

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

THE CONSTITUTION PARTY OF  
NEW MEXICO, the GREEN PARTY OF  
NEW MEXICO, and ESTEVAN TRUJILLO,

Plaintiffs,

v.

DIANNA J. DURAN, in her official capacity  
as New Mexico Secretary of State,

Defendant.

Case Number: 1:12-CV-00325

**VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to enforce their federal constitutional right to the ballot in New Mexico. Plaintiffs seek declaratory and injunctive relief against Defendant.

**PRELIMINARY STATEMENT**

2. Plaintiffs Constitution Party of New Mexico and the Green Party of New Mexico are minor political parties active in New Mexico that seek to place their presidential and vice presidential candidates on the New Mexico ballot in November, 2012. In order to do so, Plaintiffs must be qualified political parties under New Mexico laws. Plaintiff Trujillo is a New Mexico resident, is registered to vote in New Mexico, and is a member of Plaintiff Green Party of New Mexico.

3. Pursuant to the New Mexico Election Code, NMSA 1978 §§ 1-1-1 through 1-24-4, the Secretary of State of New Mexico accepts political party petitions signed by New Mexico citizens who declare by their signatures that they are voters in New Mexico and desire that

political party to be qualified to be on the ballot in New Mexico. *See* NMSA 1978 §1-7-2. The number of signatures must equal at least one half of one percent of the total votes cast for the office of governor at the preceding general election. *Id.* Pursuant to the Election Code, Defendant will not accept and count signatures on qualifying party petitions submitted after the first Tuesday in April preceding the November general election. *See id.* at §1-7-4.

4. The early April deadline and short time period in which to gather signatures limits plaintiffs' and other minor parties' abilities to qualify for a place on the ballot and can greatly increase the costs minor parties incur collecting the required number of signatures for their qualifying petitions.

5. The deadline set by the New Mexico Election Code unconstitutionally restricts third party presidential candidates' access to the ballot and violates the First and Fourteenth Amendments of the United States Constitution.

6. Plaintiffs seek: 1) a declaration that the provisions of the New Mexico Election Code setting the deadline for qualifying party petitions restricts ballot access and is unconstitutional; and 2) an injunction ordering Defendant not to enforce the April deadline and not to refuse qualifying party petitions until the first Tuesday in July, 2012 and the first Tuesday of July in each subsequent general election year.

### **PARTIES**

7. Plaintiff Constitution Party of New Mexico is an association of citizens of the United States formed for the purpose of nominating and electing candidates to public elective office in the United States; it is a minor political party in New Mexico.

8. Plaintiff Constitution Party was founded in 1992 under the name The U.S. Taxpayers Party. It has qualified to be on the New Mexico ballot in previous years. Its presidential

candidates were on the New Mexico ballot in the 1992 and 1996 general elections. Plaintiff changed its name to the Constitution Party in 1999. Constitution Party candidates were on the New Mexico ballot in 2000, 2004, and 2008. Its candidates were on the ballots of between 35 and 40 other states during those years. Constitution Party candidates have been elected to state office in Montana and county offices in Nevada. It is one of only three minor parties that placed its presidential nominee on ballots in states possessing a majority of the electoral vote in 2004 and 2008.

9. Plaintiff Green Party of New Mexico is an association of U.S. citizens formed for the purpose of nominating and electing candidates to public elective office in the United States; it is a minor political party in New Mexico. Its presidential candidates were on the New Mexico ballot in the 1996, 2000, 2004, and 2008 general elections. Its presidential candidates were on the ballots of 21 states in 1996, in 43 states in 2000, in 28 states in 2004, and in 32 states in 2008. Green Party candidates have been elected to state office in three states: California, Arkansas, and Maine.

10. Plaintiff Estevan Trujillo is a resident of Santa Fe, New Mexico, and is a member of the Green Party. Plaintiff, along with other members of his party, seeks to have a candidate for the Green Party on the ballot for the November 2012, general election in New Mexico.

11. Defendant Dianna J. Duran is the New Mexico Secretary of State and is responsible for administering elections in New Mexico. Secretary Duran accepts the qualifying petitions of minor parties and determines whether the minor parties are entitled to a place on the ballot. Secretary Duran is sued in her official capacity for declaratory judgment and equitable relief.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over Plaintiffs' claims in this action pursuant to 28 U.S.C. §§ 1343(3), 1343(4), 2201, and 2202, and 42 U.S.C. § 1983.

13. This Court is the proper venue for Plaintiffs' claims in this action pursuant to 28 U.S.C. § 1391(b).

### **ALLEGATIONS OF FACT**

14. To qualify as a political party in New Mexico, a minor political party must file its organizing and governing rules with Defendant. *See* NMSA 1978, § 1-7-2(A). Plaintiff parties have adopted such rules and intend to file them as required by New Mexico law.

15. At the same time, a minor political party must file petitions "containing the hand-printed names, signatures, addresses of registration and counties of residence of at least one-half of one percent of the total votes cast for the office of governor at the preceding general election." NMSA 1978 § 1-7-2(A). The signatories declare by their signatures "that they desire the party to be a qualified political party in New Mexico." *Id.*

16. Pursuant to NMSA 1978 § 1-7-4 (A), the deadline for filing the qualifying petitions is the first Tuesday in April of the year in which the general election takes place.

17. Before 1995, the deadline for filing qualifying petitions was the second Tuesday in July of the year in which the general election takes place. *See* 1995 N.M. Laws ch. 124, § 9.

18. In 1995, after the election of a Republican governor in an election in which the Green Party garnered a significant amount of votes, the New Mexico legislature changed the deadline to early April. *See id.*

19. Minor political parties do not nominate their candidates in June primary elections; pursuant to NMSA 1978 § 1-8-2, minor political parties select their candidates at nominating conventions, which can be held as late as July of the year of the general election.
20. To secure a spot in the 2012 general election ballot, Plaintiff political parties and their supporters need to gather valid signatures from 3014 registered voters, one half of one per cent of the 602,827 votes cast in the 2010 gubernatorial general election, by a deadline seven months before the general election, two months before the major political party primary election, and three months before minor political parties are required to hold nominating conventions.
21. Requiring minor political parties to gather signatures on their petitions so early, when the mind of the general public and the attention of the media is not focused on the general elections, is unduly burdensome.
22. It is more difficult to recruit volunteers to collect petition signatures in the sometimes adverse weather of the early months of the year; the early deadline is unduly burdensome for this reason too.
23. The Constitution Party has hired two nationally recognized experts, and the Green Party has hired consultants on petition signature gathering, to come to New Mexico to consult with local organizers and assist the parties in collecting the requisite number of signatures by the early deadline. The extra cost of flying in these paid consultants additionally and unduly burdens the Plaintiff parties, their resources, and their attempts to remain viable in this state.
24. Even with the assistance of the consultants, Plaintiff Constitution Party and Plaintiff Green Party may not be able to muster the required number of signatures on petitions by the early April deadline.

25. The early deadline is unduly burdensome and invidiously discriminatory and not designed to allow a reasonably diligent minor party organization to qualify for ballot access.
26. New Mexico's requirements for ballot access for new political parties unconstitutionally impinge on the associational rights of a minor politically party, its candidates, supporters and voters and freeze the status quo in favor of the two dominant political parties in the state.
27. Because ballot access this year is for a national election for president, New Mexico ballot access laws also impinge on the rights of voters nationally, including Plaintiffs political parties.
28. The limitations imposed on Plaintiffs by the foregoing election laws constitute an unreasonable, arbitrary, unjustified and invidiously discriminatory restriction on the right of the Plaintiffs to place candidates on the ballot and on members of their parties (such as Plaintiff Trujillo), and their supporters to vote for candidates of their choice, in violation of the First and Fourteenth Amendments to the Constitution of the United States.
29. The State of New Mexico lacks any compelling state interest in having its petition deadline so early for minor political parties seeking qualification.
30. Even though the numbers of voters for Constitution Party presidential candidates has increased in every election since 1992 in New Mexico, and even if the Constitution Party qualifies for the New Mexico ballot this year, it will have to go through the qualifying process again in four years, and will have to suffer the burdens of the early deadline again.
31. Similarly, even if the Green Party of New Mexico qualifies for the New Mexico ballot this year, it will have to go through the qualifying process again in four years, and will have to suffer the burdens of the early deadline again.
32. The Defendant and her employees have and will exercise their authority under color of State law in enforcing the aforesaid State election laws, as applied to Plaintiffs, for the 2012

general elections, and for subsequent general elections, in such a manner as to be in violation of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully requests the following:

1. Judgment declaring NMSA §§1-7-2(A) and 1-7-4 (A) as applied to Plaintiffs for the 2012 New Mexico general election, and all subsequent general elections in the State of New Mexico, unconstitutional, in that they violate the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983;
2. Injunction, both temporary and permanent, against Defendant New Mexico Secretary of State, and her agents and employees, prohibiting them from following and enforcing the provisions of NMSA §§1-7-2(A) and 1-7-4 (A) so as to serve to prevent the formation of new political parties in the State of New Mexico and the placing of presidential candidates of those parties on the general election ballot, and ordering Defendant, her agents, and employees to accept minor party qualifying petitions until July 3, 2012, and ordering them to accept qualifying petitions until the first Tuesday in July in subsequent general election years in the State of New Mexico.
3. Award Plaintiffs the reasonable costs and expenses of this action, including attorney's fees pursuant to the Civil Rights Attorney's Fees and Awards Act of 1976, 42 U.S.C. § 1988; and
4. Grant Plaintiffs such other and further relief as to which they may be entitled and which the Court may deem equitable and just.

Respectfully submitted,

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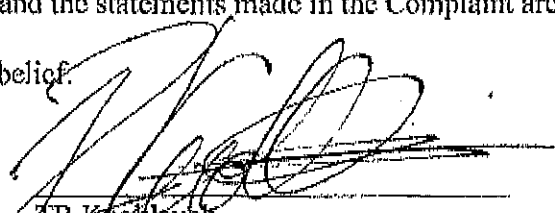
*Attorneys for Plaintiffs*




VERIFICATION

STATE OF NEW MEXICO     )  
  ) SS  
COUNTY OF BERNALILLO    )

TR Knoblauch, being first duly sworn under oath, states that he, the Secretary for the Green Party of New Mexico, who is a named Plaintiff herein, has read the foregoing Verified Complaint for Injunctive and Declaratory Relief, and the statements made in the Complaint are true and correct to the best of his knowledge and belief.

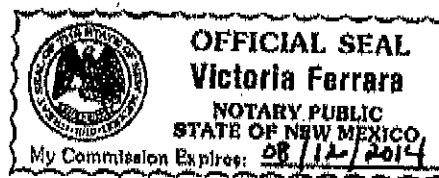
  
TR Knoblauch  
Secretary for Green Party of New Mexico

SUBSCRIBED AND SWORN TO before me this 29<sup>th</sup> day of March, 2012,  
by TR Knoblauch as Secretary for the Green Party of New Mexico.


  
Notary Public

My commission expires:

08/12/2014



[illegible]

  
James Clymer

**COMMONWEALTH OF PENNSYLVANIA**  
**NOTARIAL SEAL**  
 REBECCA S. WITMER, Notary Public  
 City of Lancaster, Lancaster County  
 My Commission Expires November 21, 2015

Rebecca Whitman  
Notary Public

11-21-2015