

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:12-CV-00192

NORTH CAROLINA
CONSTITUTION PARTY, and
AL PISANO, NORTH CAROLINA
GREEN PARTY, and
NICHOLAS TRIPLETT

Plaintiffs,

v.

GARY O. BARTLETT, as Executive
Director of the North Carolina Board of
Elections; and LARRY LEAKE,
ROBERT CORDLE, CHARLES WINFREE,
and RONALD G. PENNY, as Members of the
North Carolina Board of Elections,

Defendants.

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) **DEFENDANTS' REPLY BRIEF**
) **TO PLAINTIFFS' MEMORANDUM**
) **IN OPPOSITION TO DEFENDANTS'**
) **MOTION FOR SUMMARY**
) **JUDGMENT**
) **[F. R. Civ. P. 56 and L. Cv. R. 7.1(E)]**

Defendants, by and through undersigned counsel, respectfully submit this Reply Brief in response to the new arguments plaintiffs make in opposition to defendants' motion for summary judgment.

Plaintiffs' memorandum in opposition to summary judgment makes clear, as their previous pleadings and argument have not, that their real complaint is that North Carolina has not adopted an additional alternative for ballot access. Plaintiffs would like for North Carolina to provide a means for parties not otherwise recognized in this State to name candidates for President and Vice President to the ballot. But the challenge they have brought is to the constitutionality of N.C. Gen. Stat. § 163-96 because it has an effective deadline of May 17 for the submission of signatures for a new party to qualify for the ballot. They have not challenged the number of signatures required and have not explicitly contended the failure to include an

alternative means of achieving ballot access renders North Carolina's ballot access statutes unconstitutional.

Plaintiffs cannot show that the May 17 deadline, standing alone, has been an impediment to their ballot access in 2012 or that it will be in any future year. It is the number of signatures required, which they do not challenge, that is an impediment to them. They have been unable in 2012 to commit the effort or generate the support necessary to gather the requisite signatures on any timetable; thus if this action is viewed as an "as applied" challenge, it is manifest that the deadline applied to plaintiffs has not caused them any injury. Plaintiffs similarly cannot show that the May 17 deadline, standing alone, is facially unconstitutional. A reasonable deadline is a necessary part of ballot access statutes designed to assure that only those candidates and parties with a significant modicum of support are afforded access. Without any deadline, elections officials have no objective way for ascertaining who should be on the ballot.

The May 17 effective deadline is a date that is not an outlier among the states for statutes setting the criteria for new party ballot access.¹ It is after the date of the primary in North Carolina and before the date by which unaffiliated candidates must submit their petitions.

¹ Most of the discrepancies alleged by plaintiffs in defendants' chart entitled, "State Laws for New Party Ballot Access" (Doc. No. 36-2) are attributable to the fact that the deadlines shown on defendants' chart focus on comparing state deadlines for new political parties, because it is North Carolina's new party statute that plaintiffs are challenging, while plaintiffs use deadlines for new party petitions as well as petitions for ballot access for the presidential and vice-presidential candidates either with or without official recognition of the candidates' political parties. Thus, there is an "apples" to "oranges" aspect in comparing defendants' and plaintiffs' information. Defendants do acknowledge that plaintiffs are correct with respect to the following states: The chart fails to note a May preliminary injunction enjoining enforcement of a January 3, 2012 deadline by the United States District Court for the Central District of California, *California Justice Committee, et al. v. Bowen*, No. 2:12-CV-03956 (C.D. Cal. May 21, 2012); due to a counting error, the Missouri deadline of July 30 was shown as one week earlier; the Ohio entry did not specifically list a case pending on ballot access, *Libertarian Party of Ohio v. Husted*, No. 2:11-CV-722, 2011 U.S. Dist. LEXIS 100632 (S.D. Ohio Sept. 7, 2011), but did note legislation was pending to revise the deadline to 90 days before the primary; a change in Tennessee law, 2012 Tenn. Pub. Ch. 955, enacted May 10, 2012, in which the deadline was changed from April to August.

Plaintiffs oppose summary judgment so they can pursue discovery of how petitioners in other states have fared, and of Gary Bartlett, Executive Director of the State Board of Elections, presumably to ascertain whether elections officials could make a later date work. But even if plaintiffs were to develop evidence that North Carolina could have chosen alternative deadlines for submitting signatures for verification, this does not mean that the deadline it did choose is facially unconstitutional.

Plaintiffs cannot show that they have suffered any injury in 2012 that is fairly traceable to the May 17 deadline, nor can they show that on its face it will cause them any harm in the future. For these reasons, and those set forth in defendants' brief in support of summary judgment, defendants respectfully request that summary judgment be granted to them.

This the 16th day of July, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, July 16, 2012, electronically filed the foregoing DEFENDANTS' REPLY BRIEF TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted,

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