

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

**GREEN PARTY OF GEORGIA,  
CONSTITUTION PARTY OF GEORGIA,**  
Plaintiffs

v.

C.A NO. \_\_\_\_\_

**STATE OF GEORGIA,  
and BRIAN KEMP,  
GEORGIA SECRETARY OF STATE;**

Defendants

**COMPLAINT**  
**JURISDICTION & VENUE**

1. This is an action for legal and equitable relief pursuant to 42 U.S.C. §1983 for violation of Plaintiffs rights under the First and Fourteenth Amendments to the United States Constitution and for violation of the “Elections” Clause of Article I, Section 4, of the United States Constitution.

2. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and §1367.

**PARTIES**

3. The Green Party of Georgia is a political organization or “body” registered under OCGA 21-2-110 and 21-2-113 in Georgia desiring to be a qualified party for the purposes of having its candidate put on the 2012 Presidential ballot in Georgia; the party meets all the statutory requirements to place its presidential candidate on the ballot except for the petition requirements of OCGA 21-2-170.

4. The Constitution Party of Georgia is a political organization or “body”

registered under OCGA 21-2-110 and 21-2-113 in Georgia desiring to be a qualified party for the purposes of having its candidate put on the 2012 Presidential ballot in Georgia, as approves at its annual convention on or about May 7, 2012; the party meets all the statutory requirements to place its presidential candidate on the ballot except for the petition requirements of OCGA 21-2-170.

5. Defendant Brian Kemp is the Secretary of Stater of Georgia and is the supervisor and director of all election matters in Georgia.

6. The State of Georgia is responsible for the statutory scheme in question.

### **ELECTION STATUTES IN QUESTION**

7. OCGA 21-2-170 recognizes each Plaintiff as a political body rather than a political party and provides, in relevant part,:

(b) A nomination petition of a candidate seeking an office which is voted upon statewide shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected.

8. OCGA 21-2-113 provides that each Plaintiff is a political body, not a political party under OCGA 21-2-110:

Any political body which is duly registered as provided for in Code Section 21-2-110 is qualified to nominate candidates for state-wide public office by convention if:

(1) The political body files with the Secretary of State a petition signed by voters equal in number to 1 percent of the registered voters who were

registered and eligible to vote in the preceding general election; or

(2) At the preceding general election, the political body nominated a candidate for state-wide office and such candidate received a number of votes equal to 1 percent of the total number of registered voters who were registered and eligible to vote in such general election.

9. To be placed on the statewide ballot for President, a political body candidate must obtain signatures from 1 percent of registered voters eligible to vote in last election.

10. Since 2000 no minor party in Georgia has qualified for statewide ballot access by petition since the current law was passed in 1986, that year Pat Buchanan in 2000 qualified as an independent.

11. Both the Green Party and the Constitution party enjoy a modicum support nationally and in the State of Georgia.

12. With respect to federal offices, only the Georgia legislature has exerted its authority to establish the requirements for minor parties to be able to nominate candidates.

### **CONSTITUTIONAL PROVISIONS**

13. Article I, Section 4, of the United States Constitution, commonly referred to as the “Elections Clause,” provides, in relevant part:

The Times, Places, and Manner of holding Elections for Senators and representatives, shall be prescribed in each State by the Legislature thereof...

14. Article 4, Section 2, of the United States Constitution [provides:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

15. The First Amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble, and to petition the government for a redress of grievances.

16. The Fourteenth Amendment provides, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **COUNT 1**

17. OCGA 21-2-170 establishes that an independent or political body candidate must obtain signatures from 1 percent of registered voters eligible to vote in the last election in order to get on the ballot.

18. These signature requirements are in excess of those that satisfy constitutional standards and unduly infringe upon the constitutional rights of the Plaintiffs to participate in the electoral process.

19. The State of Georgia makes it impossible for political bodies to alternatively qualify under OCGA 21-2-180 (2) not only setting the bar unconstitutionally high, because the State does not tally the write-in votes accurately, leaving it up to the counties who usually do not tally the write-in votes.

Wherefore, Plaintiffs ask that the Court enter judgment:

A. Declaring that Georgia's statutory scheme unconstitutionally infringes upon the Plaintiffs right to ballot access and to participate in the electoral process;

B. Declaring that the Georgia statutory requirements impose an unjustifiable burden on minor party presidential candidates;

C. Declaring that Georgia has no compelling interest in imposing the statutory restrictions upon minor party presidential candidates; and that such burden on minor party candidates outweighs any interest the State may have in requiring minor party candidates to amass signatures of 1 percent of the registered voters;

D. Declaring that Georgia's statutory scheme violates the Equal Protection Clause;

E. Enjoining this statutory scheme;

F. Ordering that the Plaintiffs be placed on the 2012 Presidential Ballot in Georgia;

G. Granting Plaintiffs such other and further relief as to which they may be entitled and which the Court may deem equitable and just.

H. Awarding attorney fees and costs.

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