

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

(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; (5) JERRY BUCHANAN,  
Alternate 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.

C O M P L A I N T

COME now the Plaintiffs, and for their cause of action  
against the Defendants, allege and state as follows, to-wit:

PARTIES

I.

Plaintiff LIBERTARIAN PARTY OF OKLAHOMA (sometimes  
hereinafter referred to as LPO) was formerly recognized in  
the State of Oklahoma as a political organization pursuant  
to OKLA. STAT. tit. 26, § 1-109(B), and as a political party

pursuant to OKLA. STAT. tit. 26, § 1-108, and is seeking recognition as a political party pursuant to OKLA. STAT. tit. 26, § 1-108, in that the LPO is currently conducting a petition drive pursuant to OKLA. STAT. tit. 26, § 1-108, after filing a Notice of Intent to form a new political party with the Secretary of the Oklahoma State Election Board on May 3, 2011.

Plaintiff CLARK WILLIAM DUFFE is a resident of Oklahoma County, a registered Independent voter, and is the present Chair of the LPO.

Plaintiff ROBERT T. MURPHY is a resident of Cleveland County, a registered Democratic voter, and is a past Chair of the LPO.

Plaintiff RICHARD P. PRAWDZIENSKI is a resident of Oklahoma County, a registered Independent voter, and the present Vice Chair of the LPO.

Plaintiff CHRISTINE MARIE KANE is a resident of Cleveland County, and a registered Republican voter.

Plaintiff RICHARDJASON SATANK HARRIS is a resident of Cleveland County, a registered Independent voter, a former Congressional candidate for the Fourth District of Oklahoma, and a current candidate for the Libertarian nomination for President of the United States.

Plaintiff WHITNEY LEE BOUTIN is a resident of Cleveland County, and a registered Republican voter.

Plaintiff GREEN PARTY OF OKLAHOMA (sometimes hereinafter referred to as GPO) is an unrecognized Oklahoma political party which is seeking recognition as a political party pursuant to Okla. Stat. tit. 26, § 1-108, in that the GPO is currently attempting to conduct a petition drive pursuant to Okla. Stat. tit. 26, § 1-108, after filing a Notice of Intent to form a new political party with the Secretary of the Oklahoma State Election Board on October 20, 2011. The GPO's Presidential and Vice Presidential candidates will not be determined until the National Green Party's Convention on or about July 15, 2012.

Plaintiff RACHEL JACKSON is a resident of Cleveland County, a registered Democratic voter, and the State Facilitator for the Green Party of Oklahoma.

All the above-named individual Plaintiffs are citizens of the State of Oklahoma and the United States of America, and registered voters of the State of Oklahoma. Plaintiffs Clark William Duffe, Robert T. Murphy, Richard P. Prawdzinski, Christine Marie Kane, RichardJason Satank Harris, and Whitney Lee Boutin wish to have the LPO recognized as a political party in the State of Oklahoma and

wish to have the right to cast their votes effectively for Libertarian Party candidates in Oklahoma in the 2012 Oklahoma election and future Oklahoma elections. Plaintiff Rachel Jackson wishes to have the GPO recognized as a political party in the State of Oklahoma and wish to have the right to cast their votes effectively for Green Party candidates in Oklahoma in the 2012 Oklahoma election and future Oklahoma elections.

## II.

Defendant PAUL ZIRIAX is the Secretary of the Oklahoma State Election Board (hereinafter referred to as Defendant Secretary and Defendant Board, respectively), and is responsible for administering the election and voter registration laws of the State of Oklahoma pursuant to OKLA. STAT. tit. 26, § 2-107. Specifically, the Defendant SECRETARY has supervisory authority over all county election boards, has responsibility to promulgate, repeal or modify such rules or regulations as he deems necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation, and interpretation of the State and Federal election laws and a maximum degree of correctness, impartiality, and efficiency in administration of the election laws, and to act as the chief

state election official responsible for coordination of state responsibilities under the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg, *et seq.*).

Defendant TOM PRINCE is the Chairman of the Defendant Board. Defendant STEVE CURRY is the Vice Chairman of the Defendant Board, JIM ROTH is a member of the Defendant Board, JERRY BUCHANAN is an alternate Member of the Defendant Board, and TIM MAULDIN is an alternate Member of the Defendant Board.

Defendant BOARD is a state agency and body politic organized under the laws of the State of Oklahoma, viz.: OKLA. STAT. tit. 26, § 2-101, *et seq.*, to operate and perform such duties as are prescribed by law for the purposes of overseeing elections conducted in the State of Oklahoma.

All the aforesaid Defendants have offices in Room B-6, State Capitol Building, Oklahoma City, Oklahoma, 73152.

#### JURISDICTION AND VENUE

#### III.

This is an action for declaratory and injunctive relief. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, §§ 1343(3), 1343(4), 2201, and 2202, and 42 U.S.C. § 1983. Venue of this Court is invoked

pursuant to Title 28, U.S.C. § 1391. The rights, privileges, and immunities sought to be declared and redressed are those secured by the First and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CLAIM

IV.

This proceeding seeks a judgment declaring OKLA. STAT. tit. 26, § 1-108, as applied to the Plaintiffs for the 2012 Oklahoma General Election and all subsequent general elections in the State of Oklahoma and the facts and circumstances relating thereto, unconstitutional in that it violates in its application to the Plaintiffs herein for the 2012 Oklahoma General Election, and all subsequent Oklahoma General Elections, the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983. This proceeding also seeks an injunction, both temporary and permanent, against Defendants SECRETARY and BOARD, and its members above-styled, prohibiting said Defendants from following and enforcing the provisions of OKLA. STAT. tit. 26, § 1-108, as applied to the Plaintiffs herein for the 2012 Oklahoma General Election, and all subsequent Oklahoma General Elections, to the extent that said statute sets an unconstitutional early deadline of March 1 during election

years coupled with an unconstitutionally high petition signature requirement for the formation of new political parties and a reduction of over two months in the amount of time available for petitioning from the previous and future one year petitioning time period allowed by law because of the lateness of the passage of the new Okla. Stat. tit. 26, § 1-108 in early May of 2011.

V.

The law in question which was stated in rhetorical paragraph IV above, as signed by Governor Mary Fallin on May 10, 2011, and effective on November 1, 2011, is as follows, to-wit:

**OKLA. STAT. tit. 26, § 1-108. Formation of new political parties**

A group of persons may form a recognized political party at any time except during the period between 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 Secretary no later than March 1 of an even-numbered year. Such petitions shall not be circulated between March 1 and November 15 of any even-numbered year.

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.

Amended by Laws 2011, HB 1615, c. 196, § 3, eff. November 1, 2011.

## VI.

That previous to the aforesaid law of the State of Oklahoma as set forth in rhetorical paragraph V hereinabove, the election laws of the State of Oklahoma as to ballot access for political parties were much less restrictive, less drastic and demanding in their requirements, and applied equally to all political parties and citizens wishing to exercise their fundamental rights to political expression and association.

The pertinent, relevant, and material changes in the aforesaid election law of the State of Oklahoma, as complained of in the paragraph immediately hereinabove involve the movement by the Oklahoma Legislature in 2003 of the signature petition deadline from May 31 to May 1 of an even-numbered year, and by subsequent amendment by the



Oklahoma Legislature and signed by the Governor on May 10, 2011, of the signature petition deadline from May 1 to March 1 of an even-numbered year, with the further consequence because of the aforesaid late amendment of reducing the actual petitioning time for the 2012 election cycle to a period of slightly less than 10 months from the statutory period of one year.

VII.

Prior to 1975, the predecessor law to the current OKLA. STAT. tit. 26, §1-108 had been in effect since 1923, to-wit:

OKLA. STAT. tit. 26, §229, Laws 1923-24, Chapter 151, Page 214 (Repealed January 1, 1975)

Any political party presenting a petition of 5000 names of voters of Oklahoma, to the Secretary of State, and the same being approved by the Secretary of State, the Secretary of the State Election Board shall then place the names of the candidates of the party submitting said petition on a ballot similar to that of the major parties in Oklahoma, and it shall be mandatory on the part of the Secretary of the Election Board to prepare said ballot when said petition has been approved by the Secretary of State, and upon filing and approval of said petition for State Officers shall be sufficient to permit candidates for Congress, District Judge or other minor offices appearing on the State and County ticket.

VIII.

That from the end of World War II in 1945 until the repeal of the old OKLA. STAT. tit. 26, §229, on January 1, 1975, only the American Party in 1968 succeeded in meeting

the requirements of the aforesaid §229 of 5000 petition signatures when it filed 23,519 signatures. After the enactment of OKLA. STAT. tit. 26, §1-108 (going into effect on January 1, 1975), no new political party has ever been formed in a gubernatorial election year because of the heightened signature requirement of five (5%) percent of the previous Presidential vote in Oklahoma. As to Presidential election year formation of new political parties, only the Reform Party in 1996 and the Libertarian Party in 1980, 1996, and 2000 have successfully petitioned to obtain full party ballot status. While the GPO failed in its petition drive for ballot access in Oklahoma in 2000 and the LPO failed in its petition drives for ballot access in Oklahoma pursuant to OKLA. STAT. tit. 26, §1-108, in 1976, 1981, 1984, and 2004, the LPO was able to successfully petition for its Presidential candidate in 1988 and 1992, pursuant to OKLA. STAT. tit. 26, §10-101.2.

IX.

Okla. Stat. tit. 26, § 1-108 was amended first in 2003 and then in 2004 to move the petition filing deadline for party formation from May 31 of an even-numbered year to May 1<sup>st</sup> of an even-numbered year. Amended by laws 2003, SB 358, c. 485, § 1; Amended by laws 2004, HB 2677, c. 53, § 6,

emerg. eff. April 1, 2004. No political party has been successful in petitioning for party formation in Oklahoma since this change was made. However, after previous unsuccessful legal challenges and lobbying by Plaintiffs of the Oklahoma Legislature for changes in the law which resulted in successful liberalization of the law in only one of the two houses of the Oklahoma Legislature (viz.: the Oklahoma House of Representatives—which passed a bill which would have lowered the petition signature requirement for new political parties in Oklahoma to 22,500 and kept the May 1 petition deadline), the Oklahoma Legislature in May of 2011 (after the State Senate failed to pass the House version) passed and Governor Fallin signed on May 10, 2011, a new political party formation law which made the new, complained-of petitioning requirements even more difficult by moving the deadline from May 1 to March 1 of an even-numbered year and, in effect, cutting the petitioning period for 2012 from one year to slightly under 10 months, i.e., May 10, 2011, to March 1, 2012. The aforesaid reduction in petitioning time for the 2012 election cycle amounts to a loss of 71 days or 19.4% of the petitioning time previously allowed under the old law and allowed for future election cycles after 2012 under the new law.

X.

On the 1st day of March, 2012, the LPO plans to turn in petition signatures for the recognition of the Libertarian Party of Oklahoma pursuant to OKLA. STAT. tit. 26, §1-108. Under current Oklahoma law, 51,739 valid petition signatures of registered Oklahoma voters are required in the year 2012 for the formation of a new political party. Currently, the LPO has collected in excess of 40,000 petition signatures, while the GPO has suspended its efforts because of the severity and restrictiveness of the new requirements complained of herein.

Because of the lateness in the amendment to the aforesaid law in May of 2011, the LPO filed a Notice of Intent to form a new political party with the State Election Board on May 3, 2011, which—even if they had filed the Notice on May 1 or a few days earlier would have only allowed them 10 months for petitioning for party formation in the year 2012. Further, because the Legislature of Oklahoma in 2004 moved the filing deadline forward approximately a month, to May 1, and subsequently moved the filing deadline even earlier by approximately two months to March 1, and without compensating for the reduced petitioning time from one year to approximately 10 months

for the year 2012, Oklahoma now has the most repressive and restrictive ballot access laws in the United States.

Oklahoma's unnecessarily early aforesaid petition deadline coupled with the high petition signature requirement and the reduced petitioning time of 10 months for 2012, is unconstitutional, lacks any compelling interest, and unequally and unfairly impacts in a discriminatory manner the rights of small, minor, unrecognized political parties in Oklahoma. Ballot access deadlines and petition signature requirements which are even less repressive and restrictive than in Oklahoma have been struck down or abrogated in a number of states (including, but not limited to, Alabama, Alaska, Arkansas, Indiana, Kentucky, Maine, Maryland, Nebraska, Nevada, New Jersey, North Dakota, Pennsylvania, Massachusetts, Ohio, and Tennessee).

#### XI.

In the election year in Oklahoma for the year 2012, the filing period for political party nominations is on April 11, 12, and 13, 2012, while the political party Primary Election is on June 26, 2012, a Runoff Primary Election on August 28, 2012, and the General Election on November 6, 2012. If OKLA. STAT. tit. 26, §1-108 is enforced so as to

deny the LPO and GPO and individual Oklahoma registered voters who support its formation the right to a constitutional party formation petition deadline, time period in which to petition during 2011-2012, and signature requirement, then the rights to political association, First Amendment free speech, and free and equal elections will be abridged and denied.

XII.

Defendant SECRETARY, BOARD, and the individual members of Defendant BOARD named herein as Defendants, have and will exercise their authority under color of state law in enforcing the aforesaid state laws in such a manner as to be in an unlawful, discriminatory, capricious, and arbitrary manner, in violation of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983, in that:

A. By reason of said required action as set forth in rhetorical paragraph XI above by said Defendants, through its named Defendant members and their agents, employees, and servants, the Plaintiffs herein will be denied their rights to actively engage in the exercise of their free speech, right to political association, seek redress of grievances, cast an effective vote, and equal protection and due process

of the laws of the State of Oklahoma and the United States of America;

B. Said required action as set forth in rhetorical paragraph XI above works to further no constitutional compelling state interest or political purpose for said state election law, Plaintiffs' fundamental constitutional freedoms are or will be denied and abridged, the law in question works in an unequal and discriminatory manner in that it favors the established and entrenched political parties (viz.: Republican Party and Democratic Party), and the aforesaid statute in question is not framed in the least restrictive manner necessary to achieve the legitimate state interests in regulating ballot access, particularly as relating to the unnecessarily early petitioning filing deadline, shortened petitioning time for 2011-2012, and unnecessarily high petition signature requirement for new political parties in Oklahoma.

XIII.

Plaintiffs herein will suffer immediate and irreparable harm in the event that the complained of actions set forth in rhetorical paragraph XI and XII hereinabove are allowed to occur. The effect of the aforesaid complained of actions would be to effectively deny Plaintiffs those rights

enumerated hereinabove in rhetorical paragraph XII(A). Plaintiffs have no adequate remedy at law for the denial of their rights and the impairment of the constitutional rights, privileges, and immunities enjoyed by a citizen of the United States and the State of Oklahoma, and, unless a preliminary injunction and a permanent injunction are granted, Plaintiffs will suffer great and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment:

1. Declaring that the said required actions as set forth in rhetorical paragraph XII above pursuant to OKLA. STAT. tit. 26, § 1-108 is illegal and unconstitutional, particularly as applied to the facts of the case at bar in that they are in violation of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983;

2. Entering a preliminary and permanent injunction restraining, prohibiting, and enjoining the Defendants to the instant action, their agents, employees, and servants, and all persons in active concert and participation with them, from enforcing, applying, or implementing the aforesaid complained of state election law as applied to the instant Plaintiffs and all similarly situated individuals;



3. Awarding Plaintiffs the reasonable costs and expenses of this action, including attorney's fees pursuant to the Civil Rights Attorney's Fees and Awards Act of 1976, 42 U.S.C. § 1988; and

4. Granting Plaintiffs such further relief as to which they may be entitled and which the Court may deem equitable and just.

Dated this 31st day of January, 2012.

LIBERTARIAN PARTY OF OKLAHOMA; CLARK  
WILLIAM DUFFE; ROBERT T. MURPHY;  
RICHARD P. PRAWDZIENSKI; CHRISTINE  
MARIE KANE; RICHARDJASON SATANK  
HARRIS; WHITNEY LEE BOUTIN; GREEN  
PARTY OF OKLAHOMA, and RACHEL  
JACKSON, Plaintiffs

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