

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

2007 FEB 25 P 1:11

05 CVS 13073

WAKE COUNTY, CSC

LIBERTARIAN PARTY OF NORTH)
CAROLINA; SEAN HAUGH, as executive)
director of the party; PAMELA GUIGNARD)
and RUSTY SHERIDAN, as Libertarian)
candidates for mayor of Charlotte, North)
Carolina; JUSTIN CARDONE and DAVID)
GABLE, as Libertarian candidates for)
Charlotte City Council; RICHARD NORMAN)
and THOMAS LEINBACH, as Libertarian)
candidates for Winston-Salem City Council;)
and JENNIFER SCHULZ as)
a registered voter;)

Plaintiffs,)

and)

THE NORTH CAROLINA GREEN PARTY;)
ELENA EVERETT, as chair, and KAI)
SCHWANDES, as co-chair of the party;)
NICHOLAS TRIPLETT, as a prospective)
North Carolina Green Party candidate for)
public office; and HART MATTHEWS and)
GERALD SURH, as members of the party and)
qualified voters,)

Intervenors,)

vs.)

STATE OF NORTH CAROLINA; ROY)
COOPER, Attorney General of North Carolina;)
STATE BOARD OF ELECTIONS; and)
GARY O. BARTLETT, as executive director)
of the State Board;)

Defendants.)

**SECOND AMENDED COMPLAINT
(AMND)**

This lawsuit is brought by the Libertarian Party of North Carolina and the North Carolina Green Party against the State of North Carolina and state elections officials. The

lawsuit seeks to have the court declare invalid the state statutes concerning recognition of political parties. When considered as a whole, the statutory regulation of political parties denies Libertarians and Green Party members their constitutional rights to association and expression of their political philosophy and denies voters their rights to select candidates of their choice. The statutes are designed to and do impede the ability of political parties other than Democrats and Republicans to place their candidates on the ballot and otherwise enjoy the benefits of state recognition as an organized political party.

This Second Amended Complaint is filed on behalf of the plaintiffs and intervenors and supersedes the prior complaints filed by them separately.

NATURE OF THE ACTION

1. This is a declaratory judgment action brought pursuant to G.S. 1-253 *et seq.* The plaintiffs Libertarian Party of North Carolina, North Carolina Green Party, and candidates and voters ask the court to declare the state scheme of statutory regulation of political parties to be unconstitutional. Among the features of the election law being challenged are the requirements for petitioning to be recognized as a political party; the requirement that a party receive two percent of the vote statewide to retain recognition; the exclusion of members of parties other than the Democratic and Republican parties from the State Board of Elections and from county elections boards and other election offices; the requirement that party recognition be based on statewide results; the unfavorable placement on the ballot of candidates from parties other than the Democratic and Republican parties; the prohibition against a political party allowing registered voters of other parties to vote in its primary; the involuntary change in registration of voters affiliated with a political party when the party is decertified; the denial of political parties other than

the Democratic and Republican parties to have the same use of public buildings as Democrats and Republicans; the denial of placement on the presidential ballot of nationally recognized candidates of parties other than the Democratic and Republican parties; and the exclusion of parties other than the Democratic and Republican parties from public funding.

JURISDICTION AND VENUE

2. The court has jurisdiction of this action pursuant to G.S. 7A-245.

3. Venue is proper in Wake County pursuant to G.S. 1-77 and -82 because the offices of defendants State of North Carolina, Attorney General Cooper, and the State Board of Elections and its executive director are located in Wake County, and the actions of the defendant election officials occurred in Wake County.

PARTIES

4. Plaintiff Libertarian Party of North Carolina ("Libertarian Party") is a voluntary unincorporated organization of voters in the state. The party has been in continuous existence in North Carolina since 1976.

5. At the time of the filing of the original complaint in this lawsuit, plaintiff Sean Haugh was the full-time executive director of the Libertarian Party, and he now is employed by the national Libertarian Party. He is a member of the Libertarian Party and is a registered voter in Durham County.

6. Plaintiffs Pamela Guignard and Rusty Sheridan filed as Libertarian Party candidates for mayor of Charlotte in 2005 and are both registered voters in Charlotte and Mecklenburg County. Following the State Board's decertification of the Libertarian Party

on August 22, 2005, and cancellation of the primary scheduled for September 27, 2005, the party met in convention to select Mr. Sheridan as its candidate for mayor. Because of the decertification of the party, Mr. Sheridan's name was not listed on the Charlotte ballot.

7. Plaintiffs Justin Cardone and David Gable were Libertarian Party candidates for the Charlotte City Council in 2005 and are both registered voters in Charlotte and Mecklenburg County. Because the decertification of the party in August 2005, their names were not listed on the Charlotte ballot.

8. Plaintiffs Richard Norman and Thomas Leinbach were Libertarian Party candidates for the Winston-Salem City Council in 2005 and are both registered voters in Winston-Salem and in Forsyth County. Because of the decertification of the party in August 2005, their names were not listed on the Winston-Salem ballot.

9. Plaintiff Jennifer Schulz is a registered voter in Charlotte and Mecklenburg County, is affiliated with the Libertarian Party and desires to have the choice to vote for Libertarian candidates.

10. Intervenor North Carolina Green Party ("Green Party") is a nonprofit corporation organized by its members on August 8, 2005. The party has existed as a state political party in North Carolina since at least the year 2000. The Green Party is composed of six recognized local affiliates and many voting members throughout North Carolina, as more specifically set forth below.

11. Intervenors Elena Everett and Kai Schwandes are officers of the Green Party serving as chair and co-chair, respectively. Everett resides in Durham County; Schwandes resides in Transylvania County.

12. Intervenor Nicholas Triplett, a resident of Mecklenburg County, is a member of the Green Party who desires to run for political office as a Green Party candidate, but is unable to do so because of the ballot access laws of North Carolina.

13. Intervenors Hart Matthews, a resident of Durham County, and Gerald Surh, a resident of Wake County, are members of the Green Party and registered voters who desire to vote for candidates of their party in elections in North Carolina.

14. Defendant State of North Carolina is the governmental entity for the state.

15. Defendant Roy Cooper is the Attorney General of North Carolina and is responsible for representing the State in all actions brought against it.

16. Defendant State Board of Elections is the state agency responsible for the conduct of elections in the state, including determinations under the law as to which political parties shall be officially recognized and allowed to have their candidates listed on the ballot. Defendant State Board has general supervisory authority over county boards of election and county election officials, including the authority to instruct county boards of election to list candidates on the ballot when required by law.

17. Defendant Gary Bartlett is the executive director of the State Board of Elections and is responsible for carrying out the directives of the State Board and for instructing county election officials on preparation of ballots, including which political parties' candidates are to be listed.

18. All individually named defendants are sued in their official capacities only.

FACTUAL ALLEGATIONS

19. The Libertarian Party of North Carolina has been in continuous existence as a political party since 1976. On seven different occasions it has successfully petitioned the

State Board of Elections to be recognized as a political party and to have its candidates listed on the ballot. At the time of the State Board of Elections action decertifying the party on August 22, 2005, there were over 13,000 voters registered as affiliated with the Libertarian Party in the state.

20. The Libertarian Party of North Carolina is affiliated with the national Libertarian Party which was founded in 1971 and is active in all 50 states. Nationally, the party has over 200,000 registered voters and its members hold approximately 170 elected offices. The party qualified to have its presidential candidate on the ballot in 32 states in 1976. In 1996 and 2000 the Libertarian candidate was on the ballot in all states, and in the 2004 election the Libertarian candidate was on the ballot in 48 states (all except New Hampshire and Oklahoma) plus Guam and the District of Columbia.

21. The Libertarian Party has fielded candidates for governor and lieutenant governor in each election since 1976 except for 1988. Since 2000 the party has placed over 300 candidates on the ballot for every office from president to county soil and water district supervisor. The party had 145 candidates in 2002, including candidates for a majority of seats in each house of the General Assembly.

22. Libertarian Party members in North Carolina currently serve as elected members of three different city councils, four different soil and water conservation districts. A member also served as the elected county surveyor in Harnett County until the office was abolished in 2006. About a dozen other Libertarians serve on appointed city and county boards across the state.

23. In 1992 the Libertarian Party candidate for governor, Scott McLaughlin, received 104,983 votes or 4.5 percent of the total votes cast for the office. In that same year three Libertarian candidates for the General Assembly each received more than 12

percent of the votes in their races.

24. In 2004 over 50,000 North Carolinians voted for the Libertarian candidate for governor, Barbara Howe. One Libertarian legislative candidate won 21 percent of the vote in her race.

25. The Libertarian Party is governed by a 15-member board of directors. The party first employed an executive director in 1990. Plaintiff Sean Haugh served full-time in that capacity from 2000 to 2006, and has been active in the party since 1994, including being the party candidate for Commissioner of Insurance in 1996 and for the United States Senate in 2002 .

26. The Libertarian Party has adopted bylaws and a party platform; has held an annual convention each year for over 25 years; has active local organizations in more than two dozen counties; has organizations on college campuses in the state; has maintained a web site, lpnc.org, continuously since 1996; and has had booths at the Dixie Classic Fair and the North Carolina State Fair for the last several years and as far back as the early 1990s.

27. The Libertarian Party has been recognized by the public and news media as a political party in North Carolina for 30 years. By all reasonable measures, the Libertarian Party is an ongoing, active political party with a long-term presence in the state and the country.

28. The North Carolina Green Party, a non-profit corporation since 2005, organized as a statewide political party in or about the year 2000, and individuals associated with the national Green Party have been active in politics for years before. The Green Party has established bylaws, has published and maintains a website, has officers who have been duly elected pursuant to the bylaws, holds regular meetings, has an

established political platform, and has members who pay dues and support the mission and objectives of the party.

29. At all times pertinent to this action, the Green Party has been affiliated with the national Green Party, now known as the Green Party of the United States. The national Green Party has existed since at least 1996 and is an affiliate of the international Green Party, which has parties in many countries. The Green Party of the United States has affiliates in all of the United States, and is the only political party in the United States growing in membership—over 27% growth in the last four years. The Green Party of the United States has held conventions and national meetings each year since the year 2000. The Green Party delegates attended the conventions of the Green Party of the United States in the years 2000, 2001, 2003 and 2004. The Federal Elections Commission recognizes the Green Party of the United States as the official Green Party National Committee.

30. The Green Party is composed of a number of local groups which have been active throughout North Carolina both before and after the formation of the Green Party. Specifically, local affiliates exist throughout the Triangle area (Triangle Greens); the Piedmont area (Piedmont Greens); Charlotte (Charlotte Area Greens); western North Carolina (Mountain Greens); Greenville (Greenville Area Greens); and Transylvania County (Transylvania County Greens).

31. The Green Party and each of its local affiliates have filed appropriate documentation with the defendant State Board to register as a political party.

32. Since the year 2000, Green Party members have conducted a number of activities to gain ballot access and to challenge restrictions in the existing ballot access laws. Specifically, Green Party members have participated in public events, fairs, festivals

and forums, publicizing their party and its mission, and expressing their views on specific issues. Green Party members organized Project Green Bus, a statewide effort to promote alternative fuels; members have participated in demonstrations against the war in Iraq within North Carolina and in Washington, D.C.; and members attended and testified in North Carolina legislative committee meetings on ballot access reform in 2003, 2005 and 2006.

33. Green Party members have spent thousands of volunteer hours collecting signatures for petitions for ballot access. However, given the number of signatures required, the Green Party has been unsuccessful in meeting the requirements of North Carolina law for having its party candidates listed on a ballot. Consequently, to date, no candidate has been permitted to run for public office as a Green Party candidate. For that reason, Green Party members have run for public office as candidates affiliated with the Democratic or Republican parties.

34. For example, intervenor Nicholas Triplett, a Green Party member, has sought to run for the Mecklenburg County Board of Commissioners. As a result of the restrictive ballot access laws in North Carolina, Triplett has not been permitted to run for office as a Green Party member, and would have to run as a Republican or Democrat, or petition to run as an unaffiliated candidate, in spite of his membership in the Green Party.

35. As alleged above, intervenors Everett and Schwandes are current officers of the Green Party. In their capacities as officers and members of the Green Party, intervenors Everett and Schwandes have an interest in having candidates of the Green Party listed on ballots throughout North Carolina so that they and other members of the party and others who share the mission and objectives of the party may vote for the party candidate of their choice.

36. Student organizations of the Green Party have organized chapters (Campus Greens) at UNC-Charlotte, Appalachian State University, UNC-Wilmington, North Carolina State University and Western Carolina University. These chapters have sponsored a number of events surrounding the ballot access laws, their opposition to the war in Iraq, and a housing ordinance. The Campus Greens registered nearly 5,000 students and other voters prior to the 2004 elections, and hosted a series of youth voter issue panels.

37. Under state law voters may not register as affiliated with a political party and the party may not have its candidates listed on the ballot in any election in the state unless the party is officially recognized by the State Board of Elections.

38. To be officially recognized under G.S. 163-96 a new political party must submit to the State Board of Elections a petition signed by registered voters equal in number to two percent of the voters who voted in the most recent gubernatorial election. The petition must be submitted to the State Board of Elections by June 1st of the election year in which the party wishes to be on the ballot, and must be submitted to county boards of elections 15 days before that time for county election officials to verify signatures.

39. Once a political party is officially recognized, under G.S. 163-96 its candidate must receive at least two percent of the statewide vote for governor or president for the party to remain officially recognized and for its candidates to be listed on the ballot for any office anywhere in the state. Thus, even if candidates of the party receive more than two percent of the vote in a particular city or county, they cannot be listed on the ballot and their party identified in ballots in that community if the party did not receive two percent of the vote statewide.

40. Until January 1, 2007, the State required candidates to receive ten percent of the total statewide vote for the party to continue to be recognized. The General

Assembly reduced the requirement to two percent only after this lawsuit was filed.

41. Because their candidates routinely receive significantly more than two percent of the vote in statewide elections, the Democratic and Republican parties do not have to petition to be recognized or to have their candidates listed on the ballot.

42. From 1929 through 1981 North Carolina law required only 10,000 signatures for recognition of a new political party and listing of its candidates on the ballot. After the Socialist Workers Party qualified for the ballot in 1980, the General Assembly changed the law to lower the petition requirement to 5,000 signatures but also provided that the party affiliation of any voter who signed a petition would be automatically changed to the new party. That statute remained in effect until it was enjoined by the federal court in *North Carolina Socialist Workers Party v. North Carolina State Board of Elections*, 538 F. Supp. (E.D.N.C. 1982).

43. In 1982, the only year in which only 5,000 signatures were required for a new party, only four parties — the Democratic, Republican, Libertarian and Socialist Workers — appeared on the ballot.

44. In 1983 the General Assembly increased the number of signatures required for recognition of a new political party to two percent of the number who voted in the last gubernatorial election, at the time a seven-fold increase in the number of signatures.

45. Under G.S. 163-96 a new political party must collect at least 69,733 signatures to be recognized, based on the voter turnout for the 2004 gubernatorial election. In the entire history of the United States there are only four instances in which a new political party was able to collect that many signatures on a petition. Those were the Progressive Party in California in 1948, and the American Party in Georgia in 1968 and in Florida in 1974 and 1976.

46. From 1929 to 1949 the requirement in North Carolina for a political party to continue to be recognized and keep its place on the ballot was that the party receive three percent of the vote for president or governor. In 1948, the States Rights Party, a Southern-based break off from the Democratic Party, polled 8.8 percent of the presidential vote in North Carolina, the first time any party other than the Democratic or Republican party met the test for continued party recognition. In 1949 the General Assembly raised from three percent to ten percent the requirement for keeping the party place on the ballot. The retention requirement remained ten percent until the General Assembly lowered it to two percent in 2006, after this lawsuit was filed.

47. The only party other than the Democratic or Republican Party to receive more than ten percent of the vote for president or governor in North Carolina was the American Party in 1968 whose presidential candidate was Governor George C. Wallace of Alabama.

48. All members of the General Assembly, which enacts the election laws, including those on recognition of political parties, are either Democrats or Republicans. There are no members of the General Assembly affiliated with any other political party, nor, upon information and belief, have there been any in at least the last thirty-seven years with one possible exception.

49. As has been demonstrated convincingly in recent years, the ability of a political party to elect legislators depends a great deal on how the election districts are drawn. With increasingly sophisticated software and election data, Democratic and Republican legislators have been able to carve districts with clear voting majorities for their parties, resulting in fewer and fewer districts with truly competitive elections. Because redistricting is under the control of the General Assembly itself, members of all political parties other than Democrats and Republicans are effectively excluded from the process

and denied any meaningful opportunity to influence how districts are drawn. Consequently, the redistricting process helps perpetuate the monopoly of the Democratic and Republican parties on legislative representation in North Carolina.

50. Upon information and belief, in the last century there has never been a governor or lieutenant governor or member of the Council of State who was not a Democrat or Republican.

51. Under G.S. 163-19 the five members of the State Board of Elections are appointed by the governor. Until the law was changed in the 2005 budget bill, the governor was required to appoint members from names submitted by the Democratic and Republican parties. Today the chairs of the Democratic and Republican parties are authorized by the statute to submit names to the governor for those positions, and all the governor's appointments have come from those names. Thus, voters affiliated with the Libertarian Party and Green Party, and unaffiliated voters, are not considered for appointment to the State Board. Upon information and belief, in the century since the State Board of Elections was created and given general supervisory authority over elections in the state, there never has been a member who was not a Democrat or Republican.

52. Because under G.S. 163-30 members of county boards of elections are appointed by the State Board, and are appointed from names submitted by the Democratic and Republican parties, all members of the 100 county boards of election are either Democrats or Republicans. Upon information and belief, in the century since the present election structure for election administration was established, there never has been a member of a county board of elections who was not a Democrat or Republican.

53. Because the executive director of the State Board of Elections is selected by the State Board, and each county director of elections is chosen by the State Board upon recommendation of the county board pursuant to G.S. 163-35, the executive director and each county election director is either a Democrat or Republican. Upon information and belief, in the century since the present structure for election administration was established, there never has been a state executive director or county elections director who was not a Democrat or Republican.

54. Upon information and belief, because precinct election officials are chosen by county election boards, whose members all are Democrats or Republicans, all appointed precinct officials are either Democrats or Republicans except in circumstances where a member of one of those parties cannot be found who is willing to serve.

55. Preparation of a petition for recognition of a new political party, and distribution of the petition for signatures, is a time-consuming and expensive activity. Based on the number of voters who voted in the 2004 gubernatorial election, a new political party must collect over 69,733 valid signatures to be officially recognized. As a practical matter, a petition may not be completed successfully without hiring individuals to distribute the petitions and collect signatures. The cost of completing a successful petition is approximately \$100,000 to \$150,000.

56. Although the Libertarian Party is an established political party which has been in continuous existence in North Carolina for nearly three decades, the party's ability to raise money is limited. The expenditure of \$100,000 to \$150,000 to petition for recognition as a new political party each four years depletes most of the party's funds and leaves it with little money to assist candidates. Without such financial assistance, the party's

candidates are unable to garner enough votes for the party to remain officially recognized and to have its candidates listed on the ballot.

57. The Democratic and Republican parties do not have to raise or expend funds to petition to be recognized each four years.

58. Ballot position is considered important by political parties, especially for straight-ticket voting. For that reason, the General Assembly, a majority of whose members have been Democrats in each session for the last century, has declared in G.S. 163-165.6(d) that parties' candidates are to be listed in alphabetical order of the name of the party, meaning that Democratic Party candidates are listed before the Republican Party. In the same statute the legislature has declared that the alphabetical listing applies to only political parties with at least five percent of the statewide voter registration, *i.e.*, only the Democratic and Republican parties, and that the candidates of any other recognized party are to be listed separately after the Democratic and Republican parties.

59. Pursuant to G.S. 163-165.6(e) each official ballot must allow straight ticket voting, *i.e.*, allow each voter to vote for all candidates of one party by marking the ballot in a single place. The statute provides, however, that straight ticket voting shall not include voting for president and vice president. By denying voters an opportunity to vote a straight ticket vote for all offices on the ballot, including president, the law prevents the Libertarian Party and Green Party from taking advantage of the publicity and expenditures of their national candidates to assist state and local candidates.

60. Straight ticket voting is a mechanism that favors candidates of the Democratic and Republican parties. Straight ticket voting for state and local offices puts candidates of any third party at a disadvantage in that it allows and encourages voters who are affiliated with the Democratic and Republican parties to vote automatically for all

candidates of that party, based on their party affiliation and on the publicity for the candidates at the top of the ticket, without having to review the ballot and consider candidates of other parties for offices further down the ballot.

61. Until the law was declared unconstitutional in 1983 in *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177 (4th Cir. 1983), state law provided that a straight ticket vote for one party overrode and superseded a separate vote on the same ballot for the a candidate of a different party. The law invalidated by the federal court was part of a pattern of election regulations intended to benefit the political party in power at the time and to disadvantage the candidates of other political parties, including candidates of the Libertarian Party and Green Party and other third parties.

62. Although G.S. 163-59 and -119 allow a political party to permit unaffiliated voters to vote in its party primaries, political parties are prohibited from opening their primaries to voters who are registered with another political party. This restriction on cross-party voting is a disadvantage for political parties other than the Democratic and Republican parties because it prevents such other parties from building interest in their parties and candidates by opening their primaries to voters who may be registered as Democrats or Republicans but not feel closely aligned with its candidates.

63. Until the enactment of Session Law 2004-127 in the summer of 2004, the form required by G.S. 163-96(b) for a petition for recognition of a new political party included the statement that the signers “intend to organize a new political party to participate in the next succeeding general election.” This mandated language was in the statute from at least 1981 (see Session Laws of 1981, Chapter 219) until its repeal in 2004. The language was misleading in making it appear to potential signers that they were

obligated to actively engage in establishment of the new party, and it thus discouraged voters from signing the petition if the only commitment they wished to express was that they believed the new party should be recognized and its candidates given a place on the ballot.

64. Until 1995 state law required the petitioners for recognition of a new political party to have the petitioners' signatures notarized and to pay to county elections officials five cents per name to verify the validity of the names on the petition. This requirement was not removed by the General Assembly until a lawsuit was brought by the Libertarian Party and it was declared unconstitutional.

65. Pursuant to G.S. 163-99 recognized political parties are allowed free use of public buildings for their precinct meetings and conventions, but the statute does not provide for similar use by other political parties.

66. Upon being recognized for the first time, a recognized political party is required by statute to nominate its candidates by convention while established parties use party primaries. The state pays the entire cost of party primaries but offers no financial assistance for party conventions. In practice, this means that all the costs of nominating candidates for the Democratic and Republican parties is paid for by taxpayers, but none of the costs are paid for other political parties to nominate candidates.

67. All disputes about whether individuals are properly registered and entitled to vote are heard by county and state election boards. Because of the partisan process for appointing election board members, and the monopoly enjoyed by the Democratic and Republican parties, the crucial decisions on voter qualifications are always made by Democratic and Republican appointees, and members of other parties, or unaffiliated

voters, never get to participate in those decisions.

68. All election protests, including protests concerning unlawful voting and candidates' qualifications, are heard by county boards of elections and the State Board of Elections. Because of the partisan process for appointing election board members, and the monopoly enjoyed by the Democratic and Republican parties, these important decisions on the conduct and fairness of elections are always made by Democratic and Republican appointees, and members of other parties, or unaffiliated voters, never get to participate in those decisions.

69. In G.S. 105-159.1 and 163-278.41 *et seq.* the state provides a mechanism for citizens to provide financial support to political parties by designating a portion of their state income tax for that purpose. Because of the operation of the laws regarding official recognition of political parties, only the Democratic and Republican parties may benefit from this method of support.

70. A number of cities in the state, including Charlotte and Winston-Salem, use a partisan method of election. The State Board of Elections' action on August 22, 2005, withdrawing recognition of the Libertarian Party means that its candidates were not listed on the ballots for the 2005 municipal elections in Charlotte and Winston-Salem.

71. Two Libertarian candidates filed to run for mayor of Charlotte in 2005. Because the party had more than one candidate, a party primary was scheduled for September 27, 2005, but it was not held because of the State Board's decertification of the party in August 2005.

72. When the State Board of Elections withdraws official recognition of a political party, as it did to the Libertarian Party on August 22, 2005, election officials then alter the registration of all voters affiliated with that party to show the voter as unaffiliated. This

change in registration means that when the party is again recognized it must go to the trouble and expense to contact individual voters to re-register with the party. Given the overall scheme of regulation and recognition of political parties, the effect is to require the Libertarian Party and any other third party to register its voters anew every four years. Because they do not have to renew their official recognition in the same manner, the Democratic and Republican parties do not have to engage in such registration efforts. The Democratic and Republican parties, thus, may benefit in receipt of state funds and other means from having many voters registered with their parties just because they have never changed their registration.

73. The State Board of Elections' decision to withdraw recognition of the Libertarian Party on August 22, 2005, approximately one month before the scheduled municipal primaries, left the Libertarian candidates and voters in Charlotte and Winston-Salem with no practical alternative for running for office or supporting their candidates in that election.

74. Recognizing the Libertarian and Green Parties as political parties with all of the benefits accorded to the Democratic and Republican Parties would advance the cause of freedom of expression, promote the freedom to vote and to run for office, and would enhance the integrity of the electoral system in North Carolina.

75. Recognizing the Libertarian and Green Parties as political parties with all of the benefits accorded to the Democratic and Republican Parties would result in no detriment to the electoral process in North Carolina. Accordingly, defendants can show no compelling state interest or good cause to deny the Libertarian Party and Green Party and their members their rights to ballot access in North Carolina.

FIRST CLAIM

(Constitutional Right to Freedom of Expression and Association)

76. The allegations of paragraphs 1 through 75 are realleged and incorporated by reference.

77. Article I, Sections 1, 12, 14 and 19 of the North Carolina Constitution protect individuals' rights to freedom of expression and association and to due process. The freedom to associate with others for the advancement of beliefs and ideas is an inseparable aspect of the liberty assured by the due process and freedom of speech provisions of the constitution. Included in the right of association is the right to form a political party and have its candidates listed on the ballot so they have an equal opportunity to be elected.

78. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of the Libertarian Party and Green Party and their members to associate, to advance their beliefs and ideas, and to have their candidates listed on the ballot. The statutory scheme, when considered as a whole, imposes a series of severe burdens on the parties and their members, the cumulative effect of which is to deny the rights to expression and association.

79. There is no important state interest served by the restrictions on political parties.

SECOND CLAIM

(Constitutional Right to Free Elections)

80. The allegations of paragraphs 1 through 75 are realleged and incorporated by reference.

81. Article I, Section 10 of the North Carolina Constitution provides that "All elections shall be free." This section establishes a constitutional right of citizens to organize political parties, campaign freely and have their candidates listed on the ballot without unreasonable and unnecessary restrictions.

82. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of the Libertarian Party and Green Party and their members to free elections as provided in Article I, Section 10.

THIRD CLAIM

(Constitutional Right to Equal Protection)

83. The allegations or paragraphs 1 through 75 are realleged and incorporated by reference.

84. Article I, Section 19 of the North Carolina Constitution guarantees equal protection of the laws to all citizens.

85. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of the Libertarian Party and Green Party and their members to equal protection by treating members and candidates of the Libertarian Party and Green Party different from members and candidates of the Democratic and Republican parties and by denying members and candidates of the Libertarian Party and Green Party the same opportunity as members of the Democratic and Republican parties to associate, to be identified by party on the ballot, to receive public financing, to use public facilities, to be appointed to election offices and to otherwise participate in the election process.

86. There is no rational state interest served by the restrictions on recognition of political parties.

FOURTH CLAIM

(Constitutional Right to Vote for All Offices)

87. The allegations of paragraphs 1 through 75 are realleged and incorporated by reference.

88. Article VI, Section 1 of the North Carolina Constitution provides that all eligible voters shall be entitled to vote at any election.

89. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of the Libertarian Party and Green Party and their members to vote at any election as provided in Article VI, Section 1. Because of the unnecessary and unreasonable restrictions on recognition of political parties, and the consequent refusal of the state to list and identify Libertarian and Green candidates by their party affiliation, members of the Libertarian Party and Green Party are denied the opportunity to vote for candidates of their party in all elections.

FIFTH CLAIM

(Constitutional Right to Run for Office)

90. The allegations of paragraphs 1 through 75 are realleged and incorporated by reference.

91. Article VI, Section 6 of the North Carolina Constitution provides that every qualified voter of the state is eligible for election to office unless otherwise disqualified by the constitution. This provision establishes a constitutional right to run for office.

92. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of members of the Libertarian Party and Green Party to run for office as provided in Article VI, Section 6. Because of the unnecessary and unreasonable restrictions on recognition of political parties, and the consequent refusal of

the state to list and identify Libertarian and Green candidates by their party affiliation, members of the Libertarian Party and Green Party are denied the opportunity to run as candidates of their party.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs having stated their legal claims and the factual bases for those claims, plaintiffs ask that the Court:

1. Declare unconstitutional the state statutes governing the recognition of political parties.

2. Declare unconstitutional the state statutes governing the recognition of political parties, as those statutes are applied to the Libertarian Party of North Carolina, the North Carolina Green Party, and similarly situated political parties.

3. Declare unconstitutional the provisions of G.S. 163-96 concerning the petitions required for recognition of a new political party and the percentage of votes required to retain recognition of the political party.

4. Enjoin defendant State Board of Elections and all election officials supervised by it from enforcing the state statutes governing the recognition of political parties.

5. Declare that the Libertarian Party of North Carolina and North Carolina Green Party are political parties for all purposes under state law and are entitled to all the benefits of an officially recognized political party.

6. Pay to the plaintiffs the costs of this action, including reasonable attorneys fees.

7. Order such other and further relief as may be appropriate or necessary

This 26th day of February 2007.

THARRINGTON SMITH, L.L.P.

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