



State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
P.O. Box 629
Raleigh, North Carolina
27602-0629

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Reply to: Alexander McC. Peters
Special Litigation Section
919.716.6900
Fax: 919.716.6763
E-Mail: apeters@ncdoj.com

The Honorable Donald W. Stephens
Senior Resident Superior Court Judge
Wake County Courthouse Tenth Floor, Room 1036
316 Fayetteville Street
Raleigh, North Carolina 27601

VIA FAX TO 715.4064

Re: *Libertarian Party of North Carolina, et al., v. State Board of Elections, et al.*;
Wake County: 05 CVS 13073

Dear Judge Stephens:

We have received Michael Crowell's letter to you of October 13, 2005, in which he asks that a hearing be set for the preliminary injunction motion in the above-referenced matter. By that motion, the Libertarian Party is seeking to have the names of its candidates for municipal office in Charlotte and Winston-Salem placed on the ballots for the November 8 municipal elections. We thought that it might be helpful to you to have a more complete understanding of the current status of the elections as you consider when to set the matter for hearing.

Initially, we note that Mr. Crowell's letter states that "in late August, the names of the Libertarian candidates were removed from the ballot" and that the motion for preliminary injunction "needs to be heard as soon as possible in order to allow local elections officials sufficient time to prepare ballots if the court . . . allows the Libertarians to remain on the ballot." These statements imply that the Libertarian candidates for municipal office in Charlotte and Winston-Salem were once on the ballots in those cities, and that court action is required for those candidates to remain on the ballots; however, the Libertarian Party never qualified for recognition as a political party in North Carolina for this year's elections. Pursuant to N.C. GEN. STAT. § 163-97, because the Libertarian Party failed to poll for its candidates for governor or presidential electors at least 10% of the total votes cast in the races for governor or presidential electors in November 2004, the Libertarian Party ceased to be a recognized political party in North Carolina. Since the Libertarian Party did not re-qualify as a political party under any of the means allowed by North Carolina law, its candidates could not be placed and were never placed on any ballots for the 2005 local elections. Thus, plaintiffs are not challenging the "removal" of Libertarian candidates from any 2005 ballots or

seeking to have the names of those candidates “remain” on the ballots. Rather, they are asking the court to have the names of their candidates added to the ballots.

The first time that plaintiffs asked a court to order that their names be placed on any ballot this year was at the hearing on September 26 on their request for a temporary restraining order. They asked the court, by a motion filed four business days prior to the primary elections, to order that Libertarian candidates for office in Charlotte be added to the ballots for the primary held on the following day. This request was denied. Plaintiffs have again waited too late to request that their names be added to municipal ballots. Ballots have already been prepared and voting machines have been programmed or are in the process of being programmed for the November 8 municipal elections in Charlotte and Winston-Salem and to allow for absentee and one-stop early voting. North Carolina law required that absentee ballots be available beginning October 7 for these elections. One-stop early voting begins this Thursday, October 20.

In the municipal election in Charlotte, for example, approximately 1150 absentee ballots have already been mailed to absentee voters. 54,000 punch card ballots have been printed for this purpose and for use on November 8 by voters whose eligibility to vote might be challenged or who need to vote by provisional ballots. Those ballots, of course, do not contain the names of any Libertarian candidates for Charlotte City Council or a Libertarian candidate for Mayor of Charlotte. Voting machine programming started on October 12 and the 100 voting machines to be used for early voting in the 13 early voting locations that will open on October 20 have already been programmed. In addition, programming of the 1100 voting machines to be used for voting in the precincts on November 8 has already begun. Moreover, the Mecklenburg County Board of Elections has already ordered 30,000 sample ballots to be used to educate voters as to the layout of the ballots to be used in early voting and voting in the precincts on November 8. Again, these sample ballots do not contain the names of any Libertarian candidates.

Similarly, in Forsyth County absentee ballots have already been mailed to voters in the Winston-Salem municipal elections. Many of the absentee ballots already mailed were mailed to members of the armed services serving overseas. All programming of voting equipment and printing of ballots for use on November 8 and in one-stop early voting has already been completed. As in Mecklenburg County, the ballots already printed do not contain the names of any Libertarian candidates, although one plaintiff, Richard Norman, successfully petitioned to appear on the ballot as an unaffiliated candidate.

Thus, plaintiffs seek a court order to change the *status quo* rather than to preserve it.

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We hope that this information is helpful to you and gives you a more complete understanding of the status of this matter.

Very truly yours,

Alexander McC. Peters
Special Deputy Attorney General

AMP/hs

cc: Michael Crowell (by e-mail to mcrowell@tharringtonsmith.com)
Mark Davis (by e-mail to MDavis@wcsr.com)
Sallie Kearns (by e-mail to Sallie.B.Kearns@NCCourts.org)