

No. 21-1288

In the
Supreme Court of the United States

LIBERTARIAN PARTY OF ALABAMA,
Petitioner,

v.

JOHN HAROLD MERRILL,
SECRETARY OF STATE FOR THE STATE OF ALABAMA,
Respondent.

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

**BRIEF OF *AMICI CURIAE* COALITION FOR
FREE AND OPEN ELECTIONS AND CITIZENS
IN CHARGE IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST¹

The Coalition for Free and Open Elections (COFOE) is a nonprofit advocacy organization dedicated to the idea that full and fair access to the electoral process is central to democracy. COFOE is a group of independents and representatives from alternative parties. Since 1985 the group has supported efforts to remove barriers to ballot access that prevent non-major-party candidates and would-be voters from fully participating in the election process.

The third-party candidates and voters that make up COFOE's constituency have an interest in the question presented, because Alabama's \$37,000 fee for access to the voter registration list has a deleterious effect on the ability of minor party and independent candidate petitions to succeed.

Citizens in Charge is a nationwide citizens powered advocacy organization seeking greater public participation in public policy debate and decision making. Citizens in Charge actively works for the growth of direct democracy through the expansion and use of the initiative and referendum process as well as the reform of antiquated ballot access laws in favor of facilitating greater opportunity for citizens to more freely elect those candidates who represent their interests.

¹ No party or counsel for a party authored or paid for this brief in whole or in part, or made a monetary contribution to fund the brief's preparation or submission. All parties were notified of amicus curiae's intent to submit this brief at least 10 days before it was due, and all parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

To qualify for the general election ballot in 2022, Alabama requires that statewide minor party and independent candidates submit petitions with 51,588 valid signatures.² A petition requirement this severe makes it essential that petitioning groups have access to Alabama's list of registered voters so that they may validate their petitions before submitting them. The Libertarian Party of Alabama (hereinafter, "LPAL") is currently conducting a petition drive in an effort to place its nominees on the November 2022 general election ballot. The decision of the lower courts in this case, which upheld Alabama's policy of providing its voter registration list to major parties free of charge while charging minor parties and independent candidates an exorbitant fee, has made that goal substantially more difficult.

In 1990, the United States signed the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Commission on Security and Cooperation in Europe (hereinafter, "Copenhagen Document").³ The Copenhagen Document was also signed by many European countries, including the

²The law requires signatures equal to 3% of the last gubernatorial vote, for both new parties and non-presidential independent candidates. Alabama Code 17-9-3(a)(3). Alabama has the nation's highest petition requirement for a statewide independent; no other state requires a petition greater than 2% of the last vote cast.

³ The Copenhagen Document is available at www.osce.org/odihr/elections/14304 (accessed April 14, 2022).

Soviet Union. It pledged the signatory nations to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.” Copenhagen Document ¶ 7.5.

Federal courts, including this Court, have unanimously held that discriminatory policies such as Alabama’s, which require that minor parties and independent candidates pay for voter registration lists while providing the same lists free of charge to major parties, violate the First and Fourteenth Amendments. Alabama’s discriminatory policy also violates the principles the United States pledged to follow when it signed the Copenhagen Document. At a time when the United States seeks to foster the ideas of free elections world-wide, it is critical that the United States follow these principles for its own elections. The Court should grant LPAL’s petition for certiorari and apply well-settled precedent to ensure that Alabama does so here.

ARGUMENT

I. The Decision Below Is in Direct Conflict With This Court's Precedent and in Clear Violation of the Principles the United States Pledged to Follow in the Copenhagen Document.

In 1970, a three-judge U.S. District Court in New York ruled that the Socialist Workers Party and the Socialist Labor Party were entitled to a free copy of New York’s list of registered voters. *See Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984 (S.D.N.Y. 1970). The parties needed the list because they were soon to be conducting a petition for their

nominees for statewide office, who were required to submit 12,000 valid signatures. At the time New York provided the qualified parties with a free voter registration list, but unqualified parties had to purchase the list at “considerable expense.” *Id.*, at 996. The Socialist Workers Party and Socialist Labor Party won this ruling on June 18, 1970, and thus had access to the voter registration list during their petition drives, which lasted from late August through early October, 1970. Both parties’ petition drives succeeded. By contrast, in 1969, when the parties did not have access to New York’s voter registration list, both parties’ petition drives for the partisan elections for Mayor and other officers of New York city failed.

On October 12, 1970, this Court summarily affirmed the District Court’s decision in *Socialist Workers Party*. See *Socialist Workers Party v. Rockefeller*, 400 U.S. 806 (1970). Ever since then – until this case was decided – every court that has considered the question has ruled that groups or candidates petitioning for a place on the ballot were entitled to a free copy of a state’s voter registration list, if the state provide a free copy to qualified parties.⁴ The LPAL had a clear and reasonable expectation that the lower courts in this case would follow the precedent established by this Court’s summary affirmance in *Socialist Workers Party* and the cases following it. The issue presented here is precisely the same as the issue in *Socialist Workers Party*.

⁴ See Petition for Writ of Certiorari at 18-29, *Libertarian Party of Alabama v. Merrill*, No. 21-1288 (citing cases).

Alabama is an outlier. According to the Election Assistance Commission, Alabama charges far more for its voter registration list than any other state.⁵ Many states provide the list for free to anyone who wants it, and 36 states charge \$1,100 or less.⁶ The advent of modern technology makes it easier than ever for a state to disseminate the list free of charge. Alabama gives the list free to qualified parties and also to parties or candidates who have already obtained ballot access, but the list is not made available until after the election for which ballot access has been obtained. Thus the list is never available to parties petitioning for a place on the ballot, or for independent candidates. Nor is it available to them during their initial election campaigns.

Independent and minor party candidates frequently are competitive, and sometimes win partisan office. In November 2020, across the nation, twenty-five minor party and independent nominees for state legislative office were elected.⁷

⁵ See U.S. Election Assistance Commission, *Availability of State Voter File and Confidential Information*, available at https://www.eac.gov/sites/default/files/voters/Available_Voter_File_Information.pdf (accessed April 14, 2022).

⁶ See *id.*

⁷ The twenty-five minor party nominees and independent candidates who were elected to a state legislature in November 2020, by state, were: Alaska, two independents for State House, Daniel Ortiz and Josiah Patkotak; California, independent Chad Mayes for Assembly; Maine, four independents for State House, Walter Riseman, Jeffrey Evangelos, William Pluecker, and Sophia Warren; Massachusetts, independent Susannah Whipps for State

The Copenhagen Document states in its preamble that the participating States “recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms.... They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.” Copenhagen Document at 2. Further, the participating States will “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.” *Id.* ¶ 7.5. The participating States will also “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.” *Id.* ¶ 7.6.

Alabama’s discriminatory policy of providing voter registration lists to major parties free of charge, while

House; New Mexico, independent Aileene Barreras for State House; New York, independent Rebecca Seawright for Assembly; Vermont, Progressive Party nominee-members Christopher Pearson and Anthony Pollina for State Senate, Progressive Party nominee-members Emma Mulvaney-Stanak, Brian Cima, Selene Colburn, Taylor Small, Tanya Vyhovsk, Mollie S. Burke, Heather Suprenant, and five independents for State House, Terry Norris, Paul Lefebvre, Barbara Smith Murphy, Laura Sibia, and Kally Pajala; Wyoming, Libertarian Marshall Burt and independent Jim Rosco, both to the State House.

charging exorbitant fees to minor parties and independent candidates who seek access to the same lists, is in clear violation of these principles.

CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the petition should be granted.

Dated: April 15, 2022

Respectfully submitted,

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