



James Gray of California (“Judge Gray”) as the Libertarian candidate for vice president. But, knowing that the Secretary was threatening to enforce a “sore loser law”, the Libertarian Party informed the Secretary at the same time that it had nominated Gary E. Johnson of Austin, Texas as its candidate in the event that the Secretary barred Gary Johnson of New Mexico from the ballot. Judge Gray remained the Libertarian candidate for the vice presidency.

3. The Secretary chose to bar Governor Johnson, Gary E. Johnson, and Judge Gray as candidates. The Secretary’s stated reason for excluding Governor Johnson is that he violated Michigan’s sore loser law. The Secretary’s stated reason for excluding Gary E. Johnson was that Michigan law did not permit a contingent candidate for president. The Secretary has provided no reason whatsoever for excluding Judge Gray from the ballot as the Libertarian candidate for vice president. Indeed, it was not until after Plaintiffs filed their original complaint that the Secretary made clear that she would exclude also Judge Gray. No reason exists to exclude Judge Gray.

4. The Libertarian Party is a qualified minor party under Michigan law entitled to have its nominee on the ballot. The Libertarian Party nominated Gary E. Johnson and Judge Gray as their candidates. Even if state law bans a different Gary Johnson from appearing on Michigan’s ballot, the Secretary may not deny Gary E. Johnson, those who wish to vote for him, and his party access to the ballot. And even if state law bans Governor Johnson and Gary E. Johnson, it does not exclude James Gray as a candidate for vice president. In blocking his candidacy, the Secretary has violated the Plaintiffs’ constitutional rights.

### **PARTIES**

5. The Plaintiffs in this case are a voter who is being denied the right to vote for the candidate of his choice, a presidential candidate denied ballot access for himself and his running mate, and the party that nominated those candidates.

6. William Gelineau is a citizen of Michigan residing in Kent County. He is a qualified voter and the Libertarian Party nominee for the United States House of Representatives in Michigan's third congressional district (West Michigan). He intends to vote for Gary E. Johnson and Judge Gray himself and, as a Libertarian Party candidate for office in West Michigan, intends to tell voters to support his candidacy as a part of a broader slate of candidates. William Gelineau is also one of the Libertarian Party's candidates as a delegate to the Electoral College.

7. Gary E. Johnson is a resident and citizen of the state of Texas. He is a long-time Libertarian and has been active in Libertarian politics. He was nominated as an alternative candidate for President of the United States by the Libertarian Party in the event Gary Johnson of New Mexico was excluded from the ballot in Michigan.

8. The Libertarian Party is an affiliation of voters formed for the purpose of influencing public policy by a variety of means, which include running candidates for public office and disseminating the party's views on policy issues through its candidates' campaigns. The party was founded in or about 1972 and is the Michigan affiliate of the national Libertarian Party. It is not a "major political party" within the meaning of Mich. Comp. Laws ("MCL") 168.16 but is a "qualified" party within the meaning of MCL 168.560a. It therefore nominates its candidates by means of caucuses or conventions, as provided in MCL 168.532 and 168.686a, not by means of direct primaries. It certifies its presidential and vice presidential candidates as provided in MCL 168.686. Its presidential and vice presidential candidates are entitled to appear on the general election ballot under state law.

9. Defendant Secretary is the Secretary of State of Michigan and has overall responsibility for the conduct of elections and for the supervision and administration of the election laws in Michigan. MCL 168.31.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper under 28 U.S.C. § 1331 because Plaintiffs' claims arise under the Constitution, laws, or treaties of the United States of America, including 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States constitution.

11. Venue is proper pursuant to 28 U.S.C. § 1391 because the events or omission giving rise to the claim occurred in the Western District of Michigan.

### **GENERAL ALLEGATIONS**

#### **A. The Nomination of Gary E. Johnson.**

12. Michigan law provides the procedures for formally nominating a candidate for the president and vice president:

In each presidential election year, the state central committee of each political party shall, not more than 1 business day after the state convention or the national convention of that party, whichever is later, forward to the secretary of state the typewritten or printed names of the candidates of that party for the offices of president of the United States and vice-president of the United States certified to by the chairperson and secretary of the committees. A party is not required to certify nominations made at an official primary election. The secretary of state shall forward a copy of a list received under this section to the board of election commissioners of each county, in care of the county clerk at the county seat. [MCL 168.686 (emphasis added)]

13. Governor Gary Johnson of New Mexico was a one-time candidate for the Republican nomination for president. Under Michigan's "sore loser law," a candidate who appears on the primary ballot for one party cannot appear on the ballot for a different party in the general election. *See* MCL 168.695. Governor Johnson attempted to withdraw from the Michigan Republican presidential primary but was three minutes late in filing his paperwork. As

such, although he had dropped out of the race and left the Republican Party, his name appeared on the ballot.

14. Although the Libertarian Party had serious doubts about the constitutionality of this sore loser law, it took steps to preserve the right of its candidates and voters to have a choice in November. On behalf of the Libertarian Party, William Gelineau contacted the Secretary's office concerning issues with the sore loser law. The Secretary's response was unhelpful.

15. With this in mind, on June 2, 2012, the Libertarian Party nominated Governor Gary Johnson of New Mexico for president and Judge Gray for vice president. But because the Secretary's office had indicated that it would refuse to place the name of Governor Johnson on the November ballot, the Libertarian Party nominated Gary E. Johnson alternatively as its presidential candidate should a legal challenge be unsuccessful and Governor Johnson be barred from the ballot. Judge Gray remained the only Libertarian candidate for vice president in all circumstances.

16. The Libertarian Party provided this in the form of a letter signed by the party's chair and secretary as required by MCL 168.686. Governor Gary Johnson and the Libertarian Party promptly filed suit for a declaratory ruling that the sore loser law was unenforceable.

17. On September 6, 2012, Judge Paul Borman dismissed the complaint filed by Governor Johnson and the Libertarian Party and permitted the Secretary to enforce the sore loser law, which was followed up by a written opinion on September 7. *See Libertarian Party of Michigan, et al. v. Secretary of State*, 2:12-cv-12782-PDB-MJH. Judge Borman did not address

whether Judge Gray would be excluded, and the Libertarian Party had no reason to think he would be.

**B. The Secretary Refuses to Place Gary E. Johnson on the ballot.**

18. Immediately following Judge Borman's dismissal of the Libertarian Party's complaint, William Gelineau, on behalf of the Libertarian Party, contacted the Secretary's office concerning placing Gary E. Johnson's name on the ballot. The next day, the Secretary's office formally refused to place Gary E. Johnson on the ballot. The Secretary did not address whether she would exclude Judge Gray.

19. Writing on the Secretary's behalf, Director of Elections Christopher M. Thomas stated that "no provision of the Michigan Election Law authorizes a political party to nominate a contingent or stand-in candidate." The Secretary has things in reverse. Michigan's election law provides that the Libertarian Party will provide the "names of the candidates" to the Secretary and that the Secretary *shall* forward on those names to be placed on the ballot. MCL 168.686. The law provides no discretion to the Secretary and does not permit the Secretary to refuse such a nomination. Nor does the statute prohibit, either implicitly or explicitly, a contingent or stand in candidate. Nor does the statute prohibit a vice presidential candidate of a qualified political party from appearing on the ballot merely because the presidential candidate is excluded.

20. Gary E. Johnson was nominated as the Libertarian Party's candidate for president on a contingent basis. That contingency happened. The Secretary knows that it happened because she caused the contingency. Gary E. Johnson is now the Libertarian Party's candidate for president. By keeping Gary E. Johnson off the ballot, the Secretary is depriving the Plaintiffs of their constitutional rights.

21. Judge Gray was nominated as the Libertarian Party's candidate for vice president. He is the only candidate of a qualified political party. A slate of electoral college delegates has been set for his candidacy, and excluding Judge Gray from the ballot deprives the Plaintiffs of their constitutional rights.

**C. The Deprivation of Constitutional Rights.**

22. The Secretary has refused to place a Libertarian Party candidate for president, for vice president, or for delegate to the Electoral College on the ballot. *See* [http://miboecfr.nictusa.com/election/candlist/12GEN/12GEN\\_CL.HTM](http://miboecfr.nictusa.com/election/candlist/12GEN/12GEN_CL.HTM) (Unofficial candidate Listing excluding Libertarian Party).

23. Michigan voters, such as William Gelineau, are being deprived of their right to cast their vote and to support the Libertarian Party candidate for president, Gary E. Johnson and/or for Judge Gray as the Libertarian candidate for vice president. Moreover, as a fellow Libertarian Party candidate, William Gelineau's speech and associational rights are being denied because he can not run with or speak out in support of a slate of fellow candidates. Gelineau is also a candidate for electoral college delegate and would, if elected, be entitled to cast a vote for Judge Gray as a candidate for vice president. The exclusion of Judge Gray from the ballot violates his rights.

24. Gary E. Johnson's rights, as a candidate, as the running-mate of Judge Gray, and on behalf of the voters who support him, are being deprived because he and his running mate are being denied access to the ballot.

25. The Libertarian Party's speech and associational rights, along with the rights of its members and supports, are also being denied because the party has been denied

access to the ballot and is left without a presidential candidate and/or vice presidential candidate to support.

26. These deprivations are worsened by the denial of due process and equal protection of the law. On prior occasions, Michigan has permitted substitution of an alternate candidate on a presidential ticket. For example, in 1972, Democrats certified Thomas Eagleton for vice president in July; he resigned and Sargent Shriver was selected by the Democrats, which Michigan's then Secretary of State accepted. The Libertarian Party, its candidates, and its voters are being treated differently, in violation of its constitutional rights. Furthermore, the Secretary has denied the Plaintiffs due process and equal protection by rejecting Gary E. Johnson's nomination out of hand, without any due process or legal basis, and for excluding Judge Gray from the ballot for purely vindictive reasons.

27. Michigan allows for straight ticket voting, under which a voter selects a single box to vote for all the nominees of that political party. This November's ballot will include an option to vote straight-ticket for the Libertarian Party, and over 10,000 voters are expected to select this option. Although Judge Gray is the Libertarian Party's nominee for vice president, and although the Secretary has never provided any basis to exclude Judge Gray from the ballot, the Secretary will not count straight ticket votes for the Libertarian Party as votes for Judge Gray. Even if Judge Gray is not elected to the vice presidency, the vote totals for Judge Gray, as reported and collected by the Secretary and local governments acting on her behalf, have additional consequences for the Libertarian Party in terms of future ballot access and campaign finance. In Michigan this fall, six political parties are qualified to place their candidate for vice president on the ballot. A straight ticket vote for the Republican, Democratic, U.S. Taxpayers, Green, or Natural Law Parties will be recorded as a vote for their nominee for vice



president. Only the votes for the Libertarian Party will not be counted for its vice presidential nominee.

**COUNT I**  
**VIOLATION OF PLAINTIFFS' CONSTITUTIONAL RIGHTS AS PROHIBITED BY**  
**42 U.S.C. § 1983 – EXCLUSION OF GARY E. JOHNSON**

28. Plaintiffs restate and reallege the allegations made above as if fully restated and realleged herein.

29. The Secretary is currently refusing to place Gary E. Johnson on the ballot as the Libertarian Party's candidate for president. In doing so, she is violating the rights of Plaintiffs under the First and Fourteenth Amendments as a candidate, political party, and voter.

30. The Secretary is acting under color of state law to deprive plaintiffs of voting, candidacy, and speech and associational rights secured by the First and Fourteenth Amendments.

31. This includes burdening and violating Plaintiffs' rights to have equal protection and due process of law, to vote for the candidates of their choice, to run for public office as a candidate, to speak and associate politically.

32. The impairment of these rights is not justified by any state interest.

33. Plaintiffs have no adequate remedy at law and are suffering irreparable harm.

**COUNT II**  
**VIOLATION OF PLAINTIFFS' CONSTITUTIONAL RIGHTS AS PROHIBITED BY**  
**42 U.S.C. § 1983 – EXCLUSION OF JUDGE GRAY**

34. Plaintiffs restate and reallege the allegations made above as if fully restated and realleged herein.

35. The Secretary is currently refusing to place Judge Gray on the ballot as the Libertarian Party's candidate for president or to count votes cast for the Libertarian Party on a

straight-ticket basis as a vote for Judge Gray. In doing so, she is violating the rights of Plaintiffs under the First and Fourteenth Amendments as a voter, a political party, and a candidate with a running mate.

36. The Secretary is acting under color of state law to deprive plaintiffs of voting, candidacy, and speech and associational rights secured by the First and Fourteenth Amendments.

37. This includes burdening and violating Plaintiffs' rights to have equal protection and due process of law, to vote for the candidates of their choice, to run for public office as a candidate, to speak and associate politically, and to have their votes counted.

38. The impairment of these rights is not justified by any state interest.

39. Plaintiffs have no adequate remedy at law and are suffering irreparable harm.

#### **PRAYER FOR RELIEF**

40. The Secretary is therefore liable to plaintiffs pursuant to 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs request the following relief:

- a. a declaration that the Secretary must place Gary E. Johnson and James P. Gray on the ballot as the Libertarian Party's candidate for president and vice president;
- b. a declaration that the Secretary must place James P. Gray on the ballot as the Libertarian Party's candidate for vice president, even if Gary E. Johnson is not placed on the ballot.
- c. a declaration that votes cast for the Libertarian Party on a straight-ticket basis be counted as votes for James P. Gray for vice president.
- d. a declaration that the Secretary is in violation of 42 U.S.C. § 1983;
- e. preliminary and permanent injunctions requiring the Secretary to place Gary E. Johnson and James P. Gray on the ballot as the Libertarian Party's

candidate for president and vice president; or requiring the Secretary to place James P. Gray on the ballot; or requiring the Secretary to count and report straight ticket votes for the Libertarian Party as votes for James P. Gray for vice president.

- f. reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988;
- g. such other and further relief as may be just and proper.

Respectfully submitted,

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