

No. 22-101

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In the  
**Supreme Court of the United States**

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MARTIN COWEN, ET AL.,  
*Petitioners,*

v.

BRAD RAFFENSPERGER,  
GEORGIA SECRETARY OF STATE,  
*Respondent.*

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

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**BRIEF OF *AMICUS CURIAE*  
LIBERTARIAN NATIONAL COMMITTEE  
IN SUPPORT OF PETITIONERS**

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**INTEREST OF *AMICUS CURIAE***<sup>1</sup>

The Libertarian National Committee (“LNC”) is the governing body of the Libertarian Party, the third largest political party in the United States. The Libertarian Party was founded in 1971 to promote the principles of liberty set forth in the party’s Statement of Principles.<sup>2</sup> The Libertarian Party’s interests are frequently implicated by state election laws, including those that burden candidates and voters who seek to participate in the political process without joining the Democratic Party or the Republican Party. Accordingly, the Libertarian Party and its state affiliates have repeatedly presented their views on such issues to this Court, both as a party (for example, in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008)), and *Clingman v. Beaver*, 544 U.S. 581 (2005)) and as an amicus (for example, in *Burdick v. Takushi*, 504 U.S. 428 (1992), *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986), and *Anderson v. Celebrezze*, 460 U.S. 780 (1983)).

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received timely notice of the intent to file this brief. On August 22, 2022, Petitioners filed a letter with the Court granting blanket consent to the filing of *amicus curiae* briefs prior to the Court’s consideration of the petition for certiorari in this case. Respondents through counsel provided written consent to the filing of this brief on August 22, 2022.

<sup>2</sup> See Libertarian Party, *Statement of Principles*, available at <https://www.lp.org/platform/> (accessed August 15, 2022).

The Libertarian Party has a direct interest in this case in that members of the Libertarian Party reside in the State of Georgia and wish to vote for Libertarian candidates for public office, including United States Representative. In Georgia's November 3, 2020 general election, for example, 115,039 Georgians voted for Shane Hazel, the Libertarian candidate for United States Senate. See Georgia Secretary of State, *November 3, 2020 General Election Results*, available at <https://results.enr.clarityelections.com/GA/105369/web.264614/#/summary> (accessed August 15, 2022). Yet these same voters have been systematically denied the opportunity to vote for Libertarian candidates for United States Representative in Georgia for the nearly 80 years since the ballot access requirements challenged here were enacted. In all that time, Georgia voters have never had the choice to vote for any other party, except Republicans and Democrats, in a regularly scheduled election for United States Representative.

The total exclusion of Libertarian candidates for United States Representative from Georgia's ballot harms the core First Amendment rights of Libertarian Party voters. See *Williams v. Rhodes*, 393 U.S. 23, 31 (1968) (“[T]he right to vote is heavily burdened if that vote may be cast for only one of two parties at a time when other parties are clamoring for a place on the ballot.”). It also harms the Libertarian Party's core First Amendment rights. See *id.* (“The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes.”). The Libertarian Party cannot exercise its freedom to



associate with its voter-supporters, to develop and grow as a party, and to participate in Georgia's electoral process when its candidates are excluded from the ballot. Moreover, the Libertarian Party cannot compete on an even playing field with the Republican and Democratic parties on a national level if a state is permitted to enact laws that categorically exclude its candidates from the ballot in elections for United States Representative.

The Libertarian Party therefore submits this brief as *amicus curiae* in support of Petitioners, to urge the Court to grant the Petition for Certiorari in this case that tests the outer limits of a state's power to restrict access to the ballot.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

This Court has long recognized the “virtue of political activity” by minor political parties, “who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted.” *Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1957); *see also Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) (“Historically political figures outside the two major 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.”). And the Court has warned that “the absence of such voices would be a symptom of grave illness in our society.” *Sweezy*, 354 U.S. at 251. Nonetheless, that symptom has been allowed to fester in Georgia for nearly 80 years, during which no party except the Republicans and Democrats

has placed a candidate on Georgia's ballot in a regularly scheduled election for United States Representative.

In the 51 years since its founding, the Libertarian Party has established itself as the largest and most successful minor party in the nation. It has achieved historic successes, both in placing its candidates on state ballots nationwide and in electing them. The Libertarian Party is also ballot-qualified in Georgia. Yet the Libertarian Party has never been able to comply with the separate requirements for placing its candidates for United States Representative on Georgia's ballot.

The total exclusion of Libertarian candidates from Georgia's congressional elections harms the core First Amendment rights of the Libertarian Party itself and those of its voters. This Court should grant certiorari to rectify that harm and to protect the right of all Georgia voters to cast their votes effectively in elections for United States Representative.

## ARGUMENT

### **I. The Libertarian Party Has Achieved Historic Success as a Minor Political Party in the United States.**

Since its founding 51 years ago, the Libertarian Party has grown rapidly in size and popularity. It now has the largest membership, by far, of any minor political party in the nation. As of August 1, 2022, the Libertarian Party had 727,776 registered members in the 30 states and the District of Columbia where a voter can register as a Libertarian. *See* Richard

Winger, *Voter Registration Totals*, BALLOT ACCESS NEWS, Vol. 38, No. 3, 5 (August 1, 2022), available at [www.ballot-access.org](http://www.ballot-access.org) (accessed August 30, 2022). That is approximately three times the size of the next-largest minor party. *See id.*

In each election cycle, the Libertarian Party runs hundreds of candidates nationwide for local, state and federal offices. There are currently no fewer than 320 Libertarian Party members who serve in public office in the United States. *See* Libertarian Party, *Elected Officials*, available at <https://my.lp.org/elected-officials/?page=CiviCRM&q=civicrm/profile&gid=38&force=1&crmRowCount=100&reset=1> (accessed August 15, 2022). The Libertarian Party has also elected no fewer than 13 state legislators in four states – Alaska, New Hampshire, Vermont and Wyoming.<sup>3</sup> Thus, while many minor parties in American history have focused on disseminating their ideas and influencing public debate, *see generally Illinois Bd. of Elections v.*

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<sup>3</sup> *See* Alaska Division of Elections, *Primary, General and Statewide Election Results*, available at <https://www.elections.alaska.gov/doc/info/ElectionResults.php> (accessed August 21, 2022) (one Libertarian state legislative candidate elected in 1984 and two in 1978); New Hampshire Department of State, *Election Results*, available at <https://www.sos.nh.gov/elections/elections/election-results> (accessed August 21, 2022) (one Libertarian state legislative candidate elected in 2000, two in 1994 and four in 1992); Vermont Secretary of State, *Elections Results Archive*, available at <https://electionarchive.vermont.gov/> (accessed August 21, 2022) (one Libertarian state legislative candidate elected in 1998); Wyoming Secretary of State, *2020 Official General Election Results*, available at <https://sos.wyo.gov/Elections/Docs/2020/2020GeneralResults.aspx> (accessed August 21, 2022) (one Libertarian state legislative candidate elected in 2020).

*Socialist Workers Party*, 440 U.S. 173, 185-86 (1979), the Libertarian Party has had considerable success in actually electing its candidates.

The Libertarian Party also has a demonstrated record of success in qualifying its candidates for the ballot nationwide. In presidential elections, the Libertarian Party has placed its candidates on the ballot in all 50 states and the District of Columbia six times, including in 2020 and 2016. It is also the only minor party that has placed third in three successive presidential elections – 2020, 2016 and 2012 – since the Greenback Party did it in 1876, 1880 and 1884. See Federal Election Commission, *Election Results*, available at <https://www.fec.gov/introduction-campaign-finance/election-and-voting-information/> (accessed August 19, 2022). Additionally, the Libertarian Party has placed candidates for United States Representative on the ballot in every state in the nation, except Georgia. It is the only minor party since 1916 that has placed its candidates for United States Representative on the ballot in a majority of congressional districts nationwide. See Richard Winger, *2000 U.S. House Nominees*, *BALLOT ACCESS NEWS*, Vol. 16, No. 7, 5 (Oct. 1, 2000), available at <http://www.ballot-access.org/2000/1001.html> (accessed August 19, 2022). Such candidates frequently receive a substantial percentage of the vote – in 2012, for example, Joel Balam received 31.55 percent of the vote in the race for Kansas’s 3rd congressional district. See State of Kansas Secretary of State, *Past Election Results – 2012*, available at <https://sos.ks.gov/elections/elections-results.html> (accessed August 19, 2022).

At present, the Libertarian Party qualifies for automatic access to the ballot in 33 states and the District of Columbia. See Richard Winger, *2022 Petitioning for Statewide Office*, BALLOT ACCESS NEWS, Vol. 38, No. 2, 5 (July 1, 2022), available at <https://ballot-access.org/2022/08/06/July-2022-ballot-access-news-print-edition/>. Georgia is among those states, but unlike all the others, Georgia treats the Libertarian Party as ballot-qualified for statewide office only, and not for United States Representative or other district offices. Yet the Libertarian Party has repeatedly demonstrated that it has a substantial modicum of support among voters nationwide, including in Georgia. Since 2008, nine Libertarian candidates have received more than one million votes in statewide races nationwide, and three of those candidates ran for office in Georgia.<sup>4</sup> John Monds, who

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<sup>4</sup> Six candidates for statewide office in Texas have received more than one million votes: Jaime O. Perez, Railroad Commissioner, Unexpired Term (2012); RS Roberto Koelsch, Supreme Court Justice, Seat 2 (2012); Tom Oxford, Supreme Court Justice, Seat 4 (2012); Mark W. Bennett, Court of Criminal Appeals Judge, Seat 7 (2012); William Bryan Strange III, Court of Criminal Appeals Judge, Seat 8 (2012); and William Bryan Strange, Court of Criminal Appeals Judge, Seat 9 (2008). See Office of the Secretary of State, *1992 – Current Election History*, available at <https://elections.sos.state.tx.us/index.htm> (accessed August 20, 2022). Three candidates for statewide office in Georgia have received more than one million votes: Eric Hoskins, Public Service Commissioner (2016); David Staples, Public Service Commissioner (2012); and John Monds, Public Service Commissioner (2008). See Georgia Secretary of State, *Election List*, available at <https://results.enr.clarityelections.com/GA/> (accessed August 20, 2022).

ran for Public Service Commission in Georgia's District 1 in 2008, was the first.

In 2016, Gary Johnson, the Libertarian Party's presidential candidate, received 4,489,341 votes – the highest-ever vote total for a Libertarian candidate. *See* Federal Election Commission, *Federal Elections 2016*, available at <https://www.fec.gov/introduction-campaign-finance/election-and-voting-information/federal-elections-2016/> (accessed August 17, 2022). That total includes 125,306 votes cast in Georgia, or 3.05 percent of the votes cast in the state. *See id.* at 28. Shane Hazel, the Libertarian Party's candidate for United States Senate in Georgia received nearly that many votes – 115,039 – in 2020. *See* Georgia Secretary of State, *November 3, 2020 General Election Results*, available at <https://results.enr.clarityelections.com/GA/105369/web.264614/#/summary> (accessed August 15, 2022).

The foregoing facts demonstrate that the Libertarian Party has achieved historic success as a minor party in the United States. Few such parties in American history have lasted for more than two election cycles. *See* S. Rosenstone, R. Behr and E. Lazarus, *THIRD PARTIES IN AMERICA* 121-22 (2nd ed. 1996). By contrast, more than half a century after its founding, the Libertarian Party is larger, more popular and more successful than ever.

## **II. Georgia’s Categorical Exclusion of Libertarian Party Candidates For United States Representative Harms the Libertarian Party and Its Voters.**

“Under our political system, a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections.” *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973). Despite its substantial successes as a minor party nationwide and in Georgia, the Libertarian Party has not once in its 51 years of existence succeeded in performing this basic function in an election for United States Representative in that state. The problem is not that the Libertarian Party lacks support among Georgia voters. On the contrary, the Libertarian Party routinely runs candidates for statewide office in Georgia who have collectively received millions of votes in recent elections. *See supra* Part I. The problem is that Georgia’s ballot access requirements for minor party candidates for United States Representative are practically insurmountable, as demonstrated by the fact that no other minor party has complied with them in the nearly 80 years since they were enacted.

In *Anderson*, this Court observed that the exclusion of candidates from the ballot “burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for likeminded citizens.” *Anderson*, 460 U.S. at 787-88 (footnote omitted). It also harms the right of all Libertarian Party members “to create and develop [their] political part[y].” *Norman v. Reed*, 502 U.S. 279,

288 (1992); *see also Williams*, 393 U.S. at 31. Here, Georgia stands alone among all states in the nation in categorically excluding Libertarian Party candidates for United States Representative. *See supra* Part I. Such total exclusion is the *sine qua non* of a severe burden on constitutional rights. *Cf. Jenness v. Fortson*, 403 U.S. 431, 438 (1971) (ballot access requirements are unconstitutional if they “operate to freeze the political status quo.”); *Storer v. Brown*, 415 U.S. 724, 742 (1974) (ballot access requirements are unconstitutional if “past experience” demonstrates that “reasonably diligent” candidates cannot comply).

Georgia does not have a legitimate, much less compelling interest in limiting voters’ choices in congressional elections to just two parties. *See Williams*, 393 U.S. at 32 (rejecting state’s asserted interest in enforcing statutory scheme that “in effect tends to give [Republicans and Democrats] a complete monopoly.”). Yet Georgia has done so for the entirety of the Libertarian Party’s 51-year existence. In so doing, Georgia has harmed the rights not only of the Libertarian Party and its members, but all Georgia voters who seek to cast their votes effectively in competitive elections that present a meaningful choice of candidates. *See Williams*, 393 U.S. at 30. The Court should grant certiorari to rectify that harm.

## CONCLUSION

For the foregoing reasons, and those stated in the Petition for Certiorari, the Petition should be granted.



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