

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS _____

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,)

vs.)

STATE BOARD OF ELECTIONS; GARY O.)
BARTLETT, as executive director of the)
State Board; MECKLENBURG COUNTY)
BOARD OF ELECTIONS; MICHAEL)
DICKERSON, as director of the Mecklenburg)
County Board of Elections; FORSYTH)
COUNTY BOARD OF ELECTIONS; and)
KATHIE CHASTAIN COOPER as the director)
of the Forsyth County Board of Elections;)

Defendants.)

**COMPLAINT
(COMP)**

This lawsuit is brought by the Libertarian Party of North Carolina against state elections officials and county election officials in Mecklenburg and Forsyth counties. It is prompted by the State Board of Elections' decision on August 22, 2005, to withdraw the recognition of the Libertarian Party as a political party and thereby deny its candidates places on the ballot in this fall's municipal elections in Charlotte and Winston-Salem. While the immediate relief sought is restoration of those candidates to the ballot, the Libertarian Party more generally 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 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.

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, candidates and voters ask the court to declare unconstitutional 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 ten percent of the vote statewide to retain recognition; the disqualification of members of third parties from the State Board of Elections and their exclusion from county elections boards and other election offices; the requirement that party recognition be based on statewide results; the unfavorable placement of third party candidates on the ballot; the prohibition against a third party allowing registered voters of other parties to vote in its primary; the involuntary change in registration of voters affiliated with a third party when the party is decertified; the denial of third parties to have the same use of public buildings as Democrats and Republicans; the denial of placement on the presidential ballot of nationally recognized third party candidates; and the exclusion of third parties from public funding.

2. As immediate relief the plaintiffs seek to have the court order that the Libertarian candidates for mayor of Charlotte remain on the ballot and that the party

primary for that office scheduled for September 27, 2005, be held, and that the Libertarian candidates for the city councils in Charlotte and Winston-Salem remain on the ballot for the general election scheduled for November 8, 2005.

JURISDICTION AND VENUE

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

4. Venue is proper in Wake County pursuant to G.S. 1-77 and -82 because the offices of defendants State Board of Elections and its executive director are located in Wake County, and the actions of those defendants occurred in Wake County.

PARTIES

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

6. Plaintiff Sean Haugh is the executive director of the Libertarian Party of North Carolina and is a registered voter in Durham County.

7. Plaintiffs Pamela Guignard and Rusty Sheridan are Libertarian candidates for mayor of Charlotte and are both registered voters in Charlotte and Mecklenburg County.

8. Plaintiffs Justin Cardone and David Gable are Libertarian candidates for the Charlotte City Council and are both registered voters in Charlotte and Mecklenburg County.

9. Plaintiffs Richard Norman and Thomas Leinbach are Libertarian candidates for the Winston-Salem City Council and are both registered voters in Winston-Salem and in Forsyth County.

10. 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 a Libertarian candidate in this fall's municipal election in Charlotte.

11. 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.

12. 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.

13. Defendant Mecklenburg County Board of Elections is responsible for conducting elections in Mecklenburg County, including elections for Charlotte city offices.

14. Defendant Michael Dickerson is the director of the Mecklenburg County Board of Elections and is responsible for conducting elections in the county pursuant to directives of the State Board of Elections and the Mecklenburg County Board of Elections, including the preparation of ballots.

15. Defendant Forsyth County Board of Elections is responsible for conducting elections in Forsyth County, including elections for Winston-Salem city offices.

16. Defendant Kathie Chastain Cooper is the director of the Forsyth County Board of Elections and is responsible for conducting elections in the county pursuant to directives of the State Board of Elections and the Forsyth County Board of Elections, including the preparation of ballots.

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

FACTUAL ALLEGATIONS

18. 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 on August 22, 2005, there were over 13,000 voters registered as affiliated with the Libertarian Party in the state.

19. 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 more than 600 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.

20. The Libertarian Party of North Carolina 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.

21. Libertarian Party members in North Carolina currently serve as elected members of three different city councils, five different water and sewer district boards and as a county surveyor. About a dozen other Libertarians serve on appointed city and county boards across the state.

22. 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.

23. 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.

24. The Libertarian Party is governed by a 15-member board of directors. The party first employed an executive director in 1990. The current executive director, Sean Haugh, serves full-time in that capacity, has been employed since 2000, 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 .

25. The Libertarian Party has adopted by-laws 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 a half dozen 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.

26. The Libertarian Party has been recognized by the public and news media as a political party in North Carolina for nearly 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.

27. 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.

28. 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.

29. Once a political party is officially recognized, under G.S. 163-96 its candidate must receive at least ten 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 ten 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 ten percent of the vote statewide.

30. Because their candidates routinely receive at least ten 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.

31. 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 to provide that the party

affiliation of any voter who signed a petition was automatically changed to the new party. That statute remained in effect until it was declared unconstitutional in *North Carolina Socialist Workers Party v. North Carolina State Board of Elections*, 538 F. Supp. 684 (E.D.N.C. 1982).

32. 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.

33. 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.

34. 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,

35. 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 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 the requirement from three percent to ten percent.

36. 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 1976 whose presidential candidate was Governor George C. Wallace of Alabama.

37. 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-five years.

38. 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.

39. Under G.S. 163-19 the five members of the State Board of Elections appointed by the governor must be appointed from names presented by the Democratic and Republican parties. Thus, voters affiliated with the Libertarian Party, and unaffiliated voters, are not eligible to be members of 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.

40. 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.

41. 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.

42. 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.

43. 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 69,000 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.

44. 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.

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

46. 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.

47. 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 two major parties because it prevents such third parties from building interest in their parties and candidates by opening their primaries to voters who may be registered with one of the major political parties but not feel closely aligned with its candidates.

48. 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 be 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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 will not be listed on the ballots for this year's municipal elections in Charlotte and Winston-Salem even though those candidates were allowed to file for office, they have begun campaigning, and their names have been listed as candidates on web sites and other election materials prepared by the county elections boards. As of September 1, 2005, for example, the Libertarian candidates for Winston-Salem city offices still were listed on the web site of the Forsyth County Board of Elections.

56. The State Board's action decertifying the Libertarian Party occurred over two weeks after the filing of notices of candidacy closed on August 5, 2005, and only one month before the deadline for petitioning to be listed on the ballot as an unaffiliated candidate.

57. There are two Libertarian candidates for mayor of Charlotte. Because the party has more than one candidate, a party primary was scheduled for September 27, 2005.

58. 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 to engage in a wholly new registration effort 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 re-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.

59. 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, leaves the Libertarian candidates and voters with no practical alternative for running for office or supporting their candidates in this year's election.

FIRST CLAIM

(Constitutional Right to Freedom of Expression and Association)

60. The allegations of paragraphs 1 through 59 are realleged and incorporated by reference.

61. 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.

62. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of the Libertarian Party and its 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 party and its members, the cumulative effect of which is to deny the rights to expression and association.

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

SECOND CLAIM

(Constitutional Right to Free Elections)

64. The allegations of paragraphs 1 through 59 are realleged and incorporated by reference.

65. 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.

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

THIRD CLAIM

(Constitutional Right to Equal Protection)

67. The allegations or paragraphs 1 through 59 are realleged and incorporated by reference.

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

69. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of the Libertarian Party and its members to equal protection by treating members and candidates of the Libertarian Party different from members and candidates of the two major political parties and by denying members and candidates of the Libertarian Party the same opportunity as members of the two major political 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.

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

FOURTH CLAIM

(Constitutional Right to Vote for All Offices)

71. The allegations of paragraphs 1 through 59 are realleged and incorporated by reference.

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

73. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of the Libertarian Party and its 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 candidates by their party affiliation, members of the Libertarian Party are denied the opportunity to vote for candidates of their party in all elections.

FIFTH CLAIM

(Constitutional Right to Run for Office)

74. The allegations of paragraphs 1 through 59 are realleged and incorporated by reference.

75. 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.

76. The North Carolina statutory scheme of regulation of political parties, when considered as a whole, violates the rights of members of the Libertarian 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 candidates by their party affiliation, members of the Libertarian 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 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 is a political party for all purposes under state law and is entitled to all the benefits of an officially recognized political party.

6. Enjoin defendants State Board of Elections, Gary O Bartlett, Forsyth County Board of Elections, Kathie Chastain Cooper, Mecklenburg County Board of Elections, Michael Dickerson and all election officials supervised by them from removing from the ballot for the 2005 municipal elections in Charlotte and Winston-Salem the names of candidates of the Libertarian Party.

7. Enjoin defendant State Board of Elections and all election officials supervised by it from changing the voter affiliation of voters registered with the Libertarian Party of North Carolina based on the State Board's decision on August 22, 2005, to withdraw official recognition of the party.

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

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

This ____ day of September 2005.

THARRINGTON SMITH, L.L.P.

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VERIFICATION

I, Sean Haugh, being duly sworn, depose and say that the contents of this Complaint are true to my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Sean Haugh

Sworn to and subscribed before me
this _____ day of September 2005.

Notary Public

My commission Expires: _____