

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
Civil Division**

GREEN PARTY OF TENNESSEE,)	
CONSTITUTION PARTY OF TENNESSEE)	
Plaintiffs)	
Vs.)	
)	Case No.:
TRE HARGETT in his official capacity)	
as Tennessee Secretary of State, and MARK)	
GOINS, in his official capacity as Coordinator)	
of Elections for the State of Tennessee)	
<u>Defendant</u>)	

COMPLAINT

COME NOW, Plaintiffs **GREEN PARTY OF TENNESSEE** and **CONSTITUTION PARTY OF TENNESSEE** and sue Defendants **TRE HARGETT**, Tennessee Secretary of State, and **MARK GOINS**, Coordinator of Elections for the State of Tennessee, and say:

Action and Jurisdiction:

- 1 This is an action for legal and equitable relief pursuant to 42 U.S.C. §1983 for violation of Plaintiffs rights under the First and Fourteenth Amendments of the United States Constitution,
- 2 This Court has jurisdiction pursuant to 28 U.S.C. §1331 and §1367.

Parties:

- 3 The GREEN PARTY OF TENNESSEE is a political organization in Tennessee.
- 4 The CONSTITUTION PARTY OF TENNESSEE is a political organization in Tennessee.
- 5 Defendant TRE HARGETT is the Secretary of State of Tennessee.
- 6 Defendant MARK GOINS is the Coordinator of Elections in the office of the Tennessee Secretary of State.
- 7 Plaintiffs have been required to engage an attorney to represent them in this matter and have agreed to compensate him for his services.

Relevant Statutes and General Facts:

11. Prior to 2011, TCA §2-1-104(a)(30), defined a ""Statewide political party" as --

(A) *A political party at least one (1) of whose candidates for an office to be elected by voters of the entire state in the past four (4) calendar years has received a number of votes equal to at least five percent (5%) of the total number of votes cast for gubernatorial candidates in the most recent election of governor; or*

(B) *For one (1) year after petitioning successfully, a political party which has a membership equal to at least two and one-half percent (2.5%) of the total number of votes cast for gubernatorial candidates in the most recent election of governor as shown by petitions to establish a political party filed with the coordinator of elections and signed by registered voters as members of the party and certified as to registration of the signers by the county election commissions of the counties where the signers are residents;*

12. In 2011, the Tennessee Code was amended [by 2011 Tenn. Pub. Ch. 257]. to

(a) Eliminate TCA §2-1-104(a)(30)(B);

(b) Add a new section TCA §2-1-104(a)(24) defining a “recognized minor party” as:

“any group or association that has successfully petitioned by filing with the coordinator of elections a petition which shall conform to requirements established by the coordinator of elections, but which must at a minimum bear the signatures of registered voters equal to at least two and one-half percent (2.5%) of the total number of votes cast for gubernatorial candidates in the most recent election of governor, and on each page of the petition, state its purpose, state its name, and contain the names of registered voters from a single county;”

(c) Replace TCA §2-13-107 in its entirety and, in particular, add a new section providing:

“(f) To maintain recognition, a minor party must meet the requirements of a statewide political party as defined in Section 2-1-104. A minor party who fails to meet such requirements shall cease to be a recognized minor party. Such party may regain recognition only by following the procedures prescribed for formation of recognized minor party. The coordinator of elections shall advise each county election commission of a minor party’s failure to receive a sufficient number of votes and shall order that said party cease to be recognized.”

13. In 2012, TCA §2-13-107(f) was further amended [by 2012 Tenn. Pub. Ch. 955, enacted May 10, 2012] to provide:

(f) If a petition filed pursuant to this section is determined to be sufficient by the coordinator of elections pursuant to subsection (b), such

party shall be recognized as a minor party for all remaining primary and general elections in the current election year. To maintain recognition beyond the current election year, a minor party

COUNT I:

14. Plaintiffs incorporate by reference the allegations in paragraphs 1. through XXX and further allege as follows:
15. In *Green Party of Tenn. Et. Al. v. Hargett Et. Al.*, 882 F. Supp. 2d 959 (M.D. Tenn. 2012), the Court held that TCA §2-1-104(a)(24) is unconstitutional and granted Plaintiffs status as “recognized minor parties” for purposes of the 2012 general election.
16. Defendants requested a stay of that order, and this Court denied that request.
17. Defendants appealed the Court’s order to the Sixth Circuit and again sought a stay of this Court’s ruling. The Sixth Court denied that request as it related to the status of Plaintiffs as “recognized minor parties.”
18. While the action was pending in the Sixth Circuit, Defendants continued to tell Plaintiffs that they would not be granted ballot-inclusion as “recognized minor parties” for the 2012 general election.
19. It was not until late August, 2012 that Defendants conceded that Plaintiffs were entitled to participate in the 2012 general election as “recognized minor parties.”
20. By virtue of an order by this Court in *Green Party of Tenn. Et. Al. v. Hargett Et. Al.* Plaintiffs had the status of “recognized minor parties” for purposes of the 2012 general election.
21. By operation of TCA §2-13-107(f) (2012) Plaintiffs lost their status as “recognized minor parties” by virtue of their failure to gain the status of “Statewide political parties” in the 2012 general election.
22. “Statewide political parties” have four years to satisfy the requirements of TCA §2-1-104(a)(30)(A) as “Statewide political parties.”
23. “Recognized minor parties” have only the election on the year in which they become “Recognized minor parties” to attain the status of “Statewide political parties.”
24. The requirement to satisfy the statutory requirements to become a “Statewide political party” in the first election following their qualification as a “recognized minor party.”

- (a) Imposes a severe burden on Plaintiffs and similarly situated “Recognized minor parties,”
 - (b) Is not necessary to serve any legitimate State purpose.
25. The combined effect of Tennessee’s minor party petition signature requirement and the requirement to re-qualify as “recognized minor parties” if they do not attain the status of “Statewide political parties” in the year in which they become “Recognized minor parties”.
- (a) Imposes a severe burden on minor parties.
 - (b) Makes it virtually impossible for Plaintiffs and similarly situated minor parties to achieve “Statewide political party” status.
26. Tennessee is the only state that gives newly ballot qualified parties only one election to satisfy any requirements for showing voter support entitling them to continued ballot access.
27. Allowing existing “Statewide political parties” four years to satisfy the requirements of TCA §2-1-104(a)(30)(A) to retain their status as “Statewide political parties” while requiring “recognized minor parties” to satisfy the requirements of TCA §2-1-104(a)(30)(A) to become “Statewide political parties” in the first election following their qualification as “recognized minor parties”:
- (a) Unconstitutionally discriminates against “recognized minor parties.”
 - (b) Is not necessary to serve any legitimate State purpose.
28. **WHEREFORE**, Plaintiffs ask the Court to enter its Order and Judgment
- A. Affirming its prior determination that TCA §2-1-104(a)(24) is unconstitutional
 - B. Declaring that TCA §2-13-107(f) is unconstitutional as a violation of principles of Equal Protection.
 - C. Declaring that the combined effects of TCA §2-13-107(f) and TCA §2-1-104(a)(24) imposes an unconstitutional burden on parties seeking recognition as “recognized minor parties.”
 - D. Enjoining Defendants from enforcing TCA §2-13-107(f). .
 - E. Directing that Plaintiff be recognized as “recognized minor parties.
 - F. Awarding Plaintiffs attorney’s fees and costs.

COUNT II:

29. Plaintiffs incorporate by reference the allegations in paragraphs 1. through XXX and further allege as follows:

30. TCA §2-1-114 provides that:

No political party may have nominees on a ballot or exercise any of the rights of political parties under this title until its officers have filed on its behalf with the secretary of state and with the coordinator of elections:

(1) An affidavit under oath that it does not advocate the overthrow of local, state or national government by force or violence and that it is not affiliated with any organization which does advocate such a policy; and

(2) A copy of the rules under which the party and its subdivisions operate. Copies of amendments or additions to the rules shall be filed with the secretary of state and with the coordinator of elections within thirty (30) days after they are adopted and shall be of no effect until ten (10) days after they are filed.

31. Compliance with the requirements of TCA §2-1-114 is a predicate condition for the inclusion of a party's candidates on the ballot.

32. The Democratic and Republican Parties of Tennessee have not filed the affidavits required by TCA §2-1-114.

33. Candidates who are not statutorily allowed to appear in the ballot cannot be properly elected.

34. Application of TCA §2-1-114 to Plaintiffs would violate principles of Equal Protection.

35. TCA §2-1-114 unconstitutionally impairs the free speech rights of Plaintiffs and their candidates and other similarly situated persons and entities.

36. Art. I, Sec. 1 of the Tennessee Constitution provides that:

“...all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.” (Emphasis added)

37. TCA §2-1-114 denies political parties a right guaranteed by the Tennessee Constitution.

38. **WHEREFORE**, Plaintiffs ask the court to enter its order and judgment:

- A. Declaring that TCA §2-1-114 is unconstitutional.
- B. Enjoining Defendants from enforcing TCA §2-1-114.
- C. Awarding Plaintiffs attorney's fees and costs.

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