

CASE NO CIV-12-119-D

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

LIBERTARIAN PARTY OF OKLAHOMA, et al.,

Plaintiffs,

vs.

PAUL ZIRIAX, et al.,

Defendants.

**DEFENDANTS' OBJECTION TO PLAINTIFFS' MOTION
FOR LEAVE TO FILE AMENDED COMPLAINT (Doc 28)**

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July 2, 2012 (3 Exhibits in PDF format attached)

**DEFENDANTS' OBJECTION TO PLAINTIFFS' MOTION
FOR LEAVE TO FILE AMENDED COMPLAINT (Doc. 28)**

HISTORY OF THE CASE

Plaintiffs' Complaint challenged constitutionality of only Okla. Stat. tit. 26, § 1-108 and no other statute. [Doc. 1]. On February 17, 2012, Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin enforcement of only § 1-108. [Doc 3]. The Court conducted a preliminary injunction evidentiary hearing on March 12, 2012. On March 19, 2012, the Court entered its Findings of Fact, Conclusions of Law, and Order denying Plaintiffs' Motion for Preliminary Injunction. [Doc. 21]. The Court determined that the Plaintiff "has not shown a likelihood of success on the merits of its claim that the current Oklahoma law presents an unconstitutional restriction on the exercise of its constitutional rights." *Id.* at 26. Thus, Plaintiffs now belatedly attempt to breath life into their claims, reversing their prior position regarding the validity of the MOVE Act and Oklahoma's requirement that recognized political parties nominate their candidates by mandatory primary.¹ It is "the individual Plaintiffs" who seek to amend to add a challenge not only to the state primary and runoff primary election statutes, Okla. Stat. tit. 28, §§ 1-102 and 1-103, but also to the MOVE Act itself. *Plfs' Mot. for Leave to File Am. Compl.*, Doc. 28 at ¶ 3.

The above-referenced amended complaint is sought on the grounds that **the individual Plaintiffs herein, as supporters of minor political parties not currently recognized under Oklahoma law**, challenge the necessity of a mandatory State conducted political party primary election and runoff primary

¹Unrecognized political parties may nominate their presidential candidates by petition, and their candidate will be placed on the ballot with the party label. Okla. Stat. tit. 26, § 10-101.2.

election coupled with the requirements of the MOVE Act. . .

Id.

Plaintiffs claim that the “Amended Complaint is needed in light of changes in circumstances since the filing of the Complaint” and because the federal MOVE Act required the State to change the petition filing deadline contained in Okla. Stat. tit. 26, § 1-108 from May 1 to March 1 to accommodate the primary election and runoff primary election deadlines, but Plaintiffs fail to identify what, if any, circumstances changed. *Id.* Plaintiffs fail to identify any facts to support how an “individual Plaintiff” as a supporter of an “unrecognized” political party would have standing to challenge statutes that apply only to “recognized” political parties.

As the Court may recall, the Plaintiffs were aware of and stipulated to all deadlines connected with the primary and runoff primary elections, and to the fact that the primary and candidate filing deadlines had to be changed in 2011 in order to accommodate the federal MOVE Act mailing requirements. *Joint Stipulations of Fact*, Doc. 11 at ¶¶ 5-8 and 20-26. Plaintiffs’ expert was contacted by Plaintiffs’ attorney regarding this case months before the Complaint’s January 31, 2012, filing date. Exhibit 1, *March 12, 2012 Transcript*² at 80, lines 21-25. The expert testified on March 12, 2012, regarding a 1951 political theory espousing minor party exclusion from participation in primary elections [*Id.* at 53, lines 17-24], and regarding the expert’s own presence at the January, 2012, Tennessee ballot access hearing

²All transcript references are to the March 12, 2012, transcript, the referenced pages of which are attached hereto as Exhibit 1.

concerning the MOVE Act and the need for primary elections [*Id.* at 58, lines 5-23]. Still, the expert opined that “it doesn’t matter whether the Libertarian Party has a primary this year or not in Oklahoma.” *Id.* at 60, lines 11-12. He testified that the policy behind the MOVE Act and requiring ballots to be mailed at least 45 days prior to a primary election is “an excellent law” *Id.* at 88, lines 17-25, and at 89, lines 1-11. In fact, Plaintiffs’ expert is “totally in support of the MOVE Act.” *Id.* at 92, line 1. Significantly, even as recently as his Supplemental Expert Report issued May 25, 2012, Exhibit 2, although Plaintiffs’ expert discusses the purported status of primary elections in several states, he does not opine that a mandatory primary is unconstitutional. *Id.*

It is significant that after the March 12, 2012, hearing in which both the MOVE Act, mandatory primaries, and the related deadlines were addressed, Plaintiffs concluded by stipulating that they **do not challenge** the MOVE Act nor any deadline other than the petition signature filing deadline. *Plfs’ Mem. of Closing Arg.*, Doc. 19 at 1 (“... the LPO does not ask the Court to take any action that would interfere with the Defendants complying with the MOVE Act or alter any other dates which apply to primaries and other elections and candidate filing deadlines and challenges.”)

Significantly, subsequent to the Court issuing its findings and conclusions on March 19, 2012, [Doc. 21], the Plaintiffs did not challenge the Court’s finding that “[t]he Libertarian Party expressly acknowledges the validity of the MOVE Act and agrees with its goal.” *Findings of Fact, Conclusions of Law, and Order*, Doc. 21 at 26.

Likewise, the Plaintiffs did not challenge the Court's conclusion that:

Although the Libertarian Party does not currently believe it will have primary elections, thus eliminating the need for compliance with the MOVE Act for that stage of the election cycle, the evidence shows that whether multiple primary candidates will exist cannot be determined until the April filing period is concluded and any challenges to candidate qualifications are resolved. **Moreover, whether a primary will be required is beyond the control of the party.**

Id. at 32 (emphasis added).

By now challenging the mandatory primary requirement, Plaintiffs hope to eliminate the democratic manner in which political party candidates are currently selected in Oklahoma through primary elections, which allows the rank-and-file party members to control who the party's candidates will be. Instead, Plaintiffs ask this Court to force upon Oklahoma a non-democratic system in which party bosses select the candidates regardless of the desires of a majority of the rank-and-file party members. In order to avoid this precise problem, mandatory primary elections have been held constitutional when challenged in the past by the Libertarian Party, all as addressed in further detail in Proposition D below.

Thus, even if a Plaintiff had standing to attack Oklahoma's primary system, which standing all Plaintiffs lack, it is futile for Plaintiffs to amend to add a challenge to Oklahoma's mandatory primary because a mandatory primary survives even strict scrutiny analysis. "[The mandatory primary] is a means sufficiently tailored to its end to satisfy the Constitution. Indeed, if the goal . . . [is] to deliver power over political process from the hands of party bosses and special interests into those of the people, no measure short of the

direct primary would be adequate.” *Lightfoot v. Eu*, 964 F.2d, 865, 872-873 (9th Cir. 1992).

The additional statutes Plaintiffs attack, Okla. Stat. tit. 26, §§ 1-102 and 1-103, implement Oklahoma’s state constitution providing for all political parties to nominate their candidates through the primary election process.³ However, Plaintiffs do not attack the constitutionality of Okla. Const. Art. 3, Section 3, the State Constitution provision from which Okla. Stat. tit. 26, §§ 1-102 and 1-103 emanate.

ARGUMENT AND AUTHORITIES

A. INTRODUCTION

In order to accommodate the MOVE Act’s requirements of mailing 45 days prior to primary and runoff primary elections, Oklahoma’s Let the Troops Vote Act was signed into law on May 10, 2011, moving Oklahoma’s 2012 primary election to June 26, and of necessity moving earlier in the election cycle the petition signature filing deadline and the candidate filing and challenge deadlines. *Let the Troops Vote Act*, Exhibit 3. Although Plaintiffs acknowledge the validity of the MOVE Act and agree with its goals, Doc. 21 at 26, and were aware of the new law as early as May 3, 2011, Doc. 21 at 13, and although Plaintiffs’ expert had been contacted by Plaintiffs’ attorney several months before suit was filed, Plaintiffs did

³ Okla. Const. Art. 3, Sec. 3 (“The Legislature may enact laws providing for a mandatory primary system which shall provide for the nomination of all candidates in all elections for federal, state, county and municipal offices, for all political parties, except for the office of the Presidential Elector, the candidates for which shall be nominated by the recognized political parties at their conventions. The Legislature also shall enact laws providing that citizens may, by petition, place on the ballot the names of independent, nonpartisan candidates for office, including the office of Presidential Elector.”) Plaintiffs do not challenge the constitutionality of Okla. Const. Art. 3, Sec. 3.

not file their Complaint, Doc 1, until January 31, 2012, a delay of more than eight months after the law's passage. Plaintiffs delayed further until February 17, 2012 to file their Motion for Preliminary Injunction, Doc. 3. The Court's decision was issued March 19, 2012. [Doc. 21]. Plaintiffs then waited for another three months before seeking leave on June 21, 2012, to amend their Complaint to for the first time attack the validity of Oklahoma's mandatory primary and the MOVE Act. [*Plf. Mot. Leave To File*, Doc 28 at ¶ 3].

Whether Plaintiffs may amend their Complaint is governed by Rule 15(a) of the Federal Rules of Civil Procedure. After a responsive pleading has been filed, "a party may amend its pleadings only with the opposing party's written consent or the court's leave", which leave the court should freely give when justice so requires. Fed. R. Civ. P. 15(a)(2).

In *Forman v. Davis*, the Court stated:

In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc. – the leave sought should, as the rules require, be "freely given."

371 U.S. 178, 182 (1962)

In the present case, leave to amend should be denied because of: (1) Plaintiffs' undue delay, bad faith or dilatory motive; (2) the undue prejudice to the Defendants which the amendment causes; and (3) because the amendment would be futile both (a) because Plaintiffs lack standing to challenge the constitutionality of mandatory primary elections, and (b) because mandatory primary elections have already been upheld as constitutional.

B. UNDUE DELAY AND DILATORY MOTIVE

“‘Lateness does not of itself justify the denial of the amendment.’” *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1205 (10th Cir. 2006) (citation omitted). “‘However, ‘[a] party who delays in seeking an amendment is acting contrary to the spirit of the rule and runs the risk of the court denying permission because of the passage of time.’” *Id.* (citation omitted). “‘The longer the delay, ‘the more likely the motion to amend will be denied, as protracted delay, with its attendant burdens on the opponent and the court, is itself a sufficient reason for the court to withhold permission to amend.’” *Id.* (citation omitted).

The Court “‘focuses primarily on the reasons for the delay.’” *Id.* at 1206. “[D]enial of leave to amend is appropriate ‘when the party filing the motion has no adequate explanation for the delay’” *Id.* (citation omitted). “‘For example, courts have denied leave to amend where the moving party was aware of the facts on which the amendment was based for some time prior to the filing of the motion to amend.’” *Fed. Ins. Co. v. Gates Learjet Corp.* 823 F.3d 383, 387 (10th Cir. 1987). Courts will properly deny a motion to amend when it appears that the plaintiff is using Rule 15 to make the complaint a moving target, to salvage a lost case by untimely suggestion of new theories of recovery, to present theories seriatim in an effort to avoid dismissal, or to knowingly delay [] raising an issue until the eve of trial.” *Minter*, 451 F.3d at 1206 (quotation marks and citations omitted).

Plaintiffs were aware no later than May 3, 2011, that §§ 1-102, 1-103 and 1-108 were being amended and the dates and deadlines altered so that the Oklahoma State Election

Board could comply with the MOVE Acts requirements that ballots be sent to overseas and absent military voters at least 45 days before the primary and primary runoff elections. Plaintiffs' attorney communicated with Plaintiff's expert months before the Complaint was filed, and Plaintiff's expert was aware of the old 1951 political theory as to whether new political parties should be required to nominate their candidates by convention. Further, it is public knowledge that nationally the Libertarian Party has previously challenged the constitutionality of requiring the nomination of party candidates by primary election. *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000); *Alaskan Independence Party vs. Alaska*, 545 F.3d 1173 (9th Cir. 2008); *Lightfoot v. Eu*, 964 F.2d 865 (9th Cir. 1992).

As revealed in the California and Alaska cases, the Libertarian Party has long sought to avoid participating in primaries and instead to nominate its candidates by convention. The primary election issue is not new and Plaintiffs offer no reason why the constitutional challenge to Oklahoma's mandatory primary was not raised in their initial Complaint. The conclusion to be drawn from Plaintiffs' significant delay, – they did not raise it until June 21, the eve of the June 26, 2012, primary election – is that Plaintiffs hope that since the June 26, 2012 primary election has now passed, the Court might conclude it has no alternative but to allow the LPO and GPO to nominate by convention, should they be recognized as a party in 2012. And as this Court is aware from the Plaintiffs' argument evolving from the 1984 Western District case, [*Jr. Status Report*, Doc 25, stipulation 42], in which the LPO was permitted to nominate by convention after the State inadvertently defaulted on a motion for

summary judgment, Plaintiffs will use any Court-ordered-nomination-by-convention situation to argue that the LPO should always in the future be permitted to nominate its candidates by convention since on one prior occasion the LPO was by accident permitted to do so. Plaintiffs' delay of more than one year after the challenged statute was amended before challenging Oklahoma's mandatory primary system is nothing more than a misguided trial strategy to use delay to leave the Court no option but to grant Plaintiff the right to nominate by convention, when the real issue is not nomination of candidates, but rather how many signatures Plaintiffs must gather and the signatures' due date. Plaintiffs' misguided trial strategy is not an adequate reason to justify their delay. Amendment should be denied.

C. UNDUE PREJUDICE

"The second, and most important, factor in deciding a motion to amend the pleadings, is whether the amendment would prejudice the nonmoving party." *Minter*, 451 F.3d at 1207. "Courts typically find prejudice only when the amendment unfairly affects the defendants 'in terms of preparing their defense to the amendment.'" *Id.* at 1208 (citation omitted). "Most often this occurs when the amended claims arise out of a subject matter different from what was set forth in the complaint and raise significant new factual issues." *Id.*

Plaintiffs seek to interject into this lawsuit subject matter significantly different than that raised in their Complaint, and which subject matter involves significantly different factual issues. Plaintiffs' Complaint did not call into question either the validity of the MOVE Act nor the validity of Oklahoma's mandatory primary and runoff primary. The

reasons for a mandatory runoff primary to nominate a party's candidates, rather than a nomination by convention, include the need to have the candidate nominations be made by the party's rank-and-file members rather than by a potential alliance between wealthy out-of-state special interests which are believed to finance the LPO and control its decision-making process. As this Court will recall, only 15 people showed up for the LPO state convention in March 10, 2012, and the purported leaders of the LPO who are Plaintiffs in this lawsuit and were supposedly running the signature gathering campaign, were clueless as to who was actually gathering signatures for the LPO. The money to pay for the more than 57,000 LPO signatures had to come from somewhere, and it is doubtful it came from the individual Plaintiffs.

If Plaintiffs' requested amendment is allowed, and if the Amended Complaint survives the Motion to Dismiss which would become necessary to brief and file, depositions of the outside persons who are financing and/or directing and orchestrating the Oklahoma LPO will need to be taken in order to defend against Plaintiffs' new allegations. Depositions regarding the same subject matter would be needed from LPO's past and present leadership. Such depositions would be used to demonstrate to this Court why it is the LPO's Oklahoma rank-and-file, including all of those who register as LPO voters should the LPO become a recognized party, who should be the ones to nominate LPO candidates at the polls, and why candidate nominations should not be left to the LPO leadership. This discovery could not be completed within the time limits set up in the existing Scheduling Order.

In addition to the additional discovery the amendment would require, Plaintiffs delay has disadvantaged the Defendants in other ways. The deadline to nominate candidates expired April 13, 2012, and the deadline to contest a candidacy expired April 17, 2012. Numerous offices, at least 62 in total, including one Corporation Commission seat, did not draw an opponent on or before April 13, 2012, and certificates of election have already been issued for those candidates under Okla. Stat. tit. 26, §§ 6-102 & 8-103. *Joint Status Report*, Doc. 25, stipulations, 58-59. The Defendants could potentially be sued by these already elected candidates for a denial of due process should the LPO/GPO now be permitted to nominate in a nominating convention candidates to oppose these previously unopposed candidates. The Defendants would further be subject to suit for a denial of equal protection and/or due process by parties, potential parties, candidates or potential candidates if the LPO/GPO and its candidates are treated any differently than any other party or candidate, particularly since the filing deadline, the contest deadline, and the primary itself have all passed. The Americans Elect Party qualified for the ballot in Oklahoma by following the rules. There is no valid reason why the LPO/GPO should be treated differently than Americans Elect just because LPO/GPO did not comply with the rules.

Further, the July 2012 deadline for the Election Board to meet with the recognized parties to determine their order on the general election ballot is fast approaching, as is the deadline to begin sending ballots to the printer for printing.

The proposed amendment will require additional discovery, a motion to dismiss,

additional time to prepare for trial, and potentially subject the Defendants to further litigation. As such, it is unduly prejudicial and should be denied.

D. FUTILITY OF AMENDMENT.

Plaintiffs should not be granted leave to amend because it would be futile to do so. Being courts of limited subject matter jurisdiction, Article III courts may only rule upon “Cases and “Controversies”. U.S. CONST. ART. III, § 2. To satisfy the case or controversy requirement Plaintiffs must have “standing”. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “Standing is the threshold question in every federal case, determining the power of the court to entertain the suit.” *Opala v. Watt*, 454 F.3d 1154, 1157 (10th Cir. 2006) (quotations omitted).

First, the plaintiff must have suffered an “injury in fact” that is “concrete” rather than “conjectural or hypothetical.” Second, the plaintiff must show that there is a “causal connection between the injury and the conduct complained of.” Finally, the plaintiff must show that it is “likely,” and not merely “speculative,” that the injury complained of will be “redressed by a favorable decision.”

Opala, 454 F.3d at 1157 (citations omitted). Each Plaintiff fails to meet the burden of establishing all three elements of standing.

No Plaintiff is a recognized party in Oklahoma, and as such, no Plaintiff has the legally protected right to nominate a candidate for Oklahoma’s general election ballot. Thus, no Plaintiff has standing to challenge Oklahoma’s primary and runoff primary as there is no relief which could be granted which would give any Plaintiff the right to nominate a candidate by any method. Even if this Court declared Oklahoma’s mandatory primary

unconstitutional, no individual Plaintiff has a right to nominate a candidate for office. The individual Plaintiffs seek to be able to “vote” for LPO and GPO candidates, not to individually nominate them. No LPO and/or GPO party By-Law has been produced which provides that any of the Plaintiffs under any circumstances has the individual right to determine who the LPO/GPO candidates would be.

As for the LPO and the GPO themselves, neither is a recognized party in Oklahoma. As such, neither can select LPO or GPO candidates to be placed on the ballot since neither the LPO nor GPO have qualified for the ballot under §1-108. Until the LPO and/or GPO qualify for the ballot under §1-108, it is pointless for this Court to address whether candidate nominations are by convention or primary since it is impossible for the LPO and GPO to nominate candidates by any method until they become recognized parties.

In addition to lacking standing, Plaintiffs’ proposed amendment is also futile because mandatory direct primaries have already been upheld as constitutional. Thus, it is futile for the Plaintiffs to attempt to challenge Oklahoma’s requirement that parties nominate their candidates through Oklahoma’s primary elections.

By now challenging the mandatory primary requirement, Plaintiffs hope to eliminate the democratic manner in which political party candidates are currently selected in Oklahoma through mandatory primary elections. It is through primary elections that the rank-and-file party members control who the party’s candidates will be. Instead, Plaintiffs ask this Court to force upon Oklahoma a non-democratic system in which party bosses select the candidates

regardless of the desires of a majority of the rank-and-file party members. In order to avoid this precise problem, mandatory primary elections have been held constitutional when challenged in the past by the Libertarian Party. *Alaskan Independence Party v. Alaska*, 545 F.3d 1173, 1178 (9th Cir. 2008) (in a challenge to mandatory primary by both Alaskan Independence Party and Alaskan Libertarian Party, “**the State’s interest in enhancing the democratic character of the election process overrides whatever interest the Party has in designing its own rules for nominating candidates, such as its desire to nominate through party-run convention.**”) (quotations and citations omitted) (emphasis added); *Cal. Democratic Party v. Jones*, 530 U.S. 567, 572 (2000) (in Libertarian Party of California challenge to blanket primary, United State Supreme Court “considered it too plain for argument, for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in democratic fashion.” (quotation and citation omitted); *Lightfoot v. Eu*, 964 F.2d 865, 873 (9th Cir. 1992) (in a Libertarian Party of California challenge to selection of candidates by mandatory primary, as opposed to nominating convention, Court held the State’s interest in enhancing the democratic character of the election process overrides whatever interest the Party has in designing its own rules for nominating candidates.”)

[A mandatory primary] advances the state’s interest in limiting opportunities for fraud and corruption by preventing party leadership from controlling nominating decisions, while promoting democratic decisionmaking. The state’s goals would clearly be impeded if party leaders could either opt out of the primary altogether or interfere with the democratic process by exercising veto power over the candidates that might seek the nomination.

Alaskan Independence Party, 545 F.3d at 1177. “These benefits of mandatory direct primaries are the reason why nearly every State in the Nation now mandates that political parties select their candidates for national or statewide office by means of primary elections.”

Id. “Like most states, Alaska implemented its direct primary during the Progressive Era, seeking to remove party nominating decisions from the infamous ‘smoke-filled rooms’ and place them instead in the hands of a party’s rank-and-file, thereby destroying the corrupt alliance between wealthy special interests and the political machine.” *Id.* (quotation and citation omitted). The LPO seeks to undo that democratic process and to instead re-institute a non-democratic system in which wealthy outside sources might fund a party and control that party’s candidate selection. The State’s interest in nomination by primary outweighs any interest LPO/GPO might have in selecting another system.

Thus, it is futile for Plaintiffs to seek to amend to add a challenge to Oklahoma’s mandatory primary because the mandatory primary survives even strict scrutiny analysis. “[The mandatory primary] is a means sufficiently tailored to its end to satisfy the Constitution. Indeed, if the goal . . . [is] to deliver power over political process from the hands of party bosses and special interests into those of the people, no measure short of the

WHEREFORE, because of Plaintiffs’ undue delay and the undue prejudice it causes Defendants, because Plaintiffs lack standing to challenge the mandatory primary statutes, and because mandatory primaries are constitutional, Plaintiffs’ proposed amendment is futile and should be denied.

Respectfully submitted,

s/ Martha R. Kulmacz

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CERTIFICATE OF SERVICE

I certify that on July 2, 2012, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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IN THE UNITED STATES DISTRICT COURT FOR THE
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LIBERTARIAN PARTY OF OKLAHOMA,)
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Plaintiffs,)
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-vs-) Case No. CIV-12-119-D
)
PAUL ZIRIAX, et al.,)
)
Defendant.)

* * * * *

TRANSCRIPT OF PROCEEDINGS

HAD ON MARCH 12, 2012

BEFORE THE HONORABLE TIMOTHY D. DEGIUSTI

U.S. DISTRICT JUDGE, PRESIDING

* * * * *

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1 they can have a primary if they actually have two candidates
2 for the same office.

3 I want to ask you, are you familiar with other
4 states in the United States that have, supposedly, mandatory
5 primary laws?

6 A The vast majority of states provide that there's some way
7 for a new party to get on the ballot in the general election
8 without going through a mandatory primary.

9 Q How many states exactly have that?

10 They basically have one deadline for the -- for --
11 something for parties that are recognized and new parties.
12 How many states have laws like that?

13 A There's so much variation, but there are 43 states in
14 which it's possible for a party that did not go through the
15 primary to place its presidential nominee on the ballot with a
16 party name.

17 And in 1951, Joseph P. Harris, who was a professor at UC
18 Berkeley and considered the nation's leading authority in
19 election administration, wrote a model direct primary law for
20 the National Civic League, and he said states should not
21 provide primaries to parties that pull less than 10 percent of
22 the vote. It's not good for them and it's not good for the
23 taxpayers. It's a waste of money. They almost never have
24 contests.

25 So 43 states took that message to heart, although that

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1 believe, the Constitutional party brought against the law?

2 A I only testified on paper.

3 Q By affidavit?

4 A Yes.

5 Q All right. And did the federal judge there quote you and
6 accept your testimony as part of his decision there?

7 A Yes. What is more important is that he quoted Joseph P.
8 Harris.

9 Q Joseph P. Harris, was that political scientist from
10 Berkeley you talked about, in 1951?

11 A Right.

12 Q And what was involved in that?

13 Was that about the primaries?

14 A Well, he quoted the part of Dr. Harris' book that
15 recommended that newly qualifying and smaller parties not be
16 given their own primary.

17 Q All right. And was the MOVE Act that was passed, I
18 think, by the Congress back in '09 or so and has been the
19 subject of litigation against the State of Oklahoma, was that
20 considered in regard to the Tennessee case?

21 A I did go to the oral arguments in January, and I would
22 say 80 percent of the state's time was spent talking about the
23 MOVE Act.

24 Q All right. And how was that resolved as far -- were any
25 parties put on the ballot as a result of that decision last

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1 Q All right. And do you see any difference if we had --
2 like in Oklahoma, where you must be a member of a party or be
3 an independent voter if the party invites people to vote,
4 would that affect in regard to the MOVE Act?

5 A I'm not sure -- I didn't follow the question.

6 Q If the Court should order, say, as one possible remedy,
7 the Libertarian Party as having shown a modicum of support
8 here this year and placed them on a ballot, and this is a
9 state in which not every -- there are registered people in
10 parties, would that affect the MOVE Act in any way?

11 A No, because even -- it doesn't matter whether the
12 Libertarian Party has a primary this year or not in Oklahoma.
13 If it's put on the ballot quite soon, there's time. And
14 if it is permitted to nominate by convention, then, of course,
15 there's no problem at all.

16 Q Have there been cases in the past -- situations -- fact
17 situations -- where, in the course of a party trying to
18 qualify itself, that the legislature and governor of the state
19 have changed the law and the rules on the party?

20 A Yes. I can think of several instances when that's
21 happened.

22 Q Okay. Could you give us examples?

23 A Well, you've already made the record clear about Wyoming.
24 I heard you discuss the *Blomquist* case.

25 In Michigan, the legislature created a procedure for

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1 remember. The newsletter started in 1985. It was never my
2 intention to be a blog, but people who are aware of computer
3 technology said I should have a blog, and they helped me set
4 it up. And I don't remember what year that was.

5 Q Okay. You're the editor of "Ballot Access News"?

6 A Right.

7 Q Who else posts information -- and I'm not talking about
8 the people that can log on and comment, just the -- the main
9 posting. Are you responsible for the content?

10 A Yes. My webmaster can also post, and sometimes he does.

11 Q And how many times do you update it or issue a new
12 release?

13 A Probably twice a day on average.

14 Q What are you being paid for your testimony today?

15 A Nothing. I'll be happy to get my plane fare.

16 Q Okay. Was that your arrangement with the plaintiffs, for
17 travel expenses?

18 A If the case wins, I will ask them to pay my plane fare.

19 Q Is that routine, that you testify without compensation?

20 A Yes.

21 Q When were you first contacted about this case?

22 A I don't know. It was filed -- this case was filed
23 January 31st. Wasn't that right? So I probably talked to
24 Mr. Linger about the proposed case several months before he
25 filed it.

CHRISTINA L. CLARK, RPR, CRR
United States Court Reporter
200 N.W. Fourth Street, Suite 5419
Oklahoma City, Oklahoma 73102
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1 second page of the Exhibit 30 -- Defendants' Exhibit 30 that
2 the judge urged both sides to settle the case?

3 A Well, that was the impression I got. I may have been
4 mistaken.

5 Q And that the state rejected the attempt to settle and did
6 not make a counter settlement suggestion.

7 A I looked --

8 Q Is that from Mr. Linger?

9 A No, I looked on Pacer and read the state's brief. So
10 there was nothing in there settling. I mean, there was no
11 counterproposal to Jim Linger's suggestions.

12 Q Is a brief filed in court the proper procedure to make a
13 settlement or a counteroffer to a settlement?

14 A I don't know.

15 Q Do you recall -- well, let me get back to that in a
16 minute.

17 The MOVE Act -- do you know the policy behind the
18 MOVE Act, the federal act that went into effect in 2009?

19 A Yes.

20 Q And what is that policy?

21 A The federal government was very concerned that overseas
22 absentee voters frequently lost their vote because there isn't
23 enough time to send the absentee ballot to them and have it
24 returned.

25 So the federal government used its authority under the

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1 elections clause to fix the problem and require the states to
2 mail those ballots at least 45 days before any primary or
3 election.

4 Q And do you, as an expert and an advocate for minor
5 parties on ballots, feel that that is a good law?

6 A It's an excellent law.

7 Q And there's a 45-day deadline in that federal law;
8 correct?

9 A Yes.

10 Q And it's not optional?

11 A Right.

12 Q And then Oklahoma, in 2011, passed House Bill 1615, a Let
13 the Troops Vote Act. Have you read that in its entirety?

14 A Yes, and it's an excellent law except for what it does to
15 the deadline.

16 Q Okay. Under a state such -- including Oklahoma, which
17 has a primary system, and the candidate must be nominated at a
18 primary -- is there any way that that candidate for national
19 office -- having a primary for candidate for national office
20 can comply with the MOVE Act?

21 A Well, certainly, a presidential candidate should not be
22 affected by any of that because Oklahoma's presidential
23 primary is even earlier than its primary for other office.

24 And even the state didn't try to say all newly qualified
25 parties must participate in the presidential primary.

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1 A I am totally in support of the MOVE Act.

2 Q Have you ever said that the Soviet Union under Stalin had
3 a great Constitution?

4 A No. Oh, yes. Yes. They had a wonderful Constitution
5 when it came to the Bill of Rights, but they just didn't -- it
6 was just dead. It wasn't enforced.

7 MS. ZERR: That's all, your Honor.

8 THE COURT: Redirect?

9 MR. LINGER: Very briefly, your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. LINGER

12 Q Mr. Winger, when you say you're biased, does that affect,
13 though, your opinion as to the effects of the current law in
14 question, particularly for this year on the Libertarian Party?

15 A I'm going to answer the question a little bit indirectly.
16 I love facts. I love election data. I -- I got interested in
17 this whole subject because I was so curious about voting
18 behavior. And I -- my first instinct is always to be as clear
19 and accurate as I can be about my facts.

20 Q Okay. Are there any facts that you have related to the
21 court today that are incorrect?

22 A Not that I'm aware of.

23 Q All right. And just because you have certain
24 predisposition or biases, would you alter any opinion to
25 assert that that was not accurate?

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

X
(1) LIBERTARIAN PARTY OF OKLAHOMA;
(2) CLARK WILLIAM DUFFE; (3) ROBERT T.
MURPHY; (4) RICHARD P. PRAWDZIENSKI;
(5) CHRISTINE MARIE KANE; (6) RICHARD-
JASON SATANK HARRIS; (7) WHITNEY LEE
BOUTIN; (8) GREEN PARTY OF OKLAHOMA,
And (9) RACHEL JACKSON,

...Plaintiffs,

-v-

case no. civ 12-119 D

(1) PAUL ZIRIAX, Secretary of the
Oklahoma State Election Board;
(2) TOM PRINCE, Chairman of the
Oklahoma State Election Board;
(3) STEVE CURRY, Vice Chairman of
The Oklahoma State Election Board;
(4) JIM ROTH, Member of the Oklahoma
State Election Board; (6) TIM MAULDIN,
Alternate Member of the
Oklahoma State Election Board; and
(7) the OKLAHOMA STATE ELECTION BOARD;

...Defendants

X

SUPPLEMENTAL EXPERT REPORT OF RICHARD WINGER

1. I am over 18 years of age, and a resident of the State of California and reside at 3201 Baker Street, San Francisco CA 94123. I make this supplemental report based on my own personal knowledge and research that I have conducted. My curriculum vitae was previously submitted with my original Report in February 2012.

OPINION ONE

Very few states still require newly-qualifying parties to participate in a primary election. On January 23, 2012, the California Secretary of State issued a Memorandum saying that because Americans Elect does not wish a primary ballot printed up for it this year, no such primary ballot will be created. And on April 12, 2012, the North Dakota Secretary of State issued a similar ruling. Copies are attached. In addition, Americans Elect asked the Maine Secretary of State not to hold a primary for it, and the Maine Secretary of State agreed, according to Melissa Packard, Maine Director of Elections; however her decision is not in writing, she tells me.

Also, on May 10, the Governor of Tennessee signed SB 3700, which says that newly-qualifying parties may choose to nominate by convention, and their petitions for party status are not due until August of the election year. This bill only passed because of the decision of the U.S. District Court in *Green Party of Tennessee v Hargett* in February 2012 that struck down Tennessee's old April petition deadline for newly-qualifying parties.

Currently, the only states that still require a party to participate in a primary, if its presidential nominee is to appear on the November ballot with the party label, are Florida, Hawaii, Mississippi, Ohio, Oklahoma, and South Dakota. The Ohio ballot access laws for newly-qualifying parties were declared unconstitutional by the Sixth Circuit in 2006 and the state legislature hasn't yet passed a new law to replace the old one. Even though the Ohio law still requires all newly-qualifying parties to participate in a primary, in practice newly-qualifying parties have appeared on the Ohio ballot in 1968,

1970, 1976, 1996, and 2008, in each case because of court action that put parties on the ballot after it was too late to give them a primary.

Mississippi and Florida have very lenient laws governing how new parties get on the ballot. Neither state requires any petition for a group to become a qualified party. Hawaii's petition for a group to become a qualified party is only one-tenth of 1% of the number of registered voters, which this year is only 663 signatures.

OPINION TWO

The Libertarian Party has more voter support in Oklahoma than the Americans Elect Party does. On April 30, 2012, the State Election Board informed me that Americans Elect only has five registered voters in Oklahoma. No one from that party filed to run in the Americans Elect primary in Oklahoma. On May 17, Americans Elect announced that it will not have a presidential nominee in 2012. Therefore, it will have no nominee for any office on the Oklahoma November 2012 ballot.

Previous to the May 17 announcement, Americans Elect had invited all voters in the nation to vote in its on-line presidential primary. The top vote-getter in that private on-line primary, Ron Paul, only received 257 votes from Oklahoma voters. Paul did not file as an Americans Elect candidate, but was sponsored by a committee to draft him for the Americans Elect nomination. The highest on-line vote in the Americans Elect primary for candidates who wanted the Americans Elect presidential nomination was received by Buddy Roemer, who only received 48 votes from Oklahoma voters.

By contrast to Americans Elect, the Oklahoma Libertarian Party had 703 registered voters in October 2000, the last time it was recognized as a qualified party by the Oklahoma Election Board. In 2010, two members of the Oklahoma Libertarian Party

appeared on the November ballot as independent candidates. Angelia O'Dell ran for U.S. House in the First District, and in a race with no Democrat running, polled 45,656 votes, or 23.20% of the total vote cast. Clark Duffe ran for U.S. House in the Fifth District, and in a race with both major party opponents, polled 3,067 votes, or 1.56% of the total vote cast. Also in 2010, Edward A. Shadid, a member of the Green Party, ran for State House, 85th district, as an independent candidate, and polled 1,346 votes, 10.53% of the total, in a race with both a Democrat and a Republican candidate as well.

OPINION THREE

The fact that Americans Elect submitted at least 51,739 valid signatures to qualify for the ballot in 2012 in Oklahoma, whereas the Libertarian Party did not, does not contradict my opinion that the Libertarian Party has more voter support in Oklahoma than Americans Elect. Americans Elect collected 90,000 signatures in Oklahoma, by paying its circulators \$2.50 per signature, for a total cost to Americans Elect of \$225,000, just for wages for petitioners. That does not include the wages for the supervisors of the petition project, nor does it include the transportation and housing costs for the circulators, which Americans Elect covered. The Americans Elect national bylaws say that the group is spending at least \$10,000,000 to get a presidential nominee on the ballot in all states (this was written before Americans Elect decided not to run anyone).

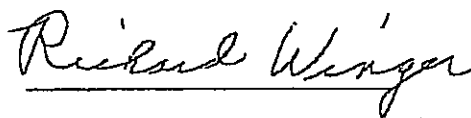
In effect, the Oklahoma ballot access law for newly-qualifying parties functions as an enormous filing fee. In Oklahoma, only groups that have access to hundreds of thousands of dollars, if not millions of dollars, can normally place a presidential nominee on the ballot. Volunteers do place minor party presidential candidates on the ballot in states such as Iowa, which requires only 1,500 valid signatures to place a statewide

independent or minor party nominee on the November ballot. Minor parties such as the Libertarian Party and the Green Party customarily get on the ballot with volunteers in Iowa. But volunteers, who generally have jobs and families, cannot and do not get parties on the ballot when a state requires as many signatures as Oklahoma requires.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: San Francisco, California

May 25, 2012

A handwritten signature in cursive script, reading "Richard Winger". The signature is written in black ink and is positioned above a horizontal line.

Richard Winger

ACKNOWLEDGMENT

State of California

County of San Francisco

On May 25, 2012 before me, Andrew Hurley, notary
(insert name and title of the officer)

personally appeared Richard Winger
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal

Signature

(Seal)



* See attached.

Supplemental Expert Report of Richard Winger.



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

January 23, 2012

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 12035

TO: All County Clerks/Registrars of Voters

FROM: 
Robbie Anderson
Elections Counsel

RE: Presidential Primary Election: The Americans Elect Party

On January 18, 2012, the Americans Elect Party provided the Secretary of State's office with a letter (attached) that includes the following notifications:

- o Americans Elect will not be participating in the June 5, 2012, Presidential Primary Election.
- o Americans Elect will not be organizing any county central committees.
- o Americans Elect will conduct its affairs under the statutory procedures used by the Peace and Freedom Party set forth in Elections Code section 7700 et seq., which can be found in Part 5 of Division 7 of the Elections Code.

As the Americans Elect Party will not be placing any candidates on the June 5, 2012, Presidential Primary Election ballot, there is no need to print ballots for voters who have disclosed a preference for the Americans Elect Party.

The Secretary of State's office reached this conclusion based on a combined reading of Elections Code sections 301, 8000, 8004, and 13102.

Elections Code section 8004(a), which was added in 2006, provides that if no candidates have filed for a party's nomination for a partisan office, "the elections official shall do both of the following:

- (1) Refrain from printing a partisan ballot for that party ...
- (2) Send notification to those voters ... together with a nonpartisan ballot ..."

Elections Code section 8000(b), which pre-dated the addition of Section 8004, states that the entire Elections Code chapter on the Direct Primary does not apply to presidential primary elections.

CCROV # 12035

January 23, 2012

Page 2 of 2

However, Elections Code section 13102(a) states that at partisan primary elections:

"... one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot ..."

Elections Code section 301 defines the term "ballot" as containing, among other things, "the names of candidates." As noted above and in the attached letter from the Americans Elect Party, the Party will not be participating in the June 5, 2012, Presidential Primary Election.

Finally, Elections Code section 13102(b) provides that at partisan primary elections:

"... each voter not registered disclosing a preference with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot ..."

Therefore, pursuant to Elections Code section 8004(a), you may wish to send to registered voters in your jurisdiction who have stated a preference for the Americans Elect Party a notification that because the Americans Elect Party will not have any candidates at the June 5, 2012, Presidential Primary Election, they will simply receive a ballot (at the polling place or if they request a vote-by-mail ballot) containing all ballot measures and candidates for nonpartisan and voter-nominated offices.

If you have any questions, please feel free to contact me at (916) 653-1690 or robbie.anderson@scs.ca.gov.

Attachment

April 12, 2012

Daniel B Winslow
Counsel for Americans Elect
Proskauer Rose LLP
One International Place
Boston MA 02110-2600

Dear Mr. Winslow,

Under N.D.C.C. § 16.1-03-19, a political organization may not endorse candidates or have candidates petition for president, vice president, congress, statewide office, or legislative office unless they have fulfilled one of the three requirements listed in this referenced section of state law. One of those requirements is that the political organization may file petitions with the Secretary of State containing the signatures of at least 7,000 qualified North Dakota electors, as required by N.D.C.C. § 16.1-11-30.

Accordingly, Americans Elect did file such petitions prior to the deadline of 4:00 p.m., April 13, 2012. The petitions have been reviewed and found that they contain a sufficient number of signatures to recognize Americans Elect as a political organization, which allows them a separate column on the primary portion of the ballot for the election on June 12, 2012.

However, in a letter dated April 4, 2012, Americans Elect has gone on record with this office indicating that they do not wish to have a column on the primary ballot in the upcoming election. Their request is based on their objective to only have the names of their Presidential Electors and Presidential candidate listed on the November general election ballot associated with the name Americans Elect. They will not have candidates for any other federal, state, or district offices associated with the name of their political organization.

Therefore, based on their request, I will not provide a column on the June primary ballot for candidates associated with their political organization. Rather, they will submit to this office (prior to the 4:00 p.m. filing deadline on September 7, 2012) the names of their Presidential Electors and the names of their Presidential and Vice President candidates. The original applicable filing documents required by North Dakota law for these candidates must be in the physical possession of this office prior to the deadline.

If you have any questions or concerns about this letter, please contact the Elections Division of the Secretary of State's office at (701) 328-4146, via e-mail message at soselect@nd.gov, or me.

Sincerely,

Alvin A. Jaeger
Secretary of State

200 P. 002

Proskauer

February 1, 2012

Daniel B. Winslow
Senior Counsel
d 617.526.9733
f 617.526.9899
dwinslow@proskauer.com
www.proskauer.com

BY EMAIL AND EXPRESS MAIL

Melissa Packard, Director of Elections and Commissions
Bureau of Corporations, Elections and Commissions
Burton Cross Building
111 Sewell St., 4th Floor
Augusta, Maine 04330
Melissa.Packard@maine.gov

Re: Americans Elect

Dear Ms. Packard:

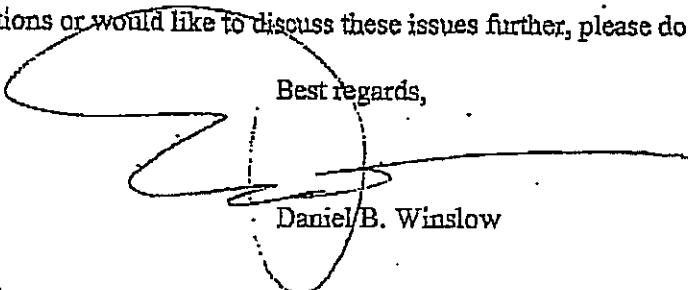
As you know, we represent Americans Elect. Thank you for confirming that the Americans Elect petition contained sufficient signatures. Americans Elect has organized in Maine for the purposes of ballot access in the 2012 presidential election, and not for any other federal, state, county or local offices. We will be sending your office a copy of the Bylaws and Convention Rules of Americans Elect.

This letter confirms that, unless otherwise required by law, Americans Elect does not wish to participate in the June 12, 2012 primary election. Americans Elect will hold a national nominating convention by which Americans Elect delegates will nominate the Americans Elect presidential ticket. In accordance with Americans Elect's Bylaws and Convention Rules, any registered voter may qualify as a delegate and participate in the Americans Elect national nominating convention without regard to party affiliation. Following the national nominating convention, Americans Elect will promptly notify your office of the presidential and vice-presidential ticket to be placed on the general election ballot in November 2012.

Separately, Americans Elect will have a state convention as required by law in order to have the party designation of its nominees on the general election ballot. The state convention will be constituted by individuals appointed by Americans Elect (in accordance with Americans Elect's Bylaws and Convention Rules), each of whom will be a voter enrolled in Americans Elect under Maine's election laws.

If you have any questions or would like to discuss these issues further, please do not hesitate to contact me.

Best regards,


Daniel B. Winslow

1587/16100-001 current/27051570v1

Beijing | Boca Raton | Euston | Chicago | Hong Kong | London | Los Angeles | New Orleans | New York | Newark | Paris | Sao Paulo | Washington, DC

P. 002

12072875428

MAY-21-2012 16:56

An Act

ENROLLED HOUSE
BILL NO. 1615

By: Banz of the House

and

Sykes, Allen, Russell and
Marlatt of the Senate

An Act relating to election dates and deadlines; creating the Let the Troops Vote Act; providing short title; amending 26 O.S. 2001, Sections 1-102, as amended by Section 2, Chapter 162, O.S.L. 2003, 1-108, as last amended by Section 6, Chapter 53, O.S.L. 2004, 3-101, as last amended by Section 1, Chapter 224, O.S.L. 2005, 4-119, as amended by Section 7, Chapter 485, O.S.L. 2003, 5-110, as last amended by Section 8, Chapter 53, O.S.L. 2004, 5-115, as last amended by Section 4, Chapter 307, O.S.L. 2004, 5-119, 12-103, as last amended by Section 3, Chapter 369, O.S.L. 2004, 12-106, 12-108 and 12-113, as last amended by Sections 4 and 5, Chapter 369, O.S.L. 2004, 12-116, as amended by Section 6, Chapter 369, O.S.L. 2004, 13-102, as amended by Section 19, Chapter 545, O.S.L. 2004, 14-115.5, as amended by Section 22, Chapter 545, O.S.L. 2004, 14-118, as last amended by Section 1, Chapter 149, O.S.L. 2010, 20-101, as amended by Section 1, Chapter 174, O.S.L. 2003 and 20-102, as amended by Section 24, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2010, Sections 1-102, 1-108, 3-101, 4-119, 5-110, 5-115, 12-103, 12-108, 12-113, 12-116, 13-102, 14-115.5, 14-118, 20-101 and 20-102), which relate to election dates and procedures; modifying time period during which recognized political parties may be formed; changing dates upon which special elections may be held; modifying time period during which changes of political affiliation may be processed and approved; modifying period during which declarations of candidacy filed; modifying time period during which notices of withdrawal of candidacy and certain petitions may be filed; requiring certain

petitions may be filed; requiring certain proclamation to prescribe filing and election dates that permit compliance with certain provisions; modifying time period during which occurrence of vacancy requires calling of special election; modifying time period after which special statewide election may be held after call; specifying filing period for certain municipal offices; modifying date of submission of list of nominees to absentee voting board; providing for transmission of absentee ballots; modifying date upon which Presidential Preferential Primary election held; eliminating procedure for return of certain funds; amending 11 O.S. 2001, Section 16-102, as amended by Section 25, Chapter 545, O.S.L. 2004 (11 O.S. Supp. 2010, Section 16-102), which relates to municipal elections; specifying filing period for certain municipal elections; repealing Section 9, Chapter 485, O.S.L. 2003, as amended by Section 21, Chapter 545, O.S.L. 2004 (26 O.S. Supp. 2010, Section 14-104.1), which relates to absentee ballots; providing for noncodification; and providing an effective date.

SUBJECT: Election code

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Let the Troops Vote Act".

SECTION 2. AMENDATORY 26 O.S. 2001, Section 1-102, as amended by Section 2, Chapter 162, O.S.L. 2003 (26 O.S. Supp. 2010, Section 1-102), is amended to read as follows:

Section 1-102. A Primary Election shall be held on the last Tuesday in ~~July~~ June of each even-numbered year, at which time each political party recognized by the laws of Oklahoma shall nominate its candidates for the offices to be filled at the next succeeding General Election, unless otherwise provided by law. No candidate's

candidate shall have been nominated as herein provided, unless otherwise provided by law; provided further that this provision shall not exclude the right of a nonpartisan candidate to have his or her name printed upon the General Election ballots. No county, municipality or school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such primary election.

SECTION 3. AMENDATORY 26 O.S. 2001, Section 1-108, as last amended by Section 6, Chapter 53, O.S.L. 2004 (26 O.S. Supp. 2010, Section 1-108), is amended to read as follows:

Section 1-108. A group of persons may form a recognized political party at any time except during the period between ~~June 1~~ March 1 and November 15 of any even-numbered year if the following procedure is observed:

1. Notice of intent to form a recognized political party must be filed in writing with the Secretary of the State Election Board at any time except during the period between March 1 and November 15 of any even-numbered year-;

2. After such notice is filed, petitions seeking recognition of a political party, in a form to be prescribed by the Secretary of the State Election Board, shall be filed with such Secretary, 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. Each page of such petitions must contain the names of registered voters from a single county. Petitions may be circulated a maximum of one (1) year after notice is filed, provided that petitions shall be filed with ~~such~~ the Secretary no later than ~~May 1~~ March 1 of an even-numbered year. Such petitions shall not be circulated between ~~May 1~~ March 1 and November 15 of any even-numbered year-; and

3. Within thirty (30) days after receipt of such petitions, the State Election Board shall determine the sufficiency of such petitions. If such Board determines there are a sufficient number of valid signatures of registered voters, the party becomes recognized under the laws of the State of Oklahoma with all rights and obligations accruing thereto.

SECTION 4. AMENDATORY 26 O.S. 2001, Section 3-101, as last amended by Section 1, Chapter 224, O.S.L. 2005 (26 O.S. Supp. 2010, Section 3-101), is amended to read as follows:

Section 3-101. A. No election required to be conducted by any county election board shall be scheduled for a day other than Tuesday.

B. Except as otherwise provided by law, no special election shall be held by any county, school district, technology center school district, municipality or other entity authorized to call elections except on the:

1. The second Tuesday of January, February, May, June, July, August, September, October, and November and December and the first Tuesday in March and April in odd-numbered years and the;

2. The second Tuesday of January, and February, May, and December, the first Tuesday in March and April, the last Tuesday in July June, the fourth Tuesday in August, and the first Tuesday after the first Monday in November of any even-numbered year, except in any year when a Presidential Preferential Primary Election is held in February, the date for the special elections shall be the same date as the Presidential Preferential Primary Election.

C. In the event that a regular or special election date occurs on an official state holiday, the election shall be scheduled for the next following Tuesday.

SECTION 5. AMENDATORY 26 O.S. 2001, Section 4-119, as amended by Section 7, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2010, Section 4-119), is amended to read as follows:

Section 4-119. Any registered voter may make application under oath to change political affiliation by executing a form prescribed by the Secretary of the State Election Board at any time. The county election board secretary in the applicant's county of residence shall process and approve any such application for political affiliation change upon receipt, except as provided in Section 4-110.1 of ~~Title 26 of the Oklahoma Statutes~~ this title and except during the period from ~~June 1~~ April 1 through August 31, inclusive, in any even-numbered year. The secretary shall process and approve such applications for change of political affiliation received or postmarked from ~~June 1~~ April 1 through August 31 in any even-numbered year after August 31.

SECTION 6. AMENDATORY 26 O.S. 2001, Section 5-110, as last amended by Section 8, Chapter 53, O.S.L. 2004 (26 O.S. Supp. 2010, Section 5-110), is amended to read as follows:

Section 5-110. Declarations of Candidacy provided herein must be filed with the secretary of the appropriate election board no earlier than 8:00 a.m. on the ~~first Monday in June~~ second Wednesday of April of any even-numbered year and no later than 5:00 p.m. on the next succeeding ~~Wednesday~~ Friday. Such Declarations of Candidacy may be transmitted by United States mail, but in no event shall the secretary of any election board accept such Declarations after the time prescribed by law.

SECTION 7. AMENDATORY 26 O.S. 2001, Section 5-115, as last amended by Section 4, Chapter 307, O.S.L. 2004 (26 O.S. Supp. 2010, Section 5-115), is amended to read as follows:

Section 5-115. Any candidate may withdraw as a candidate only upon the filing of a written notice of withdrawal as a candidate with the secretary of the election board which accepted such candidate's declaration of candidacy. Such notice shall be signed by the candidate or a lawfully appointed personal representative or a lawfully appointed special administrator of any deceased candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 5:00 p.m. on the Friday second business day following the close of the filing period prescribed by law.

SECTION 8. AMENDATORY 26 O.S. 2001, Section 5-119, is amended to read as follows:

Section 5-119. ~~Said~~ The petition must be filed no later than 5:00 p.m. on the second business day following the close of the filing period.

SECTION 9. AMENDATORY 26 O.S. 2001, Section 12-103, as last amended by Section 3, Chapter 369, O.S.L. 2004 (26 O.S. Supp. 2010, Section 12-103), is amended to read as follows:

Section 12-103. The proclamation required by Section 12-102 of this title shall prescribe filing and election dates that permit full compliance with the requirements of the federal Military and Overseas Voter Empowerment Act of 2009 and shall contain the following facts:

1. A filing period of three (3) days, on a Monday, Tuesday and Wednesday not less than ten (10) days from the date of such proclamation;

2. The date of the Special Primary Election, not less than twenty (20) days after the close of the filing period;

3. The date of the Special Runoff Primary Election, not less than twenty (20) days after the date of the Special Primary Election; and

4. The date of the Special General Election, not less than twenty (20) days after the date of the Special Runoff Primary Election.

Should such a vacancy occur ~~between on or after~~ March 1 and June 1 of an even-numbered year, when a special election is required, the proclamation must contain dates that are the same as are required by law for the regular filing period, Primary Election, Runoff Primary Election and General Election, if practicable.

SECTION 10. AMENDATORY 26 O.S. 2001, Section 12-106, is amended to read as follows:

Section 12-106. A. Whenever a vacancy shall occur in the office of a member of the State Senate or the State House of Representatives, the vacancy shall be filled at a Special Election to be called by the Governor within thirty (30) days after the vacancy occurs; provided, no special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the same year.

B. If in an even-numbered year an incumbent State Senator with two (2) or more years remaining in the term for which elected shall file with the Oklahoma Secretary of State before ~~June 1~~ April 1 a resignation in writing which states that the resignation will not become effective immediately, but rather will become effective on some date certain that is after the General Election but before the convening of the next session of the Legislature, the vacancy shall be filled by a special election which shall be held in that even-numbered year on the same dates as the regular Primary Election, Runoff Primary Election and General Election. The filing period for the special election shall be the regular filing period prescribed in Section 5-110 of this title. The person elected in the General

Election of the special election shall take office on the date the resignation of the incumbent becomes effective and shall serve the remainder of the unexpired term.

SECTION 11. AMENDATORY 26 O.S. 2001, Section 12-108, as last amended by Section 4, Chapter 369, O.S.L. 2004 (26 O.S. Supp. 2010, Section 12-108), is amended to read as follows:

Section 12-108. Such proclamation shall contain the following facts:

1. A filing period of three (3) days, on a Monday, Tuesday and Wednesday not less than ten (10) days from the date of such proclamation;

2. The date of the Special Primary Election, not less than twenty (20) days after the close of the filing period; and

3. The date of the Special General Election, not less than twenty (20) days after the date of the Special Primary Election.

Should such a vacancy occur ~~between on or after March 1 and June 1~~ of an even-numbered year, when a special election is required, the proclamation must contain dates that are the same as are required by law for the regular filing period, Primary Election, Runoff Primary Election and General Election, if practicable.

SECTION 12. AMENDATORY 26 O.S. 2001, Section 12-113, as last amended by Section 5, Chapter 369, O.S.L. 2004 (26 O.S. Supp. 2010, Section 12-113), is amended to read as follows:

Section 12-113. Such proclamation shall contain the following facts:

1. A filing period of three (3) days, on a Monday, Tuesday and Wednesday, not less than ten (10) days from the date of such proclamation;

2. The date of the Special Primary Election, not less than twenty (20) days after the close of the filing period; and

3. The date of the Special General Election, not less than twenty (20) days after the date of the Special Primary Election.

Should such a vacancy occur ~~between on or after~~ March 1 and June 1 of an even-numbered year, when a special election is required, the proclamation must contain dates that are the same as are required by law for the regular filing period, Primary Election, Runoff Primary Election and General Election, if practicable.

SECTION 13. AMENDATORY 26 O.S. 2001, Section 12-116, as amended by Section 6, Chapter 369, O.S.L. 2004 (26 O.S. Supp. 2010, Section 12-116), is amended to read as follows:

Section 12-116. In the event the Governor or the Legislature shall call for a special statewide election on any measure to be submitted to a vote of the people, ~~said the~~ election shall be held not fewer than ~~sixty (60)~~ seventy (70) days from the date ~~said the~~ election is called. Such special statewide election may be on the same date as a primary or general election or may be on some other date set by the Governor or the Legislature. In the event the board of county commissioners or the governing body of a municipality or school district or technology center school district or any other governmental subdivision calls for a special election on any question, ~~said the~~ election shall be held not fewer than sixty (60) days from the date ~~said the~~ election is called; provided, that a special election called by a school or technology center school district to be held on the date of the annual school runoff election shall not be held fewer than forty-five (45) days from the date ~~said the~~ special election is called. A special election to fill a vacancy for member of the board of education of a school district or to fill a vacancy for municipal office shall be scheduled not fewer than sixty (60) days from the date ~~said the~~ election is called.

SECTION 14. AMENDATORY 26 O.S. 2001, Section 13-102, as amended by Section 19, Chapter 545, O.S.L. 2004 (26 O.S. Supp. 2010, Section 13-102), is amended to read as follows:

Section 13-102. A. Not fewer than fifteen (15) days before the filing period for any regular municipal election, or in the event of a special election, not fewer than sixty (60) days before such election, the governing board of any municipality shall submit a resolution to the secretary of the county election board conducting such election. Such resolution shall contain the following facts:

1. The dates of the election or elections;
2. The offices to be filled or the questions to be voted upon at such election or elections;

3. Qualifications for such offices;

4. Designation of which offices shall be filled by voting by ward and which offices shall be filled by voting at large;

5. Indication of whether the election will be partisan or nonpartisan;

6. For charter cities where the charter is silent, indication of any portion of state law which will apply; and

7. Any other information necessary for conducting said election or elections.

B. In the event that a municipality governed by charter schedules a regular or special election for a municipal office on the same date as an election involving state or federal offices, the filing period for such municipal office shall be scheduled on a Monday, Tuesday and Wednesday not less than fifteen (15) days nor more than twenty (20) days following the date of the resolution or order.

SECTION 15. AMENDATORY 26 O.S. 2001, Section 14-115.5, as amended by Section 22, Chapter 545, O.S.L. 2004 (26 O.S. Supp. 2010, Section 14-115.5), is amended to read as follows:

Section 14-115.5 To carry out the provisions of Sections 14-115 and 14-115.4 of this title, the secretary of the county election board shall designate one or more absentee voting boards, to be composed of two (2) members each, with each member to be of a different political affiliation. No later than ~~July 1~~ June 1 in each even-numbered year, the chair of the county central committees of the two political parties having the highest number of registered voters in the county shall each submit a list of ten names to the secretary. Such lists shall contain names of registered voters of the county, who may be members of the county election board, except the secretary, or precinct election boards. The secretary shall be confined to such list in designating membership on the absentee voting board or boards, unless all persons on such lists are ineligible or unwilling to serve. In the event the chair of the county central committee of a political party fails to submit a list as herein provided, the secretary shall appoint membership to such board or boards from the ranks of registered voters of such party within the county. Provided further, that in the event the list of

names of either or both parties is exhausted and additional absentee voting boards are needed, the secretary shall appoint additional members to such boards from the ranks of such party or parties in the county. Members of an absentee voting board shall be reimbursed for their expenses at the same rate as a precinct judge or clerk, as provided in Section 2-129 of this title. One member of each such board serving a nursing home or convalescent hospital shall be allowed mileage reimbursement at the rate prescribed for travel by state employees according to the State Travel Reimbursement Act.

SECTION 16. AMENDATORY 26 O.S. 2001, Section 14-118, as last amended by Section 1, Chapter 149, O.S.L. 2010 (26 O.S. Supp. 2010, Section 14-118), is amended to read as follows:

Section 14-118. A. When an application for an absentee ballot pursuant to Section 14-117 of this title is received by the secretary of a county election board, it shall be the duty of the secretary to transmit by United States mail, by facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes, or as provided in subsection B of this section the ballots which the elector has requested and is entitled to receive. When an application for an absentee ballot is received at least forty-five (45) days before an election involving state or federal offices, the absentee ballot shall be transmitted by mail, by electronic mail, or by other means of electronic communication, as provided in this section, or by facsimile device as provided in Section 14-118.1 of this title, not less than forty-five (45) days preceding the election. When an application for an absentee ballot for an election involving state or federal offices is received less than forty-five (45) days preceding the election, the absentee ballot shall be transmitted by mail, by electronic mail, or by other means of electronic communication, as provided in this section, or by facsimile device as provided in Section 14-118.1 of this title, within forty-eight (48) hours of receipt of the application.

B. The secretary of the county election board may transmit balloting materials for any state or federal election, or for any other election as designated by the Secretary of the State Election Board as provided in subsection D of this section, ~~to an~~ by electronic mail address or by other means of electronic communication in a form and manner prescribed by the Secretary of the State Election Board, if the voter:

1. Is a Federal Post Card Application registrant and is eligible to receive an absentee ballot as provided by law;

2. Provides an electronic mail address; and
3. Requests that balloting materials be sent by electronic mail.

If the secretary of the county election board transmits a ballot to a voter ~~at an~~ by electronic mail address or by other means of electronic communication as provided in this subsection, the secretary shall amend the voter's federal postcard application for future elections to include the voter's electronic mail address.

C. An electronic mail address provided under this section is confidential and does not constitute public information for purposes of the Oklahoma Open Records Act. The secretary of the county election board shall ensure that an electronic mail address provided under this section is excluded from disclosure.

D. The Secretary of the State Election Board shall determine if balloting materials for any election other than a state or federal election may be produced in a form which would allow them to be transmitted ~~to an~~ by electronic mail address or by other means of electronic communication. If so, the Secretary shall so designate them. If such designation is not made, the balloting materials may be transmitted to the voter as provided in subsection A of this section.

E. All other provisions of this title that would normally apply to a ballot voted under this title apply to a ballot provided pursuant to the provisions of subsection B of this section.

F. The Secretary of the State Election Board may suspend the provisions of subsection B of this section if the Secretary determines that electronic transmission of balloting materials is not in the best interest of the people of this state due to a potential problem with the security of the balloting materials.

SECTION 17. AMENDATORY 26 O.S. 2001, Section 20-101, as amended by Section 1, Chapter 174, O.S.L. 2003 (26 O.S. Supp. 2010, Section 20-101), is amended to read as follows:

Section 20-101. A. A Presidential Preferential Primary for recognized political parties shall be held on the first Tuesday in ~~February~~ March in each of the years in which the President and Vice President of the United States are to be elected.

B. If one or more states having a mutual boundary with this state establish a single date for a regional primary, the State Election Board is authorized to change the date of the Oklahoma primary to the date established for the regional primary.

C. No county, municipality, school district or other entity authorized by law to call elections shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such Primary Election. However, this subsection shall not apply to home rule municipalities.

SECTION 18. AMENDATORY 26 O.S. 2001, Section 20-102, as amended by Section 24, Chapter 485, O.S.L. 2003 (26 O.S. Supp. 2010, Section 20-102), is amended to read as follows:

Section 20-102. A. Candidates for the nomination for President of the United States shall file with the Secretary of the State Election Board. Such candidates shall be members of political parties recognized under the laws of the State of Oklahoma and shall have filed a statement of candidacy with the Federal Election Commission and shall have raised and expended not less than Five Thousand Dollars (\$5,000.00) for said office. The candidates shall be required to swear an oath or affirm that they meet the aforementioned qualifications, and their signatures shall be witnessed by a notary public. Such filing beginning at 8:00 a.m. on the first Monday in December and ending at 5:00 p.m. on the next succeeding Wednesday, or at a time prescribed by the State Election Board for a Presidential Preferential Primary to be held on a date other than the first Tuesday in ~~February~~ March. A statement of candidacy must be accompanied by a petition supporting a candidate's filing signed by one percent (1%) of the registered voters in each congressional district eligible to vote for a candidate or one thousand (1,000) registered voters in each congressional district eligible to vote for a candidate, whichever is less, as reflected by the latest January 15 registration report; or by a cashier's check or certified check in the amount of Two Thousand Five Hundred Dollars (\$2,500.00). ~~Such check shall be forfeited unless a candidate receives more than fifteen percent (15%) of the votes east.~~ The State Election Board shall cause the names of all candidates who have filed within the proper time to be printed on the official ballots. The ballots shall be prepared as provided for by law. Voters shall be restricted to one vote for the candidate of his or her choice of the political party in which the voter is registered.

B. Each page of a petition supporting a candidate's filing shall identify the county and the congressional district, and shall contain the names of registered voters in only one congressional district and in only one county.

C. Each page of a petition supporting a candidate's filing shall be verified. Verification shall be made in substantial compliance with the provisions of Section 6 of Title 34 of the Oklahoma Statutes.

SECTION 19. AMENDATORY 11 O.S. 2001, Section 16-102, as amended by Section 25, Chapter 545, O.S.L. 2004 (11 O.S. Supp. 2010, Section 16-102), is amended to read as follows:

Section 16-102. A. The provisions of Section 16-101 et seq. of this title shall not apply to any municipality which is governed by charter; provided, that elections for such municipalities which shall be conducted by the county election board shall be scheduled only on an election date identified by ~~Section~~ subsection B of Section 3-101 of Title 26 of the Oklahoma Statutes. However, such a municipality may, by indicating in its resolution calling an election, choose to follow any provision of state law governing elections conducted by a county election board when the municipality's charter or ordinances are silent on the matter addressed by such provision. In such instance, if the municipal election or any substantial portion thereof is not conducted by a county election board, the duties required of the county election board or its secretary shall be performed by the municipal authority designated by the municipal governing body and nothing herein shall be construed to require the county election board to perform any such duties. The residency requirements of Sections 16-109 and 16-110 of this title shall apply to all municipalities except to the extent that such residency requirements are governed by municipal charter.

B. The provisions of Sections 16-101 through 16-114 of this title shall not apply to any municipality subject to the provisions of the Oklahoma Town Meeting Act; provided, Section 16-103.1 of this title shall apply to such municipalities.

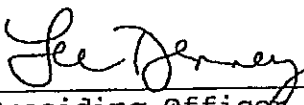
C. In the event that a municipality governed by charter schedules a regular or special election for a municipal office on the same date as an election involving state or federal offices, the filing period for such municipal office shall be scheduled on a

Monday, Tuesday and Wednesday not less than fifteen (15) days nor more than twenty (20) days following the date of the resolution or order.

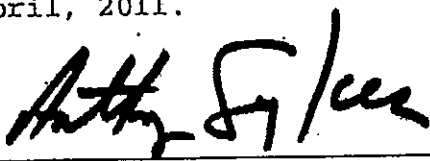
SECTION 20. REPEALER Section 9, Chapter 485, O.S.L. 2003, as amended by Section 21, Chapter 545, O.S.L. 2004 (26 O.S. Supp. 2010, Section 14-104.1), is hereby repealed.

SECTION 21. This act shall become effective November 1, 2011.

Passed the House of Representatives the 3rd day of May, 2011.

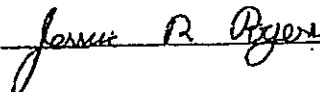

Presiding Officer of the House
of Representatives

Passed the Senate the 7th day of April, 2011.


Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 4th
day of May, 20 11,
at 5:21 o'clock PM.

By: 

Approved by the Governor of the State of Oklahoma the 10th day of
May, 20 11, at 11:42 o'clock AM.


Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
10th day of May, 20 11,
at 2:49 o'clock PM.

By: 