a national election than the evidence presented to the Georgia district court and the Eleventh Circuit.

California's signature requirement to secure ballot access in presidential elections is higher both in real terms and on a per capita basis than Georgia's unconstitutional ballot access scheme. California permits only 105 days to collect signatures, whereas, Georgia

permitted a full six months for independent presidential candidates to collect signatures for ballot access. In contrast to California's dearth of independent presidential candidates appearing on its ballot dating to 1992, Pat Buchanan appeared on Georgia's ballot in 2000. The district court's judgment in *Green Party of Ga.*, was affirmed by the Eleventh Circuit in an unpublished *per curiam* decision stating that: "The judgment of the district court is affirmed based on the district court's well-reasoned opinion." *See*, *Green Party of Ga. v. Kemp*, 674 Fed. Appx. 974 (11th Cir. 2017).

Unlike the Ninth Circuit opinion at issue in this petition, the district court in *Green Party of Ga.*, accepted the testimony of Richard Winger explaining historic evidence that no state has suffered from ballot clutter in presidential elections where the state has required independent and third-party presidential candidates to collect 5,000 valid signatures to secure ballot access. (App.34a-37a at ¶¶6-12). In contrast, and despite the same evidence in this action, the Ninth Circuit failed to conduct a full *Anderson-Burdick* analysis and upheld California's requirement that independent presidential candidates collect signatures equal to 1% of the registered voters (a requirement to collect 178,039 valid signatures in 2016) during a far more limited 105-day circulation window.

In order to gain access to state general election ballots, independent presidential candidates are typically required to either pay a filing fee or circulate nomination petitions prepared by the Secretary of State and collect and timely file a certain number of

valid signatures from registered voters requesting that the name of the independent candidate be placed on the state's general election ballot. Signature requirements to secure ballot access is justified by a state "chiefly by its interest in having candidates demonstrate substantial support in the community." *Storer v. Brown*, 415 U.S. 724, 743 (1974). However, this Court has also explained that a state's interest in requiring candidates to demonstrate substantial support in the community does not extend beyond a state's interest in protecting its ballot from "frivolous candidacies and kept within limits understandable to the voter." *Id.*

The right to vote, the right to associate for political purposes and the right to choose to stand as either a party or independent candidate for political office are fundamental constitutional rights protected under the First and Fourteenth Amendments to the United States Constitution. *See e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 224 (1989); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986); *Anderson v. Celebrezze*, 460 U.S. 780, 787, 790-91, 793-95 (1983). As applied to state-imposed ballot access restrictions on independent presidential candidates, this Court has stated:

> A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and—of particular importance—against those voters whose political prefer-

ences lie outside the existing political parties. By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Historically, political figures outside the two major political parties have been fertile sources of new ideas and new programs; many of their challenges to the *status quo* have, in time, made their way into the political mainstream. In short, the primary values protected by the First Amendment—"a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,"—are served when election campaigns are not monopolized by the existing political parties. Furthermore, in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States, Thus, in a Presidential election, a State's enforcement of more stringent ballot access requirements . . . has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because

> the outcome of the former will be largely determined by voters beyond the State's boundaries. . . . "the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State."

See, *Anderson v. Celebrezze*, 460 U.S. 780, 793-95 (quoting *Cousins v. Wigoda*, 419 U.S. 477, 490 (1975). In *Storer v. Brown*, 415 U.S. 724 (1974), this Court recognized that a state "must justify its independent signature requirements chiefly by its interest in having candidates demonstrate substantial support in the community so that the ballot, in turn, may be protected from frivolous candidates and kept within limits understandable to the voter." *See*, *Storer*, 415 U.S. at 743.

Petitioner presented uncontested evidence, ignored by the courts below, but relied upon by the Northern District of Georgia's order reducing Georgia's 50,000 signature requirement to 7,500 that there is no ballot clutter where states require independent presidential candidates to collect and file 5,000 valid signatures. (App.34a-37a at ¶¶6-12). There is simply no historical evidence that in any given election cycle there are independent presidential candidates in numbers which threaten to clutter presidential ballots sufficient for California to constitutionally justify under the First and Fourteenth Amendments the requirement for independent presidential candidates collect and file over 170,000 valid signatures in 105 days to secure access to California's general election ballot.

In addition to Petitioner's uncontested evidence that California's signature requirement is excessive

to protect against ballot clutter, the evidence demonstrates that California's ballot access scheme for independent presidential candidates is the most restrictive in the country based on every available metric. In 2016, California required independent presidential candidates to collect 178,039 valid signatures of registered California voters in just 105 days to secure access to California's general election presidential ballot. *See*, Cal. Elec. Code §§ 8400, 8403(a)(2) (App.30a). Only 15 states require independent presidential candidates to both collect signatures and to do so within a limited time period to secure ballot access, *i.e.*, impose a restriction on when a candidate may begin to collect signatures. 35 states either do not require an independent presidential candidate to collect any signatures or impose a restriction on the start date that petition circulation may begin. *See*, Alabama, Ala. Code § 17-14-31; Alaska, Alaska Stat. § 15.30.025; Arizona, Ariz. Rev. Stat. Ann. § 16-341-E; Arkansas, Ark. Code Ann. § 7-8-302; Colorado, Colo. Rev. Stat. § 1-4-801; Delaware, Del. Code Title 15 § 3002; Florida, Fla. Stat. § 103.021(3); Georgia, O.S.G.A. § 21-2-132(i)(B)(3); Hawaii, H.R.S. Title 2, § 11-113(2)(b); Idaho, Idaho Code Title 4 § 45.1; Indiana, Ind. Code § 3-8-6-3; Iowa, Iowa Code Title 4, § 45.1; Kansas, Kan. Stat. Ann. § 25-303; Kentucky, Ky. Rev. Stat. Ann. Title 10 § 118.315(2); Louisiana, La. Rev. Stat. Title 18, § 465C; Maryland, Md. Ann. Code Art. 33 § 5-703(e); Michigan, Mich. Comp. Laws § 168.590(b)(2); Mississippi, Miss. Code Ann. § 23-15-359; Missouri, Mo. Rev. Stat. Title 9, § 115.321; Montana, Mont. Code Ann. § 13-10-601; Nebraska, Neb. Rev. Stat. § 32-620; Nevada, Nev. Rev. Stat. Title 24, § 298-109; New Hampshire, N.H. Rev. Stat. Ann.

Title 4, § 655:42; New Jersey, N.J.S.A. § 19:13-5; New Mexico, N.M. Stat. Ann. § 1-8-51; North Carolina, N.C. Gen. Stat. § 163-122; Ohio, Ohio Rev. Code Ann. § 3513.257; Oklahoma, Okla. Stat. Title 26, § 10-101; Oregon, Or. Rev. Stat. Ann. § 249.735; South Carolina, S.C. Code Ann. § 7-11-70; Tennessee, Tenn. Code Ann. § 2-5-101; Utah, Utah Code Ann. § 20A-9-502; Vermont, VT. Stat. Ann. Title 17, § 2402(b); West Virginia, W.Va. Code § 3-5-23; Wyoming, Wyo. Stat. Ann. § 22-5-304.

In 2016, the other 49 states required only a total of 580,940 signatures and/or filing fees for an independent candidate to secure ballot access for the presidential election in those 49 states. California, in contrast, required independent presidential candidates to collect 178,039 signatures, in 105 days, just to qualify for California's presidential general election ballot—a per capita ballot access signature requirement 121.5% greater than the pre capita signature requirement imposed by the other 49 states combined. In other words, California requires an independent presidential candidate to collect 23.45% of the total number of signatures to secure ballot access in all 50 state general election ballots just to qualify for California's general election ballot, in a state with only 12.12% of the national population in 2016.[1] *See*, Alabama, 5,000 signatures (number stated in statute), Ala. Code § 17-14-31; Alaska, 3,005 signatures (1% of

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[1] The total estimated United States resident population in 2016 was 323.4 million; the total estimated California resident population in 2016 was 39.21 million. *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2016–2016 Population Estimates*. U.S. Census Bureau.

2012 votes cast), Alaska Stat. § 15.30.025; Arizona, 35,514 signatures (3% of registered independents), Ariz. Rev. Stat. Ann. § 16-341-E; Arkansas, 1,000 signatures (number stated in statute), Ark. Code Ann. § 7-8-302; Colorado, 0 signatures (pay filing fee), Colo. Rev. Stat. § 1-4-801; Connecticut, 7,500 signatures (maximum number stated in statute), Conn. Gen. Stat. § 9-453(d); Delaware, 6,526 signatures (1% of December 2015 registration), Del. Code Title 15 § 3002; Florida, 119,316 signatures (1% of October 2014 registration), Fla. Stat. § 103.021(3); Georgia, 7,500 signatures (reduced from 1% of registered voters to 7,500 by *Green Party of Ga. v. Kemp*, 171 F.Supp.3d 1340 (N.D. Ga. 2015) *aff'd* 674 Fed. Appx. 974 (11th Cir. 2015); Hawaii, 4,347 signatures (1% of 2012 presidential vote), H.R.S. Title 2, § 11-113(2)(b); Idaho, 1,000 signatures (number stated in statute), Idaho Code § 34-708A; Illinois, 25,000 signatures (number stated in statute), 10 Ill. Comp. Stat. § 5/10-3; Indiana, 26,700 signatures (2% of 2014 vote for Secretary of State), Ind. Code § 3-8-6-3; Iowa, 1,500 signatures (number stated in statute), Iowa Code Title 4, § 45.1; Kansas, 5,000 signatures (number stated in statute), Kan. Stat. Ann. § 25-303; Kentucky, 5,000 signatures (number stated in statute), Ky. Rev. Stat. Ann. Title 10, § 118.315(2); Louisiana, 0 signatures (pay filing fee), La. Rev. Stat. Title 18, § 465C; Maine, 4,000 signatures (number states in statute), 21-A Me. Rev. Stat. Ann. § 354; Maryland, 10,000 signatures (number stated in statute), Md. Ann. Code Art. 33, § 5-703(e); Massachusetts, 10,000 signatures (number stated in statute), Mass. Gen. Laws Chapter 53, § 6; Michigan, 30,000 signatures (number stated in statute), Mich. Comp. Laws § 168.590(b)(2); Minnesota, 2,000

signatures (number stated in statute), Minn. Stat. § 204B.08; Mississippi, 1,000 signatures (number stated in statute), Miss. Code Ann. § 23-15-359; Missouri, 10,000 signatures (number stated in statute), Mo. Rev. Stat. Title 9, § 115.321; Montana, 5,000 signatures (number stated in statute), Mont. Code Ann. § 13-10-601; Nebraska, 2,500 signatures (number stated in statute), Neb. Rev. Stat. § 32-620; Nevada, 5,431 signatures (1% of total 2014 U.S. House of Representatives vote), Nev. Rev. Stat. Title 24, § 298-109; New Hampshire, 3,000 signatures (number stated in statute), N.H. Rev. Stat. Ann. Title 4, § 655:42, New Jersey, 800 signatures (number stated in statute), N.J.S.A. § 19:13-5; New Mexico, 15,388 signatures (3% of 2014 gubernatorial vote), N.M. Stat. Ann. § 1-8-51; New York, 15,000 signatures (number stated in statute), N.Y. Election Law § 6-142; North Carolina, 67,025 signatures (1.5% of 2012 gubernatorial vote), N.C. Gen. Stat. § 163-122; North Dakota, 4,000 signatures (number stated in statute), N.D. Cent. Code § 16.1-12-02; Ohio, 5,000 signatures (number stated in statute), Ohio Rev. Code Ann. § 3513.257; Oklahoma, 0 signatures (pay filing fee), Okla. Stat. Title 26, § 10-101; Oregon, 17,893 signatures (1% of 2012 presidential vote), Or. Rev. Stat. Ann. § 249.735; Pennsylvania, 5,000 signatures (number set by court order in *Constitution Party of Pennsylvania v. Cortes*, 116 F.Supp.3d 486 (E.D. Pa. 2015) *aff'd* 824 F.3d 386 (3rd Cir. 2016)); Rhode Island, 1,000 (number stated in statute), R.I. Gen. Stat. § 17-14-7; South Carolina, 10,000 signatures (number stated in statute), S.C. Code Ann. § 7-11-70; South Dakota, 2,775 signatures (1% of 2014 gubernatorial vote), S.D. Codified Laws § 12-7-7; Tennessee, 275 signatures (number stated

in statute), Tenn. Code Ann. § 2-5-101; Texas, 79,939 signatures (1% of 2014 gubernatorial vote), Tex. Elections Code Ann. § 192.032; Utah, 1,000 signatures (number stated in statute), Utah Code Ann. § 20A-9-502; Vermont, 1,000 signatures (number stated in statute), Vt. Stat. Ann. Title 17, § 2402(b); Virginia, 5,000 signatures (number stated in statute), Va. Code Ann. § 24.2-543; Washington, 1,000 signatures (number stated in statute), RCW § 29A.20.121(2); West Virginia, 6,705 signatures (1% of 2012 presidential vote), W.Va. Code § 3-5-23; Wisconsin, 2,000 signatures (number stated in statute), Wis. Stat. Title 2, § 8.20(4); Wyoming, 3,302 signatures (2% of 2014 U.S. House of Representatives vote), Wyo. Stat. Ann. § 22-5-304.

Accordingly, California's signature collection scheme impairs both rights guaranteed under the First and Fourteenth Amendments, and the pervasive national interest in presidential elections overriding a state's interest in excessive ballot access restrictions. The lower courts' failure to apply the full analysis required under the *Anderson-Burdick* framework established by this Court to evaluate competing interests in the regulation of presidential election ballots and the resulting split among the circuit courts of appeals militate in favor of this Court granting the petition for writ of certiorari.

STATEMENT OF THE CASE

1. Similar to John Anderson's decision to contest the 1980 presidential election as an independent presidential candidate after withdrawing from the

1980 Republican presidential nomination contest, in 2016, Petitioner Roque De La Fuente announced his candidacy on May 1, 2016, as an independent presidential candidate after withdrawing from the 2016 Democratic presidential nomination contest.

2. Petitioner qualified for 20 state ballots in the 2016 presidential election. (App.12a).

3. California requires independent presidential candidates to collect valid signatures on nomination petitions equal to 1% of the number of registered California voters at the time of the close of registration prior to the preceding general election and to do so within a 105-day time period to circulate nomination petitions. (App.30a).

4. Petitioner estimated the cost of ballot access in California to be three to four million dollars. (App.2a)

5. Petitioner filed a complaint on May 11, 2016 in the United States District Court for the Central District of California requesting declaratory and injunctive relief alleging that Sections 8400 and 8403 of the California Election Code, in combination, impair rights guaranteed to Petitioner under the Fourteenth Amendment to the United States Constitution. (App.13a)

6. On August 9, 2016, Petitioner filed an application for an *ex parte* temporary restraining order. On August 12, 2016, the district court denied Petitioner's application for an *ex parte* temporary restraining order. On August 31, 2016, Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit appealing the district

court's denial of Petitioner's application for *ex parte* temporary restraining order. On March 30, 2017, the Ninth Circuit Court of Appeals denied Petitioner's appeal of the denial of the requested *ex parte* temporary restraining order as moot without expressing any opinion on the merits of the district court's order.

7. Respondents filed a motion for judgment on the pleadings on May 4, 2017.

8. After briefing and a short oral argument on October 2, 2017, the district court, treating Respondents' motion as a motion for summary judgment, granted Respondents' motion for summary judgment. (App.29a).

9. The district court applied the *Anderson-Burdick* test characterizing it as a "sliding scale test, where the more severe the burden, the more compelling the state's interest must be." (citing *Arizona Green Party v. Reagan*, 838 F.3d 983, 991-92 (9th Cir. 2016). Without conducting an analysis of any of the *Anderson-Burdick* prongs, the district court employed a limited analysis boiled down to:

> The burden of an election regulation is considered "severe" and thus warrants strict scrutiny, where the regulation 'significantly impairs access to the ballot, stifles core political speech, or dictates electoral outcomes . . . .An election regulation will not be deemed "severe," and will thus be subject to less searching scrutiny, where the restriction imposed is "generally applicable, even handed, and politically neutral, or if it protects the reliability and integrity of the election process.

(App.17a). In denying strict scrutiny analysis, the district court proceeded to discount both the projected expense of securing ballot access in California under the challenged statutes and evidence that the challenged signature requirements were far in excess of the number of signatures necessary to prevent the threat of ballot clutter and voter confusion. (App.18a-27a). The district court then applied less exacting scrutiny, and failed to consider either California's diminished interest in regulating the presidential ballot or the rights of independent candidates and their voters to be able to secure access to California's presidential ballot before granting Respondents' motion for summary judgment. (App.26a-29a).

10. Petitioner timely filed an appeal to the United States Court of Appeals for the Ninth Circuit on November 2, 2017.

11. The Ninth Circuit, in broad respects, adopted the district court's opinion in rejecting Petitioner's appeal. The Ninth Circuit, after announcing the *Anderson-Burdick* test immediately proceeds to announce that: "Although De La Fuente argues that his individual burden is severe because *he* might not appear on the ballot, California's overall scheme does not significantly impair ballot access." (citing *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 730 (9th Cir. 2015)) (Pet. App 5a). The Ninth Circuit failed to conduct an analysis of the rights sought to be vindicated by Petitioner—that independent presidential candidates have a right under the First Amendment to appear as independents, and not to be forced to adopt a party label as a condition to secure ballot access under California's scheme. (App.4a-6a). The Ninth Circuit

ignored this Court's warnings on the importance of independent candidates for a specific segment of the electorate and the fullness of political debate. *Anderson*, 460 U.S. at 795. Following the district court's lead, the Ninth Circuit equated minor party access as the same as independent candidate access to the ballot, ignoring the impact ballot access laws have on the constitutional rights of independent candidates and voters.

The Ninth Circuit then declares that the challenged statutes are "generally applicable, even-handed, politically neutral and aimed at protecting the reliability and integrity of the election process." (App.6a). The Ninth Circuit does not conduct any analysis as to the fact that the challenged statutes only apply to independent presidential candidates, does not explain how such targeted restrictions are "generally applicable" or "even-handed" or "politically neutral" or how the statutes are aimed at "protecting the reliability and integrity of the election process." (App.6a). The Ninth Circuit, also fails to conduct any analysis to "identify and evaluate the precise interests put forward by the State as justification for the burden imposed by the rule" (App.6a-8a). Nor does the Ninth Circuit evaluate prior to deciding that strict scrutiny does not apply the "legitimacy and strength of each of the interests" prong of *Anderson-Burdick*. (App.6a-8a). Nor does the Ninth Circuit conduct an evaluation on the "extent to which these interests make it necessary to burden plaintiff's rights" required under *Anderson-Burdick*. (Pet. App 6a-8a). None of the required analytical work is done by the Ninth Circuit in order to properly determine what level of review is warranted.

The Ninth Circuit's opinion fails to conduct, or incorporate into its analysis, evidence produced by Petitioner that ballot clutter and voter confusion is avoided where 5,000 signatures are required to secure ballot access for independent presidential candidates. (App.34a-37a at ¶¶6-12). Furthermore, the opinion of the court below completely fails to conduct any *Anderson-Burdick* analysis as to California's interest in limiting the time period to circulate nomination petitions to a 105-day period or the impact the short time period has on the ability of independent presidential candidates to secure ballot access. Nor does the Ninth Circuit engage in any analysis as to the strength of California's interest in regulating the presidential ballot as compared to the impact on the precise harm that Petitioner seeks to vindicate. (App.6a-8a).

REASONS FOR GRANTING THE WRIT

I. THERE IS A SPLIT AMONG THE COURTS OF APPEALS OVER THE QUESTION PRESENTED

The courts of appeals have developed divergent applications of the test announced in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992) used to evaluate the constitutionality of ballot access restrictions. While all of the courts of appeals understand that the *Anderson-Burdick* test control adjudication of constitutional challenges to ballot access restrictions, the Ninth Circuit Court of Appeals, unlike her sister courts, has

failed to conduct an analysis of all of the prongs required by *Anderson-Burdick* to evaluate the level of scrutiny and constitutionality of excessive signature collection statutes used to regularly prevent independent presidential candidates from appearing on state ballots.

In contrast, the Eleventh and Third Circuits applied the full *Anderson-Burdick* test to rule excessive signature collection and ballot access schemes unconstitutional, under both strict scrutiny and less exacting scrutiny analysis, as applied to the exclusion of third party and independent presidential candidates from state ballots. In this action, the Ninth Circuit upheld California's more severe ballot access restrictions on independent presidential candidates under *Anderson-Burdick*'s less exacting balancing test but failed to consider the overriding national interest in presidential election contests as part of a proper *Anderson-Burdick* evaluation.

1. The *Anderson-Burdick* Test

This Court in *Anderson* confronted ballot access restrictions impacting the ability of an independent presidential candidate to secure access to Ohio's general election ballot. This Court began its analysis in *Anderson* emphasizing the "rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." *Anderson*, 460 U.S. at 786 (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)). The Court further explained: "Our primary concern is with the tendency of ballot access restrictions 'to limit the field of candidates from which voters might choose.' Therefore

'[i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.'" *Ibid.* "The impact of candidate eligibility requirements on voters implicates basic constitutional rights." *Id.*; *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958) (explaining the freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty interest protected by the Due Process Clause of the Fourteenth Amendment); *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968) (explaining the impact of ballot access restrictions on fundamental liberty interests).

This Court in *Anderson* also recognized that not all ballot restrictions impose constitutionally suspect burdens on voters' rights. *Anderson*, 460 U.S. at 788. The Court explained 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.'" *Id.* (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). "The State has the undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot, because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates." *Anderson*, 460 U.S. at 788. Accordingly, the analytical framework devised by this Court in *Anderson* and reflected in *Storer*, was constructed to protect both necessary regulations associated with the mechanics of conducting an election, and to prevent chaos in the process while preventing States from imposing ballot access restrictions which are not designed to protect the electoral process or

the ballot from clutter and potential voter confusion. The test announced in *Anderson* is designed to generally save only reasonable and non-discriminatory ballot access restrictions from constitutional attack. *Anderson*, 460 U.S. at 788.

In order to balance these competing interests, this Court rejected a "litmus-paper test" for separating valid from invalid election restrictions. *Anderson*, 460 U.S. at 789. Instead, this Court opted for a balancing test to evaluate the constitutionality of ballot access restrictions. The Court explained that a court must: (1) "consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate", and (2) "identify and evaluate the precise interests put forward by the State as justification for the burden imposed by its rule." *Id.* A court must then consider "the legitimacy and strength of each of those interests" as well as "the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.*

Severe burdens to ballot access trigger strict scrutiny analysis requiring the state to demonstrate that the regulation is "narrowly drawn to advance a state interest of compelling importance." *Norman v. Reed*, 502 U.S. 279, 289 (1992). Whereas when a state election law imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions. *Anderson*, 460 U.S. at 788.

Accordingly, under the *Anderson* balancing test, evidence that signature collection requirements to

demonstrate substantial support in the community in excess of what is necessary to protect a ballot from clutter would fail under the *Anderson* framework because a court is required to evaluate "the extent to which [the State's interest against ballot clutter] make it necessary to burden the plaintiff's rights." *Id.* Furthermore, ballot access rules which regularly exclude independent presidential candidates from a state ballot would similarly fail the *Anderson* test on the court's required analysis to "consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." Litmus-paper testing, that a signature requirement is constitutional without exposition of the full *Anderson* test fall far short of this Court's instructions.

In *Burdick*, this Court confirmed application of the *Anderson* framework in upholding Hawaii's prohibition on write-in voting. In applying the test announced in *Anderson*, the Court noted that Hawaii's ban on write-in voting did not "limit access to the ballot by party or independent candidates or unreasonably interfere with the right of voters to associate and have candidates of their choice placed on the ballot." This Court commented that "[i]ndeed, petitioner understandably does not challenge the manner in which the State regulates candidate access to the ballot." *Burdick*, 504 U.S. at 434-35. This Court further explained that in the ten years preceding the filing of the action in *Burdick*, "8 of 26 nonpartisans who entered the primary obtained slots on the November ballot." *Burdick* 504 U.S. at 436. The *Burdick* Court, applying the *Anderson* framework, found that ballot access laws which only impose a light burden

"on the right to vote for the candidates of one's choice" will be presumptively valid and any burden "counterbalanced by the very state interests supporting the ballot access scheme." *Burdick*, 504 U.S. 441.

2. Ninth Circuit's failure to conduct an analysis of each prong of the *Anderson-Burdick* framework before determining the level of judicial scrutiny splits from the Eleventh and Third Circuits' application of *Anderson-Burdick* conducting a full analysis of each prong of the *Anderson-Burdick* framework to evaluate the constitutionality of ballot access restrictions.

The Ninth Circuit's refusal to conduct a full analysis of each prong of the *Anderson-Burdick* framework to evaluate the level of judicial scrutiny and constitutionality of excessive signature collection requirements for independent presidential candidates constitutes a true split from other circuit courts of appeals, and not the result of divergent evidence militating a different adjudication. In *Green Party of Ga. v. Kemp*, 171 F.Supp.3d 1340 (N.D. Ga. 2016), plaintiffs challenged Georgia's requirement that independent and "political body" candidates (*i.e.*, candidates from a political organization other than a recognized "political party" having received 20% of the votes cast in the preceding gubernatorial or presidential election) collect signatures equal to 1% of the registered voters of Georgia. *Green Party of Ga.*, 171 F.Supp.3d at 1344-45. Plaintiffs alleged that the "signature requirements are in excess of those that satisfy constitutional standards and unduly infringe upon the constitutional rights of the Plaintiffs to participate in the electoral process." *Id.*

Initially, the Georgia district court dismissed plaintiffs' claims because higher courts held more onerous signature requirements constitutional in *Jenness v. Fortson*, 403 U.S. 431 (1971); *Cartwright v. Barnes*, 304 F.3d 1138 (11th Cir. 2002); and *Coffield v. Kemp*, 599 F.3d 1276 (11th Cir. 2010). *Green Party of Ga.*, 171 F.Supp.3d at 1345. On appeal of the district court's dismissal of plaintiffs' claims, the Eleventh Circuit Court of Appeals reversed and remanded, holding that the district court had applied the type of "litmus-paper test" that the Supreme Court rejected in *Anderson*, and directed the district court to apply the *Anderson* balancing approach. *Green Party of Ga. v. Georgia*, 551 Fed. Appx. 982 (11th Cir. 2014). The Eleventh Circuit further held that the district court erred in dismissing plaintiffs' action because the dismissal precluded the "parties' right to present the evidence necessary to undertake the balancing approach outlined in *Anderson*." *Id.*

On remand, the district court relied on Richard Winger's testimony that since 2000, no independent or third-party presidential candidate had qualified for Georgia's ballot through the petition process. *Green Party of Ga.*, 171 F.Supp.3d at 1346-47. Georgia's signature requirement for 2004 was 37,153; in 2008, 42,489 and in 2012, 50,334, all within a 180-day circulation period. *Id.* The district court in *Green Party of Ga.*, also accepted Mr. Winger's testimony that: "no state requiring more than 5,000 signatures has ever had more than six candidates qualify by petition" and that "the only independent candidates who satisfied a petition requirement greater than 5,000 signatures were Ross Perot, John Anderson, Ralph

Nader, Eugene McCarthy and Lyndon LaRouche." *Green Party of Ga.*, 171 F.Supp.3d at 1366.[2]

In its analysis, the district court in *Green Party of Ga.*, parrots this Court's discussion on the important function third-party and independent candidates play "in the voter's exercise of his or her rights," noting that "[t]he right to vote is 'heavily burdened' if that vote may be cast only for major-party candidates at a time when other parties or other candidates are 'clamoring for a place on the ballot.'" *Green Party of Ga.*, 171 F.Supp.3d at 1352 (quoting *Anderson*, 460 U.S. at 787; *citing Lubin v. Panish*, 415 U.S. 709, 716 (1974)). However, the district court noted while "the law has been clearly established that states may require candidates seeking ballot access to show some level of support. . . . lower courts have grappled with precisely how much support is required." *Green Party of Ga.*, 171 F.Supp.3d at 1353.

The district court in *Green Party of Ga.*, accepted plaintiffs' evidence that the signature requirement imposed by Georgia to secure ballot access exceed Georgia's interest in regulating access to the presidential election ballot, under deferential scrutiny. *Green Party of Ga.*, 171 F.Supp.3d at 1366-72. The court then ordered Georgia to accept 7,500 valid signatures for independent presidential candidates to secure access to Georgia's presidential ballot. *Green Party of Ga.* 171 F.Supp.3d at 1372-74.

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[2] Petitioner filed multiple petitions in excess of 5,000 signatures to secure ballot access in 20 States in the 2016 presidential general election.

In *Constitution Party of Pennsylvania v. Cortes*, 116 F.Supp.3d 486 (E.D. Pa. 2015), plaintiffs challenged the operation of two Pennsylvania ballot access laws which, acting in tandem, plaintiffs alleged impaired rights guaranteed to plaintiffs under the First and Fourteenth Amendments. 116 F.Supp.3d 486, 488-89 (E.D. Pa. 2015). Plaintiffs challenged 25 Pa. Stat. Ann. § 2911(b)[3] and 25 Pa. Stat. Ann. § 2937[4] which, in combination, force a minority party to assume the risk of incurring substantial financial burdens to defend nomination papers they are required by law to submit to secure ballot access in presidential elections. *Constitution Party of Pa.*, 116 F.Supp.3d at 488-89.

Applying the *Anderson-Burdick* framework, the district court's analysis as to *Anderson's* "character and magnitude of the asserted injury" prong found that: "Freedom to associate for political ends has little practical value if the plaintiffs cannot place

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[3] 25 P.S. § 2911(b) requires independent and third-party presidential candidates to collect signatures on nominating papers equal to 2% of the "largest entire vote cast for any elected candidate in the State at large at the last preceding election at which Statewide candidates were voted for." *Id.* In 2012, the last presidential election before the 25 P.S. § 2911(b) was enjoined as unconstitutional as-applied to third-party candidates, independent and third-party presidential candidates were required to collect and file 20,601 signatures. *Constitution Party of Pa.*, 116 F.Supp.3d at 490.

[4] 25 P.S. § 2937 requires independent and third-party presidential candidates to shoulder the costs of litigating any challenge, including the possibility that if their petitions are rejected, the requirement to pay attorney fees and litigation costs to opposing counsel. *Constitution Party of Pa.*, 116 F.Supp.3d at 491-92.

their candidates on the ballot and have an equal opportunity to win votes." *Constitution Party of Pa.*, 116 F.Supp.3d at 499 (citing *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)). The court also noted that the impact of Section 2911(b) and Section 2937 on voters is relevant because their rights are impinged when the state limits the field of candidates. *Constitution Party of Pa.*, 116 F.Supp.3d at 499 (citing *Bullock v. Carter*, 405 U.S. 134, 143 (1972)). After recognizing the State's interest in regulating elections, in evaluating the legitimacy of Pennsylvania's interest, the court found it "difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Constitution Party of Pa.*, 116 F.Supp.3d at 500 (citing *Anderson*, 460 U.S. at 793).

In analyzing the severity of the burden, the district court aptly noted that "the Supreme Court has not set forth a clear test for what constitutes a severe burden." *Constitution Party of Pa.*, 116 F.Supp.3d at 500-01 (citing *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997); Demian A. Ordway, *Disenfranchisement and the Constitution: Finding a Standard that Works*, 82 N.Y.U.L. Rev. 1174, 1192 (2007) ("The word 'burden' is exceedingly vague when left unqualified, inviting courts to make ad hoc judgments concerning what is 'excessive' and what is 'reasonable'")). The court noted that Justice Scalia suggested that a burden is "severe if it goes beyond the merely inconvenient." *Constitution Party of Pa.*, 116 F.Supp.3d at 501 (citing *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 205 (2008)). The court

also noted that this Court explained in *Storer* that the test for a severe burden was "could a reasonably diligent independent candidate be expected to satisfy the suspect regulation." *Constitution Party of Pa.*, 116 F.Supp.3d at 501 (citing *Storer*, 415 U.S. at 742. Ultimately, the district court in *Constitution Party of Pa.*, found that the two statutes, acting in combination, imposed a severe burden on rights guaranteed to them under the First and Fourteenth Amendments because: "State election regulations which impose financial burdens on candidates are severe if they work to exclude legitimate candidates from the ballot." *Constitution Party of Pa.*, 116 F.Supp.3d at 501 (citing *Bullock v. Carter*, 405 U.S. 134, 143 (1972)).

The district court noted that, acting in combination,

> [A] minor party candidate who seriously wants to place his or her name on the general election ballot must be prepared to assume a $130,000 financial liability. This figure is staggering and would deter a reasonable candidate from running for office. . . . These costs go far beyond what the *Bullock* Court considered to be 'patently exclusionary.'

Constitution Party of Pa., 116 F.Supp.3d at 502 (citing *Storer*, 415 U.S. at 742; *Bullock*, 405 U.S. at 143).

The district court also relied on this Court's decision is *Storer* instructing that: "[A] number of facially valid provisions of elections laws may operate in tandem to produce impermissible barriers to constitutional rights." *Constitution Party of Pa.*, 116 F.Supp.3d at 503 (citing *Storer*, 415 U.S. at 727). The

court found "[i]t is the combined effect of the signature requirement with Section 2973's signature verification procedures which creates the substantial burdens in this case." *Id.* The district court, applying strict scrutiny, found the challenged statutes were not narrowly tailored to advance any compelling interest advanced by the Commonwealth. *Constitution Party of Pa.*, 116 F.Supp.3d at 507-08, and held the 2% signature requirement unconstitutional. *Constitution Party of Pa.*, 116 F.Supp.3d at 510-11.

The Third Circuit upheld the district court's decision in *Constitution Party of Pa.*, though defendants limited their appeal to two narrow issues and did not appeal the lower court's *Anderson-Burdick* analysis. 824 F.3d 386, 390 (3rd Cir. 2016).

In contrast, to the detailed prong-by-prong analysis of challenged ballot access restrictions mandated in the Eleventh and Third Circuits, the Ninth Circuit's short 10 page opinion in Petitioner's action engages in virtually none of the detailed analysis demanded under the *Anderson-Burdick* test to determine the severity of California's ballot access restrictions to rights guaranteed to Petitioner, the voters of California, and the national electorate in a presidential election. Rather, the Ninth Circuit merely incantates the *Anderson-Burdick* test and then announces, without the full prong-by-prong analysis outlined in *Anderson-Burdick*, conclusory outcomes to save the challenged ballot access laws. (App.4a-5a; 30a).

Under *Anderson-Burdick*, a court must first "consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that plaintiff seeks to

vindicate." *Anderson* 460 U.S. at 789. In this case, Petitioner sought to vindicate the right of independent presidential candidates to secure access to the California general election ballot as an independent candidate—access denied in California since 1992. The Ninth Circuit, after announcing the *Anderson-Burdick* test immediately proceeds to announce that: "Although De La Fuente argues that his individual burden is severe because *he* might not appear on the ballot, California's overall scheme does not significantly impair ballot access." (citing *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 730 (9th Cir. 2015)) (App.5a). In support of the Court's quick conclusion, the Court continues:

> [n]on-major party candidates can access California's ballot in three ways: as minor party candidates, write-in candidates, or independent candidates. Although the last independent candidate appeared on California's general election ballot in 1992, minor party candidates have consistently appeared alongside major party candidates. De La Fuente's own expert suggested that 'there's almost nobody left [for independent candidates] to petition" because voters have their choice among major and minor party candidates. Not only do these choices reduce a voter's need for independent candidates, they cut against De La Fuente's assertion that the Ballot Access Laws "seriously restrict the availability of political opportunity."

(App.5a-6a). The Court's discussion completely evades the specific right sought to be vindicated by Petitioner—

that independent presidential candidates have a right under the First Amendment to appear as independents, and not to be forced to adopt a party label as a condition to secure ballot access under California's scheme. The *Anderson-Burdick* test requires the Ninth Circuit, as the Eleventh and Third Circuits have done, to conduct a specific analysis of the impact of California's ballot access scheme as applied to the right sought to be vindicated by Petitioner—the right of independent presidential candidates to campaign as independent candidates.

This Court in *Anderson* specifically singled out the importance of independent candidates stating that: "By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas." *Anderson*, 460 U.S. at 793-95. The Ninth Circuit ignored this Court's warnings on the importance of independent candidates for a specific segment of the electorate and the fullness of political debate. Minor party access to the ballot does not foreclose the need for courts to conduct an analysis under *Anderson-Burdick* as to the impact ballot access laws have on the constitutional rights of independent candidates and voters.

The Ninth Circuit then declares that the challenged statutes are "generally applicable, even-handed, politically neutral and aimed at protecting the reliability and integrity of the election process." (Pet. App 6a). The Ninth Circuit does not conduct any analysis as to the fact that the challenged statutes only apply to independent presidential candidates, does not

explain how such targeted restrictions are "generally applicable" or "even-handed" or "politically neutral" or how the statutes are aimed at "protecting the reliability and integrity of the election process"—a full analysis of which is required under *Anderson-Burdick*. (App.6a). This Court in *Anderson* expressly warns against burdens falling unequally on independent candidates: "A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices . . . ." *Anderson*, 460 U.S. at 793 (emphasis added).

The Ninth Circuit then jumps to declare that strict scrutiny does not apply without even pretending to conduct an analysis as to the other *Anderson-Burdick* prongs necessary to determine if strict scrutiny applies. The Ninth Circuit, prior to concluding that strict scrutiny does not apply, fails to conduct any analysis to "identify and evaluate the precise interests put forward by the State as justification for the burden imposed by the rule" (App.6a-8a). Nor does the Ninth Circuit evaluate prior to deciding that strict scrutiny does not apply the "legitimacy and strength of each of the interests." (App.6a-8a). Nor does the Ninth Circuit conduct an evaluation on the "extent to which these interests make it necessary to burden plaintiff's rights." *Anderson*, 460 U.S. at 789; (Pet. App 6a-8a). None of the required analytical work is done by the Ninth Circuit in order to properly determine what level of review is warranted. Both the Eleventh and Third circuit courts conducted the correct analysis under *Anderson-Burdick* before concluding on the level of scrutiny required to properly evaluate the constitutionality of the challenged ballot access laws.

The Ninth Circuit's failure to conduct a proper *Anderson-Burdick* analysis prior to deciding that strict scrutiny does not apply, circumvents any analysis and application of evidence, relied upon by the courts in the Eleventh Circuit, that ballot clutter and voter confusion is avoided where 5,000 signatures are required to secure ballot access for independent presidential candidates. (App.34a-37a at ¶¶6-12). Perhaps most glaringly, the opinion in the court below completely fails to conduct any *Anderson-Burdick* analysis as to California's interest in limiting the time period to circulate nomination petitions to a 105-day period or the impact the short time period has on the ability of independent presidential candidates to secure ballot access. The Ninth Circuit's failure to conduct a proper *Anderson-Burdick* test also results in the Court's failure to conduct an analysis as to the strength of California's interest in regulating the presidential ballot as compared to the impact on the precise harm that Petitioner seeks to vindicate. This is a critical plank of any proper *Anderson-Burdick* analysis of ballot access restrictions impacting the presidential ballot. In *Anderson*, this Court explained:

> Furthermore, in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice-President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus, in a Presidential election, a State's

> enforcement of more stringent ballot access requirements . . . has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries. This Court, striking down a state statute unduly restricting the choices made by a major party's Presidential nominating convention, observed that such conventions serve 'the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State.

Anderson, 460 U.S. at 795 (quoting *Cousins v. Wigoda*, 419 U.S. 477, 490 (1975)). In combination with the evidence that 5,000 signatures suffices to prevent ballot clutter and California's reduced interest in regulating the presidential ballot, it is difficult to understand how the Ninth Circuit was able to properly justify signature collection requirements stricken as unconstitutional by courts in the Eleventh and Third Circuits.

In the concluding paragraphs of the opinion below, the Ninth Circuit regresses into the type of "litmus-paper test' expressly rejected by this Court and the Eleventh Circuit in *Green Party of Ga.* (App.7a-8a). The Ninth Circuit's reliance on *Storer*'s pre-*Anderson* rulings upholding excessive signature requirements is precisely the type of bright-line tests replaced by *Anderson-Burdick*, and further evidence that the

Ninth Circuit has split from the other circuit courts of appeals in the proper application of this Court's *Anderson-Burdick* framework to ballot access restrictions.

II. IT IS IMPORTANT TO THE NATIONAL INTEREST THAT THIS COURT RESOLVE THE QUESTION PRESENTED

This Court has established that: "The loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elron v. Burns*, 427 U.S. 347, 353 (1976). As noted above, in *Anderson*, this Court further explained that presidential elections implicate a unique national interest which supersedes a state's more stringent ballot access requirements. *Anderson*, 460 U.S. at 795.

In the context of a national election, voters outside California may be deterred from supporting an independent candidate who has been excluded from the California ballot. California occupies a unique position in presidential elections as California is currently entitled to elect 55 members to the Electoral College, which accounts for 20.37% of the electoral votes necessary to win the presidency. Furthermore, the other states within the Ninth Circuit currently account for a further 50 electoral votes. When added to California's 55 electoral votes, the Ninth Circuit's 110 electoral votes account for 40.74% of the total electoral votes required to prevail in a presidential election. The adjudication of this action, if left to stand, threaten to embolden partisan instincts to close off their ballots to independent presidential candidates. To be clear, Petitioner is not advancing that an independent candidate is, in the near term, likely to win the White House. However, an inde-

pendent presidential candidate blocked from California's ballot, alone, imposes a diminished national platform from which to campaign and impacting the willingness of voters to support the candidate in states where he or she has secured ballot access.

Ballot access for independent presidential candidates serve at least two critical national functions. First, they often reflect the will of the voters. Second, even when independent candidates have not prevailed, they have been "fertile sources of new ideas and new programs," that have later "made their way into the political mainstream." *Anderson*, 460 U.S. at 794.

While the *Anderson-Burdick* test does not seek to, and cannot, engraft a uniform ballot access scheme on national presidential elections, it does command a uniform framework to analyze the constitutionality of ballot access restrictions. As applied to ballot access for independent presidential candidate and the marketplace of ideas in which they seek to participate and expand, it is clearly in the national interest for this Court to remind the circuit courts of appeals of the importance in not truncating the *Anderson-Burdick* framework in order to ensure a rigorous defense of core political speech protected by the First and Fourteenth Amendments—rights that "rank among our most precious freedoms." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

III. THIS CASE IS THE RIGHT VEHICLE FOR RESOLVING THE QUESTION PRESENTED.

Currently, only the Ninth and Eleventh Circuit are likely to adjudicate future signature collection requirements for independent presidential candidates.

Petitioner is poised to file just such an action challenging Florida's signature collection requirement to secure access to the Florida general election ballot in 2020. As Florida is in the Eleventh Circuit, the precedent set by *Green Party of Ga.* and the Eleventh Circuit's adherence to the full *Anderson-Burdick* analysis seems secure.

The Ninth Circuit, however, has pending another appeal challenging, among other issues, Arizona's signature collection requirement for independent presidential candidates in *De La Fuente v. Reagan*. Granting the instant petition for a writ of certiorari, therefore, will secure proper and uniform application of the *Anderson-Burdick* framework for the remaining contested signature collection requirements necessary to protect the constitutional terrain for ballot access in presidential elections. Accordingly, the question presented is mature for review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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