

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

**CONSTITUTION PARTY OF KANSAS, CURT
ENGELBRECHT, and MARK PICKENS,**

Plaintiffs – Appellants,

Versus

**KRIS KOBACH, in his official
capacity as Secretary of State,**

Defendant – Appellee.

*On Appeal from the Final Order of the U.S. District
Court for the District of Kansas, District Judge Sam A.
Crow, presiding, Case No. 5:10-cv-0403-SAG-KGS*

**OPENING BRIEF
NO ARGUMENT REQUESTED**

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STATEMENT OF RELATED CASES

There are no related cases.

JURISDICTIONAL STATEMENT

The Federal District Court for the District of Kansas had subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 2201. The issues before the district court were federal questions under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution. Relevant facts relating to establishing jurisdiction are that the Complaint alleged that citizens of Kansas, when registering to vote, were prohibited from registering with a political party unless that political party was an official political party as defined by Kansas statutes, and that this violated the equal protection clause of the United States Constitution when the “unofficial” political party had a significant modicum of statewide support.

The District Court entered an order granting a motion for summary judgment on April 27, 2011 dismissing the case with prejudice against the Plaintiffs-Appellants. (R. 30, Appellants’ Appendix, p. 11.)¹ Judgment was filed the same day. (R. 31, Appellants’ Appendix, p. 28.) Plaintiffs-Appellants timely filed the Notice of Appeal on May 26, 2011. (R. 34, Appellants’ Appendix, p. 29.) The United States Court of Appeals has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and Fed. R. App. P. 4(a).

¹ Citations to the Appellants’ Appendix is first to the record citation, and then to the appendix and page number. An example of the form used in this paper is “(R. XXX, Appellants’ Appendix, p. XXX).”

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the State of Kansas' statutes prohibiting a citizen from registering to vote as a member of a political party that has a sufficient modicum of state-wide support, but that has not yet satisfied the statute's minimum requirements to be considered an "official" political party violates the right to equal protection of the laws.

This issue was raised in the Plaintiffs-Appellants' Motion for Summary Judgment and the Plaintiffs-Appellants' Opposition to the Defendant's Motion for Summary Judgment. (R. 23, 24, 25.) The district court disposed of this issue in its final order. (R. 30, Appellants' Appendix, p. 11.)

STATEMENT OF THE CASE

Nature of the Case

This case is an election law case challenging Kansas' statute limiting state citizens from registering to vote as a member of a political party that does not satisfy the statutory requirements for a separate place on partisan election ballots. The case was filed as a civil rights action under 42 U.S.C. § 1983 based primarily on the equal protection clause of the United States Constitution.

Course of the Proceedings and the Disposition Below

The original complaint was filed on April 30, 2010. (R. 1.) In addition to Count I, which alleged a violation of the equal protection clause as described in the

previous paragraph, the Complaint also alleged a constitutional violation based on the statutory prohibition barring non-residents of Kansas from circulating petitions for a candidate's ballot access. *Id.* Count II was settled and the district court entered judgment on August 13, 2010. (R. 15.)

Count I – the voter registration and party affiliation count – went to summary judgment. A joint statement of facts was filed by the parties on September 30, 2010. (R. 20; Appellants' Appendix, p. 6.) Both parties filed their own motions for summary judgment, and after full briefing, the district court decided the cross-motions in favor of the Defendant. (R. 30; Appellants' Appendix, p. 11.) Judgment was issued on April 27, 2011, which was the same day as the final order. (R. 31; Appellants' Appendix, p. 28.) A timely Notice of Appeal was filed on May 26, 2011. (R. 34; Appellants' Appendix, p. 29.)

STATEMENT OF FACTS

The Plaintiffs-Appellants are (1) the Constitution Party of Kansas ("Constitution Party"), (2) Curt Engelbrecht ("Engelbrecht"), a resident and citizen of Kansas and the treasurer of the Constitution Party, and (3) Mark Pickens ("Pickens"), a resident of Arizona. (R. 20, ¶¶ 1, 4-7; Appellants' Appendix, p. 6; R. 1, ¶ 5.)² The Constitution Party is an active political party in the state of

² The parties agreed on a Joint Statement of Facts upon which both parties relied for their cross-motions for summary judgment. (R. 20; Appellants' Appendix, p. 6.) Where possible, factual citations will be to the Joint Statement of Facts.

Kansas, but is not ballot qualified. (R. 20, ¶ 2; Appellants' Appendix, p. 6.) The state of Kansas officially considers the Constitution Party a political action committee. *Id.*, ¶ 3. The Defendant-Appellee is Kris Kobach ("Kobach"),³ who was sued in his official capacity as Secretary of State. *Id.*, ¶¶ 8 and 10. Kobach "oversees the [state of Kansas'] electoral process and enforces the state laws at issue." *Id.*, ¶ 9.

A political party gains official recognition by the State of Kansas by filing petitions signed by qualified electors. *Id.*, ¶ 11. The number of signatures required for recognition is 2% of the total vote cast for the office of governor in the last general election. *Id.*, ¶ 12. In 2006, the last gubernatorial election in Kansas prior to the filing of the Complaint, a total of 849,700 votes were cast; therefore, approximately 16,994 signatures are required for a political party to gain official recognition by the State of Kansas.⁴ *Id.*, ¶ 13.

On the voter registration card, a voter, regardless of political affiliation, may only select an affiliation with an officially state-recognized political party or must

³ Kris Kobach took office after this litigation began. The prior office-holder was Chris Biggs and was only sued in his official capacity. Chris Biggs was not sued personally. Therefore, for consistency's sake, all references to the Defendant-Appellee will be to Kobach no matter if Chris Biggs actually held office at the time of the action at issue.

⁴ In 2010, there were 838,590 votes cast in the gubernatorial election meaning approximately 16,771 signatures are required for a political party to gain official recognition. *See*

www.kssos.org/elections/10elec/2010_General_Election_Results.pdf.

select “Not affiliated with a party” on the voter registration form when that voter registers to vote. *Id.*, ¶ 15. At the time the Complaint was filed, there were four officially-recognized party affiliations in Kansas: Democratic, Republican, Libertarian, and Reform.⁵ *Id.*, ¶ 16.

A recognized political party loses recognition if its nominee for statewide office fails to receive 1% of the total vote or the party fails to nominate a candidate for a least one statewide office. *Id.*, ¶ 17. Any registered voter affiliated with a political party that loses official recognition will have his affiliation changed to “unaffiliated.” *Id.*, ¶ 18.

Kobach tracks registered voters by a computerized system and only classifies registered voters as being affiliated with a recognized party or as unaffiliated. *Id.*, ¶ 19. Kobach makes available party affiliation lists and voter registration records to the chairpersons of each recognized party and the public. *Id.*, ¶ 20. Party affiliation lists and voter registration records can be used for political campaign and election purposes. *Id.*, ¶ 21.

The Constitution Party and Engelbrecht wish to use party affiliation lists or voter registration records to contact and associate with members and supporters for political campaign or election purposes but cannot because Kobach does not record and track voter affiliation with the Constitution Party. *Id.*, ¶¶ 22 and 23.

⁵ The American Elect Party is a new party that qualified for the ballot in July, 2011.

Furthermore, Engelbrecht, in his capacity as a registered voter, cannot express his affiliation with the Constitution Party on the voter registration application or have his affiliation tracked by Kobach. *Id.*, ¶ 24.

Constitution Party supporters have run under other party tickets because the Constitution Party is not officially recognized. *Id.*, ¶ 25. For example, Susan Ducey is a Constitution Party supporter who is currently a candidate for the Kansas Reform Party because the Constitution Party is not a recognized party in Kansas. Susan Ducey ran for Congress in Kansas' Fourth Congressional District in 2000. *Id.*, ¶ 26.

SUMMARY OF ARGUMENT

The citizens of Kansas have the right to register to vote and declare their affiliation with any political party (or organization if using the statutory definition of “party”) that has shown a sufficient modicum of support even if that level of support is insufficient to satisfy the state’s requirements for ballot-recognition for political parties. The Tenth Circuit in *Baer v. Meyer* set forth several factors to consider when deciding when a state must provide an option for citizens to register as members or as affiliated with an “unrecognized” party. *Baer v. Meyer*, 728 F.2d 471 (10th Cir. 1984). These factors include whether “a political organization already exists in the State under its name, has recognized officials, and has previously placed a candidate on the ballot by petition.” *Id.* at 475. The

Constitution Party satisfies these factors and their associational interests are significantly burdened.

Furthermore, in light of the important constitutional rights to associate for political purposes, the prohibition from tracking Constitution Party affiliations cannot be justified by the Kansas' interest in controlling factionalism, avoiding voter confusion and reducing the administrative burden of regulating elections, especially when voter registrations are computerized.

The district court improperly substituted the *Baer* factors with Kansas' statutory definition of an official political party. However, *Baer* is the controlling case law that sets a lower threshold for a political party or organization to appear as an option on a voter registration card. The *Baer* factors recognize a party's need to associate for political purposes exists while the political organization pursues ballot access. That is one of the reasons *Baer* sets a lower barrier for political parties to be tracked in voter registration lists than necessary to appear on an actual election ballot. The other reason is because of the miniscule cost associated with tracking voter affiliations. Therefore, the district court erred in determining that the Constitution Party was not entitled to be an option on Kansas' voter registration applications, and that the Constitution Party's members, like Engelbrecht, were not entitled to register as affiliated with the Constitution Party.

ARGUMENT

“State statutes that preclude members of minority parties from indicating their party affiliation on the registration lists foreclose minority parties from using the lists to discover and target other members of their parties.” *Rainbow Coalition of Oklahoma v. Oklahoma St. Election Bd.*, 844 F.2d 740, 747 (10th Cir. 1988).

The district court agreed that this is a “legitimate and important interest[] which [is] burdened by the State.” (R. 30, p. 9; Appellants’ Appendix, p. 19.)

Unfortunately, the district court erred by holding that the facts did not warrant the Constitution Party being an option for party affiliation when Kansas citizens register to vote primarily by over-valuing the state’s interests against the significant burdens on the Constitution Party’s and its members’ associational and voting rights. The district court also erred in its analysis of the controlling case law that governs the issue of whether a political party should probably have a place on the ballot.

I. BARRING A CITIZEN FROM REGISTERING TO VOTE WITH AN ESTABLISHED NATIONAL POLITICAL PARTY VIOLATES THE EQUAL PROTECTION CLAUSES OF THE U.S. CONSTITUTION BECAUSE IT FAVORS WELL-ESTABLISHED PARTIES OVER PARTIES WISHING TO ENTER THE POLITICAL ARENA AND COMPETE WITH THOSE ESTABLISHED PARTIES.

The Constitution Party is at a significant disadvantage compared to established parties, like the Republican and Democratic parties, because unlike their competitors in the marketplace of ideas, the state does not provide the

Constitution Party with basic contact information for the state citizens that would like to declare their affiliation or preference for the Constitution Party when they register to vote. As noted by a federal Oklahoma district court: “success in modern political organization and electoral campaigns depends on a group’s ability to seek particularized support by targeting an appropriate audience and focusing its efforts.” *Atherton v. Ward*, 22 F.Supp.2d 1265, 1268 (W.D. Okla. 1998). Without much effort, the State of Kansas could keep track of Constitution Party voter registrations and treat all parties equally in Kansas. Furthermore, since the Supreme Court requires an election regulation to be reviewed by weighing the interests the state intends to protect by the regulation against the constitutional interests burdened by the regulation, this issue should weigh heavily in the Plaintiffs-Appellants’ favor. The computerized database system makes adding a Constitution Party option easy and extremely cheap when compared to the important constitutional interests burden. *See Atherton*, 22 F.Supp.2d 1265.

Standard of Review

“We review the grant of summary judgment de novo applying the same standard as the district court embodied in Rule 56(c). . . . In applying this standard, we view the factual record and draw all reasonable inferences there from most favorably to the nonmovant.” *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (internal citations omitted).

A. *Baer v. Meyer* and *Rainbow Coalition of Oklahoma v. Oklahoma St. Election Bd.* Are Controlling in this District and Set Forth Factors That Are Considered When Considering Whether a Citizen Has the Right to Register Under a Particular Party Name.

In the Tenth Circuit, two cases are controlling. Both govern directly the issue on appeal: whether a state citizen has the right to register to vote and declare a political party that is not an officially recognized party pursuant to state statutes for ballot access purposes. These cases hold that parties like the Constitution Party have a sufficient modicum of support such that Kansas' voters' affiliations with the party be tracked.

1. The Kansas Statutory Schema.

To register to vote, a citizen of Kansas must fill out a Kansas Voter Registration Application. (R. 20, ¶ 15; Appellants' Appendix, p. 7.) In addition to providing the citizen's name and address, the citizen must select a party affiliation. *Id.* The choices for party affiliation are the five currently recognized political parties in Kansas – Democratic, Republican, Libertarian, Reform, and American Elect – or the citizen may select to not be affiliated with a party. *Id.*, ¶¶ 15-16. If the citizen fails to select one of the five political parties, the citizen will be listed as not affiliated with any party. If the citizen is affiliated with a political party that is not recognized by the State of Kansas, there is no opportunity for the citizen to state that affiliation. There is no "Other" box where the citizen can fill in the name of the party with which the citizen wishes to be affiliated. *Id.*

The Secretary of State of Kansas maintains a computerized record of voter registrations. (R. 20, ¶ 19; Appellants' Appendix, p. 8.) The computerized record tracks the name, address, and party affiliation of the registered voters along with other information. The computerized record of registered voters is available to chairpersons political parties and the public, and can be used for political campaign and election purposes. *See* Kan. Stat. §§ 25-2320, 25-2320a, 25-3302 (2008) and Doc. 20, ¶¶ 20-21; Appellants' Appendix, p. 8.

To be recognized as a political party in Kansas, a new party must first submit petitions signed by qualified electors. (Doc. 20, ¶ 11; Appellants' Appendix, p. 7.) The number of signatures required for recognition is 2% of the total vote cast for the office of governor in the last general election. *See* Kan. Stat. § 25-302a and Doc. 20, ¶ 12; Appellants' Appendix, p. 7. To maintain recognition as a political party, and continue to have the party appear as an option on the voter registration application, the party must nominate a candidate for at least one statewide office and its nominee must receive at least 1% of the total vote. *See* Kan. Stat. § 25-302b and Doc. 20, ¶ 17; Appellants' Appendix, p. 8.

If a party loses recognition, it will be removed from the voter registration application as an option for affiliation. The computerized record of registered voters will be updated changing the affiliation of voters affiliated with the party to

the status of not being affiliated with any party. *See* Kan. Stat. § 25-302c (2008) and Doc. 20, ¶ 18; Appellants' Appendix, p. 8.

The current laws prohibiting the Secretary of State from giving citizens the option of being affiliated with unrecognized parties and ending the tracking of affiliations with a party that loses recognition places an impermissible burden on Plaintiffs' First and Fourteenth Amendment rights of freedom of speech and freedom of association. Providing information about registered voters to recognized parties but not providing similar information to unrecognized parties is discriminatory. Further, the effort required from the State of Kansas to remove these burdens on First and Fourteenth Amendment rights by allowing citizens to declare affiliation with unrecognized parties and tracking these affiliations with the computerized record of voter registrations is miniscule. Additionally, the Constitution Party has shown sufficient political activity, organization, and support to allow registered voters in Kansas to be listed as affiliated with the Constitution Party. For these reasons, this schema of Kansas statutes is unconstitutional.

2. *Not Allowing Affiliations With Unrecognized Parties and Not Tracing Affiliations With Unrecognized Parties Burdens First and Fourteenth Amendment Rights and is Discriminatory.*

A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and – of particular importance – against those voters whose political preferences lie outside the existing political parties. By limiting the opportunities of independent-minded voters to

associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas.

Anderson v. Celebrezze, 460 U.S. 780, 793-94 (1983) (citation omitted).

The failure to track affiliation with unrecognized parties places impermissible burdens on the unrecognized parties. This Circuit has made this conclusion. In *Baer*, this Court reviewed Colorado statutes strikingly similar to the contested Kansas statutes. Under the Colorado statutes a person not affiliated with the Democratic or Republican parties was registered as unaffiliated and this was reflected in the computerized voter registration records made available to political parties and the public. The Court found these actions – identical to the current actions by the State of Kansas – burdened “the opportunity of the citizen and his party to promote their minority interests.” *Baer*, 728 F.2d at 475. The Second Circuit also reviewed statutes similar to the contested Kansas statutes – citizens affiliated with unrecognized parties were listed as non-affiliated – and agreed with the Tenth Circuit that the statutes placed severe burdens on associational rights. *Green Party of New York State v. New York State Bd. of Elections*, 389 F.3d 411, 420 (2nd Cir. 2004) (affirming an appeal at the preliminary injunction stage). In addition to the burdens on the right of free speech and association, the failure to track affiliation with unrecognized parties also discriminates against the unrecognized parties.

The computerized voter registration record maintained by the Defendant includes names and contact information in addition to party affiliation. (Doc. 20, ¶ 19; Appellants' Appendix, p. 8.) The voter registration records are available to recognized parties and the public. (Doc. 20, ¶ 20; Appellants' Appendix, p. 8.) The record is "invaluable in organizing campaigns, enlisting party workers and raising funds." *Baer v. Meyer*, 577 F.Supp. 838, 843 (D. Col. 1984) *aff'd*. 728 F.2d 471 (1984). Of course, the record is only invaluable to the parties which have their affiliations tracked. The record is virtually useless to unrecognized parties which are unable to use the list to locate registered voters affiliated with their parties. By only tracking affiliation with recognized parties, the State of Kansas is subsidizing a substantial advantage for recognized parties and discriminating against unrecognized parties. *See Green Party*, 389 F.3d at 417 (holding that a statutory scheme in New York similar to the one in Kansas was "unreasonably discriminated against minor parties.")

**3. *The Burden on the State to Track Affiliation With
Unrecognized Parties is Miniscule or Even Nil.***

The failure to track affiliation with unrecognized parties places severe burdens on the constitutional rights of the Constitution Party and Engelbrecht and discriminates against the Plaintiffs-Appellants. The harm caused to the Plaintiffs-Appellants is substantial, especially viewed in light of the minimal effort the State of Kansas must expend to remove the burdens.

To track affiliation with unrecognized parties, the State merely has to add a box on the Kansas Voter Registration Application allowing the citizen to write in the name of an unrecognized party with which she wishes to be affiliated and replace the current “Unaffiliated” entry in the computerized voter registration record with the party name. The State of Kansas could also add an option for the Constitution Party on their voter registration applications. These are easy cheap solutions. In “light of this nominal effort, the refusal to permit such designation unnecessarily burdens the opportunity of the citizen and his party to promote their minority interests.” *Baer*, 728 F.2d at 475.

Courts reviewing similar statutes after the *Baer* decision have found that as the burden on the State to track affiliation has decreased, so too does any justification for not tracking party affiliation. In *Rainbow Coalition*, this Circuit reviewed Oklahoma statutes similar to the Colorado statutes reviewed in *Baer*. *Rainbow Coalition*, 844 F.2d 740. At the time of this decision (four years after the *Baer* decision in the 1980’s), only three counties in Oklahoma had computerized voter registration rolls. This Circuit found the burden on the State of Oklahoma to track affiliations with minor parties would be substantial and the challenged statutes were therefore not unconstitutional. Six years after *Baer*, the Eighth Circuit reviewed Iowa statutes similar to the Colorado statutes reviewed in *Baer* in *Iowa Socialist Party*. See *Iowa Socialist Party v. Nelson*, 990 F.2d 1175 (8th Cir.

1990). That Court found that the cost of requiring the State of Iowa to track affiliations with minor parties would be too substantial and therefore the statutes were not unconstitutional. In *Atherton v. Ward*, 22 F.Supp.2d 1265 (W.D. Okla. 1998), a sister district court returned to the statutes previously found constitutional in *Rainbow Coalition of Oklahoma*. In *Atherton*, fourteen years after the *Baer* decision, the court found that because of computerization of the Oklahoma's voter registration records tracking affiliation with minor parties would be an easy task and, as a result of this diminished burden, the statutes were now unconstitutional.

It is now twenty-seven years since the decision in *Baer* and the computational power available to the State of Kansas is orders of magnitude greater than that available to the State of Colorado at the time of the *Baer* decision. Indeed, they run a computerized system of records. (Doc. 20, ¶ 19; Appellants' Appendix, p. 8.) Also, this Court should take notice that the Americans Elect Party is now a ballot qualified party in Kansas, see Richard Winger, ed., *Americans Elect is Now Ballot-Qualified in Kansas*, Ballot Access News, July 5, 2011 (found at <http://www.ballot-access.org/2011/07/05/americans-elect-is-now-ballot-qualified-in-kansas/> last checked August 5, 2011), and only a month later, as of the date this paper is written, the voter registration application is already changed to accommodate the new party, see Kansas Voter Registration Application (found at <http://www.kssos.org/forms/Elections/voterregistration.pdf>, last checked August 5,

2011) (hereinafter the “Kansas Voter Registration Application”). Since the State of Kansas amended the form within a few weeks of a new official political party joining the ranks of official parties in Kansas, it cannot be too difficult to amend the application. Frankly, it is as easy as amending the puff file from which all the applications are printed. The effort required by the State of Kansas to track affiliations with unrecognized parties is miniscule, or perhaps even nil, and cannot be used as a justification to continue placing unconstitutional burdens on the Plaintiffs.

4. *Reading Handwriting is not a Substantial Burden on the State of Kansas, nor is Requiring the State of Kansas to Develop a System that Would Allow the Constitution Party to be an Option for a Citizen Registering to Vote.*

The district court’s conclusion that handwriting on voter registration forms is a substantial burden is erroneous and fails as a logical matter. (R. 30, p. 10; Appellants’ Appendix, p. 20.) How can interpreting handwriting be problematic when the form instructs applicants to “please print”? *See* Kansas Voter Registration Application. Handwriting interpretation is good enough to identify the voter on the voter rolls by requiring him to print his name, address, phone number, birth date, naturalization number if necessary, drivers’ license number, and residency establishment date. Because Kobach and his agents are already interpreting handwriting for every line but the yes or no options, there is no reason

that handwriting should be problematic for identifying a political party outside of the list of official parties.

Furthermore, it should be pointed out that the Constitution Party and Engelbrecht are not responsible to develop and suggest a constitutionally-conforming system for determining which organizations Kobach should keep track of on voter registration forms. In *Atherton*, the Oklahoma district court developed such a system. *Atherton*, 22 F.Supp.2d at 1269-70. The Plaintiffs-Appellants have not asked the Kansas district court to develop such a system (and in fact, the Plaintiffs-Appellants wonder whether the district court has the authority to affirmatively develop such a system rather than just declare the current system unconstitutional). Rather, the Plaintiffs-Appellants have only sought a judicial declaration that Kobach's failure to keep track of the Constitution Party affiliations violates the equal protection clause.

In the name of the state's "legitimate interest in avoiding voter confusion, deception, or other election process frustrations," the district court erroneously held that a "blank line **without limitations** on what could be written presents the possibility of voter confusion." (R. 30, p. 10; Appellants' Appendix, p. 20) (emphasis added). It would be for the State of Kansas through legislation or the promulgation of regulations, to develop a constitutional system. "[W]here a statute requires an amendment to pass constitutional muster, we cannot usurp the

legislature’s role and rewrite it.” *Legend Night Club v. Miller*, 637 F.3d 291, 301 (4th Cir. 2011). Therefore, the district court’s concern about limiting the number of potential organizations that the state must keep track of is misplaced because it is the State of Kansas’ responsibility to set those limits via statute or regulation. The district court’s role was only to decide whether, under the facts and circumstances set forth before it, the Constitution Party should be a party that Kobach keeps track of voter affiliations.

B. Substituting the *Baer* Factors With the Statutory Criteria Kansas Established for Official Political Party Status Constituted Reversible Error.

Finally, the district court erred by replacing the factors in *Baer* with the statutory criteria Kansas has for defining political parties. (R. 30, p. 16; Appellants’ Appendix, p. 26.) While it is true that “[n]either the United States Supreme Court nor the Tenth Circuit has given *specific criteria* for determining whether an organization has a modicum of support,” (R. 30, p. 13; Appellants’ Appendix, p. 23) (emphasis added), this did not give the district court license to fail to consider *the factors* set forth in *Baer* for determining whether an organization had a sufficient modicum of support.

In *Baer*, there were three factors considered: “a political organization already exists in the State under its name, has recognized officials, and has previously placed a candidate on the ballot by petition.” *Baer*, 728 F.2d at 475.

The standard used by the district court was the “political party” criteria. (R. 30, p. 17; Appellants’ Appendix, p. 27.) That criteria requires a party (1) obtain signatures equal to 2% of the latest gubernatorial or presidential election, or (2) poll 1% in a statewide election in the latest gubernatorial or presidential election. Kan. Stat. §§ 25-302a and 25-302b. The latter criteria is substantially more difficult to meet than the factors set forth in *Baer*, and consequently was error.

Ballot recognition and ballot access are not the primary concerns in this case. “Plaintiffs do not argue that Colorado election laws unconstitutionally impede their candidates’ actual access to the ballot.” *Baer*, 728 F.2d at 474. Rather, this case involves voter affiliation in the State’s voter registration database. Consequently, the district court’s review of several cases on page 12 of its Order is misplaced because those cases involve party or candidate restrictions to ballot access, not restrictions to the state’s voter registration database. (R. 30, p. 12; Appellants’ Appendix, p. 22.)

The district court attempts to justify a connection between these two distinct issues in the district court’s footnote on page 12: “It is foreseeable that if voter registration forms are changed by listing additional political parties, a corresponding change in the ballots will follow.” (Doc. 30, p. 12, n.2; Appellants’ Appendix, p. 22, n.2.) The statement is actually untrue because “a corresponding change in the ballots” would still only occur if the Constitution Party would meet

the statutory definition of “political party.”⁶ It is also curious that the district court would conclude that voters would be confused when the ballot would not change by adding the Constitution Party to the voter registration form.

Finally, the district court erroneously relies on *Iowa Socialist Party* as a basis for finding that the 2% petition requirement is an adequate regulatory hurdle for parties to overcome before they get ballot access. In *Iowa Socialist Party*, the state was able to show that a change would cost \$45,000 in 1990 dollars to change the voter registration forms to accommodate a party with only 63 statewide members. *Iowa Socialist Party*, 990 F.2d at 1176-77. This case is different in that there is virtually no cost to Kansas to amend the pdf form the State uses for voter registrations. Circulation can be done by email, and if there are local or county offices that have these forms available, it costs little or nothing to print off several of the pdf forms and set them out for the public.

Without any significant burdens on the state, it is time for this Court to hold that the *Baer* factors control whether a party’s membership or affiliation in voter registration databases should be tracked by the State whenever the State makes available to the public the voter lists with the party affiliation listed like Kansas

⁶ Footnote 2 could also be interpreted to mean that the State has an interest in avoiding a change in the ballot, but the Plaintiffs-Appellants assume that was not the intent of this footnote. Rather, the Plaintiffs-Appellants believe this footnote was solely inserted to connect a line of cases discussing ballot access with the very independent issue in this case, mainly access to the voter registration database.

does. The district court erred in failing to follow the reasoning in *Atherton*, *Rainbow Coalition*, and *Baer*.

CONCLUSION

For all of the foregoing reasons, the Judgment should be reversed and the case remanded with instructions to enter a Judgment in favor of the Plaintiffs-Appellants.

Dated at Milwaukee, Wisconsin, on this the 8th day of August, 2011.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF COMPLIANCE

The following is hereby certified by the undersigned below:

1. All fonts are Times, in 14-point type. (Footnotes are in 14-point type).
2. This brief contains 5,142 words, exclusive of the table of contents, table of authorities, this certificate of compliance, and the certificate of service. This word count was performed with the Macintosh “Microsoft Word X” word count tool.

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I hereby certify that with respect to the foregoing:

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on August 8, 2011.

I hereby certify that seven (7) copies of the Opening Brief and two (2) copies of the Appendix were served this day on the Tenth Circuit Court of Appeals by sending via Federal Express overnight delivery to the Clerk of Court.

Furthermore, one (1) copy of the Opening Brief and Appendix was served via Federal Express overnight delivery to the following addresses:

Ryan Kriegshauser, Deputy Secretary of State
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, Kansas 66612

Dated on August 9, 2011.

/s/ Daniel J. Treuden
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CONSTITUTION PARTY OF KANSAS,
CURT ENGELBRECHT, and MARK PICKENS,

Plaintiffs,

vs.

Case No. 10-4043-SAC

CRIS BIGGS, in his official capacity as
Secretary of State of Kansas,

Defendant.

MEMORANDUM AND ORDER

This case comes before the court on the Plaintiffs' and Defendant's cross-motions for summary judgment.

Summary Judgment Standard

On summary judgment, the initial burden is with the movant to point out the portions of the record which show that the movant is entitled to judgment as a matter of law. *Thomas v. Wichita Coca-Cola Bottling Co.*, 968 F.2d 1022, 1024 (10th Cir. 1992), *cert. denied*, 506 U.S. 1013 (1992); Fed.R.Civ.P. 56(c)(2).

In applying this standard, the court views the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the nonmoving party. *Adler v. WalMart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998). This legal standard remains the same here, where the court is ruling on cross-motions for summary judgment, since each party still

has the burden to establish the lack of a genuine issue of material fact and its entitlement to judgment as a matter of law. See *City of Shawnee, Kan. v. Argonaut Ins. Co.*, 546 F.Supp.2d 1163, 1172 (D.Kan. 2008). "Cross-motions for summary judgment are to be treated separately; the denial of one does not require the grant of another." *Buell Cabinet Co. v. Sudduth*, 608 F.2d 431, 433 (10th Cir. 1979). To the extent the cross-motions overlap, however, the court addresses the legal arguments together.

Facts

The parties stipulate to the relevant facts. The Kansas Constitution Party ("Constitution Party") is officially recognized by the state of Kansas as a political action committee but not as an officially recognized political party. The Constitution Party is a political affiliation of like-minded individuals who actively promote their political views and support chosen candidates for state and national elected offices in the state of Kansas.

Curt Engelbrecht ("Engelbrecht") is a member and treasurer of the Constitution Party and its political action committee. He is also the primary Kansas contact person for the national Constitution Party, a Kansas resident, and a registered Kansas voter. Plaintiffs sue the Kansas Secretary of State, Chris Biggs, in his official capacity ("the Secretary").

When a Kansas resident registers to vote, the State allows the voter to declare affiliation with any "recognized political party" or "registered political organization". KAN. STAT. ANN. § 25-3306 (2010). Regardless of political

affiliation, voters must either select an affiliation with a listed recognized political party or registered political organization, or select "not affiliated with a party" on the voter registration form. There are currently four recognized political parties in Kansas: Democratic, Republican, Libertarian, and Reform. If the voter does not declare affiliation with a recognized political party or registered political organization then the voter is listed as "unaffiliated" by default. KAN. STAT. ANN. § 25-2309(19).

The Secretary of State "may adopt rules and regulations prescribing the method of listing members of all registered political organizations in voter registration and affiliation." KAN. STAT. ANN. § 25-3307(b). The Secretary also has the duty to confer recognized political party status on parties that meet the statutory requirements. The Constitution Party has not met the statutory requirements for either a recognized political party or a registered political organization under KAN. STAT. ANN. § 25-3307(a). Accordingly, when a member of the Constitution Party registers to vote, he or she is reflected as "not affiliated with a party."

Kansas law requires that to become a recognized political party, the party must file "petitions signed by qualified electors equal in number to at least 2% of the total vote cast for all candidates for the office of governor in the state in the last preceding general election." KAN. STAT. ANN. § 25-302a. A recognized political party will lose its recognized status if the party's "nominee for any office for which the officer is elected from the state as a

whole fails to receive at least 1% of the total vote cast for any such office in this state at any general election,” or if the party “fails to nominate persons for at least one such office.” KAN. STAT. ANN. § 25-302b.

Kansas law also permits voters to declare affiliation with a registered political organization. There are three requirements for an organization to be qualified as a registered political organization. See KAN. STAT. ANN. § 25-3307(a). An organization must file a statement of organization with the Secretary of State, must file a certified List of officers with the Secretary of State, and though the organization is not required to hold recognized party status at the time of filing, it must have held recognized political party status under KAN. STAT. ANN. § 25-302a at some time in the past. *Id.*

The Secretary tracks voter registration information on a computerized system and provides a party affiliation list to each recognized political party. See KAN. STAT. ANN. § 25-3304(a). The list contains certain contact information for voters who selected that particular party on their voter registration form. *Id.*

Party affiliation lists and voter registration records may be used for political campaign and election purposes. See KAN. STAT. ANN. § 25-2320(a). The Constitution Party and Engelbrecht seek to use party affiliation lists to contact and associate with members and supporters for political campaign or election purposes, but cannot because the Secretary does not record voter affiliation with the Constitution Party. Engelbrecht, as a registered Kansas

voter, cannot express his affiliation with the Constitution Party on the voter registration application or have his party affiliation tracked by the Secretary.

Constitution Party supporters have run under other party tickets because the Constitution Party is not officially recognized in Kansas. For example, Susan Ducey, a Constitution Party supporter and a candidate for Congress in Kansas' Fourth Congressional District, ran as a candidate for the Kansas Reformed Party because the Constitution Party is not a recognized political party in Kansas.

Discussion

Plaintiffs seek declaratory relief that the Secretary's failure to track the party affiliation of voters who wish to affiliate with the Constitution Party, an unrecognized political party, violates the plaintiffs' First Amendment right to speech and right to associate, and their Fourteenth Amendment equal protection rights.

The formation of political parties and the right to vote implicates the First and Fourteenth Amendments' right to form an organization to facilitate political speech, and an individual's right to associate with that organization. *See Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973); *see also Green Party of the State of N.Y. v. Weiner*, 216 F.Supp.2d 176, 186 (S.D.N.Y. 2002). First Amendment freedom of speech and association claims usually involve a separate analysis from equal protection claims. However, where, as here, a challenged election law burdens minor political parties, these separate claims

tend to coalesce. "A burden that falls unequally on new or small political parties . . . impinges, by its very nature, on associational choices protected by the First Amendment." *Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983). *See also Green Party*, 216 F.Supp.2d at 189 (noting that "neat distinctions" between First Amendment and Equal Protection challenges to state election laws that burden the rights of minor parties are "difficult" and perhaps "irrelevant" because "the ultimate analysis" requires the state to pass both tests.) This same burden, placed specifically on minority political parties, necessarily raises an equal protection concern. *Green Party*, 216 F.Supp.2d at 188-189. Therefore, "[w]hether particular claims are characterized as equal protection claims with a First Amendment component or as First Amendment claims with an equal protection component does not alter the ultimate analysis required to resolve such claims." *Id.* at 189.

Plaintiffs argue for the use of strict scrutiny analysis.¹ But the Tenth Circuit has rejected the use of strict scrutiny review in cases related to elections. *Rainbow Coalition v. Oklahoma State Election Board*, 844 F.2d 740, 742-43 (10th Cir. 1988). *See also Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (using the standards set forth in *Anderson* and reaffirming that

¹The Supreme Court has not been consistent in articulating the test applied to cases challenging state regulations of the voting process. *See, e.g., Munro v. Socialist Workers Party*, 479 U.S. 189 (1986); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Illinois State Bd. Of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979).

"to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest ... would tie the hands of States seeking to assure that elections are operated equitably and efficiently.")

The Court finds that the correct test for this particular challenge is the balancing test set out in the Supreme Court's decision of *Anderson v. Celebrezze*. See *Rainbow Coalition*, 844 F.2d at 743; *Baer v. Meyer*, 728 F.2d 471, 474 (10th Cir. 1984); *Blomquist v. Thomson*, 739 F.2d 525, 527 (10th Cir. 1984). This test, which is essentially the same for each of plaintiffs' claims, weighs the severity of the burdens placed on the asserted rights by the challenged provisions, then evaluates the interests of the state in the challenged provisions.

[The court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justification for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests , it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Rainbow Coalition, 844 F.2d at 743 (quoting *Anderson*, 460 U.S. at 789).

Although there may be similarities between this test and intermediate scrutiny, the Court will use the Supreme Court's flexible balancing approach from *Anderson*, rather than using strict, intermediate, or rational-basis

scrutiny.

Accordingly, the court first considers the interests articulated by the plaintiffs. Plaintiffs argue that the state hinders the marketplace of ideas by compiling information about only the major political party members and is therefore subsidizing major political parties over minority parties. The court recognizes that our government is built upon the process of voting. Voting is the most precious right of an individual and the "life blood of representative government." *Baer*, 728 F.2d at 473; *also see Westberry v. Sanders*, 376 U.S. 1, 17 (1964). "By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas." *Anderson*, 640 U.S. at 794. It is important to create a marketplace of ideas which allows the expression of ideas that differ from those of the two main political parties.

Plaintiffs argue that by supplying recognized political parties with the invaluable resources of party affiliation lists, the Constitutional rights of unrecognized parties and their members are severely burdened. A political party's ability to communicate with all possible party members is a valuable resource in facilitating the party's organization of campaigns, enlisting party workers, and in fund raising efforts. *See Atherton v. Ward*, 22 F.Supp.2d 1265, 1268 (W.D. Okla. 1998). Recognized political parties receive a list of all voters who have identified themselves as part of that recognized political

party on their voter registration forms. Any member of the Constitution Party is listed as "unaffiliated" and therefore is not distinguishable from other "unaffiliated" but non-Constitution Party members. Accordingly, a list of contact information for all voters listed as "unaffiliated" is useless to unrecognized parties for the above-stated purposes. Plaintiffs thus articulate legitimate and important interests which are burdened by the State.

The court next considers the interests asserted by the state. Although an individual's voting rights are of utmost importance, the Secretary first notes its corresponding obligation to regulate the voting process, including voter registration. The law is well-settled that a state has the power to engage in "substantial regulation of elections ... if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). Thus some substantial regulation of elections is necessary to ensure that elections are fair, honest, and orderly. *Id.*, 415 U.S. at 730.

Second, the Secretary, as the facilitator of the election process, has the duty to avoid voter confusion, deception, and other possible frustrations of the democratic process. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 194 (1986). Adding party names of recognized and non-recognized political parties to the voter registration card may increase voter confusion. Plaintiffs suggest that the Secretary could easily add an "Other" box followed by a line on the voter registration forms, so that Constitution Party members

could write in "Constitution Party," but the Secretary counters that requiring election workers to decipher handwriting or abbreviations for political parties is problematic. Plaintiffs downplay the difficulty of interpreting handwriting and abbreviations by citing an Oklahoma District Court's confidence in the election board members that they would have relatively few problems and could create a method to overcome any difficulties. *See Atherton*, 22 F.Supp.2d at 1269. This court does not share the Oklahoma court's confidence.

The state has a legitimate interest in avoiding voter confusion, deception, or other election process frustrations without presenting empirical evidence that the contested measure in fact reduces those risks. *See Storer*, 415 U.S. at 736. The court finds that leaving a blank line without limitations on what could be written presents the possibility of voter confusion, therefore the State presents an understandable, though not insurmountable, concern for the clarity of voter registration.

Further, the addition of unrecognized parties or an "Other" line to the voter registration cards and tracking software imposes an administrative burden on the state. In *Rainbow Coalition*, minority parties challenged Oklahoma's voter registration law allowing voters to declare association with only the recognized political parties listed. 844 F.2d at 747. The Tenth Circuit found the administrative burden associated with changing voter registration cards and the increased work required with tracking more party information,

to be substantial because at the time only three Oklahoma counties had computerized voter registration systems. *Id.*

Ten years later, in another challenge to Oklahoma's voter registration system, an Oklahoma district court found the state's administrative burdens associated with changing the registration forms insignificant in light of the state's then updated computerized voter registration systems. *Atherton*, 22 F.Supp.2d at 1268. The court acknowledges that making any change in the Kansas voter registration card undoubtedly produces some administrative burdens on the state, in producing new cards, distributing them throughout the state, educating voters and election workers about them, and funding such changes. With Kansas' statewide computerized registration system, however, adding one more party to the forms may seem to be an insignificant burden. The separate burden, however, of interpreting handwritten notations and properly categorizing them can be substantial. Additionally, if this were done for the Constitution Party, it would likely have to be done for numerous other parties, as well.

Voter confusion and administrative burdens must be considered together with the state's third interest: controlling frivolous party registration of tiny fractional interests. See *Rainbow Coalition*, 844 F.2d at 747; *Baer*, 728 F.2d at 475. "It is settled beyond hope of contradiction that states have a legitimate interest in ensuring that a candidate makes a preliminary showing of a substantial measure of support as a prerequisite to

appearing on the ballot." *Barr v. Galvin*, 626 F.3d 99, 111 (1st Cir. 2010). See e.g., *Jenness v. Fortson*, 403 U.S. 431 (1971) (rejecting a challenge to Georgia's election statutes that required independent candidates and minor-party candidates, in order to be listed on the general election ballot, to submit petitions signed by at least 5% of the voters eligible to vote in the last election for the office in question); *American Party of Texas v. White*, 415 U.S. 767 (1974) (rejecting a First Amendment challenge to a 1% requirement, finding the State's interest in preserving the integrity of the electoral process and in regulating the number of candidates on the ballot to be compelling); *Anderson v. Celebrezze*, 460 U.S. at 788-789. This 'support' requirement is meant "to safeguard the integrity of elections by avoiding overloaded ballots and frivolous candidacies, which diminish victory margins, contribute to the cost of conducting elections, confuse and frustrate voters, increase the need for burdensome runoffs, and may ultimately discourage voter participation in the electoral process." *Libertarian Party of Maine v. Diamond*, 992 F.2d 365, 371 (1st Cir. 1993). Similarly, the state of Kansas has a legitimate interest in ensuring that a political group makes a preliminary showing of a substantial measure of support as a prerequisite to appearing on the voter registration forms.²

To protect this significant state interest in Kansas, the Secretary

²It is foreseeable that if voter registration forms are changed by listing additional political parties, a corresponding change in the ballots will follow.

requires a showing of a modicum of support from a political party, as stated in the Kansas statutes, before a party can be listed on the voter registration form. In this case, the state argues that if a political party cannot reach the very low statutory requirements for becoming a recognized political party in Kansas,³ then the party cannot show a modicum of support and represents a mere fractional interest. The Constitution Party argues it has shown a modicum of support by becoming an officially recognized political action committee, having a defined organization with officers and dues-paying members, being associated with the national Constitution Party which has fielded presidential candidates in five presidential elections, and by fielding Kansas Constitution Party supporters on the ballot in Kansas elections, although under other party tickets.

Neither the United States Supreme Court nor the Tenth Circuit has given specific criteria for determining whether an organization has a modicum of support. The plaintiffs contend that the Tenth Circuit in *Baer v. Meyer* held that the failure to track affiliation with unrecognized parties places impermissible burdens on the unrecognized parties. This is not completely accurate. The court in *Baer* did hold that the state of Colorado must allow voters to designate their support on registration forms and

³ See KAN. STAT. ANN. §§ 25-302a, 25-302b, 25-3307(a). Kansas requires at least signatures equal to 2% of the total number of votes in the last general election, while Oklahoma requires at least 5%.

provide voter contact information to the plaintiff parties - the Citizen Party and the Libertarian Party - despite the parties' inability to meet Colorado's statutory definition of a recognized political party. *Baer*, 728 F.2d at 476. But that holding was grounded in state law different than in Kansas, and the court carefully limited the decision to apply to only "political organizations," as defined by state law, which had demonstrated a modicum of political support. *Id.*

The court finds cases from Colorado, Oklahoma, and Iowa to be instructive. Colorado's definition of a modicum of political support is rooted in the Colorado state law defining a "political organization" as a group that "places upon the official general election ballot nominees for public office." COLO. REV. STAT. § 1-1-104(17) (1980). Both the Citizen Party and the Libertarian Party fulfilled this requirement and were recognized political organizations in Colorado. *See Baer*, 728 F.2d at 472, 476. Because the parties were able to fulfill the Colorado statutory definition of a political organization, the court determined they had a modicum of support and did not represent only a fractional interest in Colorado; therefore, they had the right to be listed on the voter registration cards and tracked by the state. *Id.* at 476. Here, of course, the Constitution Party is neither a registered political party nor a registered political organization.

Oklahoma uses the state's political party recognition requirements to determine a modicum of support. In Oklahoma, a political party shows it

does not represent only a fractional interest either by completing the process of becoming a recognized political party, or by having qualified as a recognized political party in the past.⁴ See *Atherton*, 22 F.Supp.2d at 1266. To receive recognized political party status, a political body was required to “file petitions with the Board bearing the signatures of registered voters equal to at least five percent (5%) of the total votes cast in the last General Election either for Governor or for electors for President and Vice President.” *Rainbow Coalition*, 844 F.2d at 741 (internal quotations omitted) (quoting Okla. Stat. tit. 26 § 1-108 (1981 & Supp. 1987)). When a party was unable to meet the 5% signature standard, the Tenth Circuit found the 5 % percent requirement was “undeniably constitutional,” 844 F.2d at 744, concluding, “the state has not unnecessarily infringed upon the associational rights of the voter and his party by restricting party designation to those parties that have shown the modicum of support necessary to receive recognized [party] status.” *Rainbow Coalition*, 844 F.2d at 747.

Iowa’s voter registration statutes similarly require the state to track only recognized political party status, *i.e.*, parties who have filed a petition with signatures at least equal to 2% of the total votes cast in the last

⁴ In Oklahoma, a recognized political party can lose its recognized status if “its nominee for Governor or its nominees for electors for President and Vice President fail to receive at least ten percent of the total votes cast in any general election.” *Rainbow Coalition*, 844 F.2d at 742. When a party loses recognized status, all voters registered under that party name are automatically changed to “Independent.” *Id.*

general election for governor or president. See *Iowa Socialist Party v. Nelson*, 909 F.2d 1175, 1176 (8th Cir. 1990). In *Nelson*, the Iowa Socialist Party fielded candidates for state governor and President,⁵ but could not satisfy the 2% requirement to become a recognized political party. *Id.* at 1177. Because of the party's failure to meet that requirement, the Eighth Circuit Court of Appeals held that the Iowa Socialist Party was a fractional interest that did not show a modicum of support. *Id.* at 1180-81.

Kansas, like Colorado, Oklahoma, and Iowa, properly relies on the state statutes to define when a political party or organization shows a modicum of support. The Kansas requirements for becoming a recognized political party or registered political organization closely resemble the Oklahoma and Iowa statutory requirements. The statutory standard is reasonably low in its percentage requirements; its requirements are capable of being objectively measured; its result can be determined with certainty; and its method is not easily susceptible to fraud or deception. The Constitution Party argues for a more privatized standard that is more easily manipulable, less objectively measured, and which could produce a political status that frequently.

The state of Kansas has a substantial and heavy burden to control

⁵ The Iowa Socialist Party's candidate for President only received 0.03% of all votes cast in Iowa. See *Nelson*, 909 F.2d at 1177.

fractionalism. The Court finds that the statutory requirements for recognition as a registered political party or organization in Kansas are unquestionably constitutional in requiring the stated modicum of support, and precluding fractional interests.

Unrecognized political parties representing minority views are vital to the continuation of a representative government, but this must be balanced with the State's important interests in controlling fractionalism, avoiding voter confusion, and reducing the burden of additional administrative costs. Kansas, by its statutes, has established a reasonable threshold for an organization to become a recognized political party or organization. When the court balances the interests of the parties here, it finds that the state has not unnecessarily infringed upon the speech, association or equal protection rights of the plaintiffs by restricting party affiliation on voter registration forms to those parties that are either recognized political parties or registered political organizations, as defined in Kansas statutes.

IT IS THEREFORE ORDERED that plaintiff's motion for summary judgment (Dk. 23) is denied and that defendant's motion for summary judgment (Dk. 21) is granted.

Dated this 27th day of April, 2011.

s/ Sam A. Crow
Sam A. Crow, U.S. District Senior Judge