

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LIBERTARIAN PARTY OF NORTH)
DAKOTA, RICHARD AMES, THOMMY)
PASSA AND ANTHONY STEWART,)

Plaintiffs,)

v.)

ALVIN A. JAEGER,)

Defendant.)

Civil No. _____

COMPLAINT

1. Plaintiffs Libertarian Party of North Dakota (“LPND”), Richard Ames, Thommy Passa and Anthony Stewart file this Complaint to seek relief from the operation of Section 16.1-11-36 of the North Dakota Century Code (“Section 16.1-11-36”).

2. Section 16.1-11-36 states that candidates of a ballot-qualified political party who win their party’s nomination for public office may not be placed upon the general election ballot unless they receive a specified minimum number of votes in the primary election.

3. Plaintiff LPND is a ballot-qualified political party. Plaintiffs Ames, Passa and Stewart are candidates for the state legislature, who won Plaintiff LPND’s nomination for their prospective offices in the party’s 2010 primary election.

4. Defendant Jaeger, as Secretary of State of North Dakota, declined to include Plaintiffs Ames, Passa and Stewart on North Dakota’s 2010 general election ballot, for failure to comply with Section 16.1-11-36, even though Plaintiffs Ames, Passa and Stewart are the undisputed nominees of a ballot-qualified political party.

5. Section 16.1-11-36, as applied, impermissibly burdens Plaintiffs' freedoms of speech, petition, assembly and association for political purposes, and Plaintiffs' right to equal protection of the law, as guaranteed by the First and Fourteenth Amendments to the United States Constitution. Plaintiffs therefore seek declaratory relief in the form of a judgment holding Section 16.1-11-36 unconstitutional as applied, and injunctive relief in the form of an order directing Defendant Jaeger to certify the names of Plaintiffs Ames, Passa and Stewart for inclusion as candidates of Plaintiff LPND on North Dakota's 2004 general election ballot.

PARTIES

6. Plaintiff Libertarian Party of North Dakota is the North Dakota state affiliate of the Libertarian Party, a national political party formed in 1971, with headquarters in Washington, D.C. Plaintiff LPND was formed for the purpose of influencing public policy by a variety of means, which include nominating candidates to run for public office and disseminating its views on policy issues through its candidates' general election campaigns. Plaintiff LPND's address is 604 6th Street North, Wahpeton, ND 58075.

7. Plaintiff Richard Ames is Chair of Plaintiff LPND and the party's 2010 nominee for the North Dakota State Senate, 25th district. Plaintiff Ames became Plaintiff LPND's nominee by winning the party's 2010 primary election, but North Dakota, by and through Defendant Jaeger, has declined to include Plaintiff Ames on the state's 2010 general election ballot. Plaintiff Ames' address is 604 6th Street North, Wahpeton, ND 58075.

8. Plaintiff Thommy Passa is Plaintiff LPND's 2010 nominee for the North Dakota State House of Representatives, 43rd district. Plaintiff Passa became Plaintiff LPND's nominee by winning the party's 2010 primary election, but North Dakota, by and through Defendant

Jaeger, has declined to include Plaintiff Passa on the state's 2010 general election ballot. Plaintiff Passa's address is 1802 South 20th Street, Grand Forks, ND 58201.

9. Plaintiff Anthony Stewart is Plaintiff LPND's 2010 nominee for the North Dakota State House of Representatives, 17th district. Plaintiff Stewart became Plaintiff LPND's nominee by winning the party's 2010 primary election, but North Dakota, by and through Defendant Jaeger, has declined to include Plaintiff Stewart on the state's 2010 general election ballot. Plaintiff Stewart's address is 3615 Landeco Lane #9, Grand Forks, ND 58201.

10. Defendant Alvin A. Jaeger is Secretary of State of North Dakota. Defendant Jaeger is North Dakota's chief elections officer, and is charged with prescribing the form and content of statewide election ballots. Plaintiffs file this Complaint against Defendant Jaeger in his official capacity only, and make no claims against Defendant Jaeger in his personal capacity. Defendant Jaeger's address is State of North Dakota, 600 East Boulevard Avenue, Department 108, 1st Floor, Bismarck, ND 58505.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, because Plaintiffs' claims arise under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

12. This Court has personal jurisdiction over Defendant Jaeger because he is a state official who maintains offices in North Dakota. Venue is proper in this Court because all Plaintiffs and the Defendant reside in North Dakota.

FACTUAL ALLEGATIONS

13. Plaintiff LPND is a ballot-qualified political party in the state of North Dakota. Plaintiff LPND became ballot-qualified by submitting nomination petitions with at least 7000

valid signatures of qualified electors prior to the deadline of April 9, 2010, as required by state law. N.D.C.C. § 16.1-11-30 (“Section 16.1-11-30”).

14. On April 12, 2010, Defendant Jaeger sent a letter to Plaintiff Ames, as Chair of Plaintiff LPND, confirming that Plaintiff LPND’s nomination petitions contained the signatures of more than 7000 qualified electors, and certifying that Plaintiff LPND fulfilled the requirements of state law as set forth in Section 16.1-11-30.

15. Defendant Jaeger’s April 12, 2010 letter further stated that Plaintiff LPND “will be provided with a separate column on the ballot for the upcoming primary election,” and that “all qualified candidates for your party will be listed on the June primary ballot,” provided that they timely filed their required documents before the April 9, 2010 deadline.

16. Plaintiffs Ames, Passa and Stewart are qualified candidates for the state legislature, and each timely filed the required documents to be listed on the primary ballot.

17. On June 8, 2010, Plaintiff LPND held its primary election. Plaintiff Ames was listed on the primary ballot as a candidate for the North Dakota State Senate, 25th district. Plaintiff Passa was listed on the primary ballot as a candidate for the North Dakota State House of Representatives, 43rd district. Plaintiff Stewart was listed on the primary ballot as a candidate for the North Dakota State House of Representatives, 17th district.

18. Plaintiffs Ames, Passa and Stewart each won their primary election races. Plaintiffs Ames, Passa and Stewart thus became the duly selected nominees of Plaintiff LPND for their respective offices.

19. On or about June 25, 2010, Defendant Jaeger sent Plaintiff Ames a Notice of Nomination, stating that “you were nominated in the primary election that was held on June 8,

2010,” and that “your name will now be placed on the ballot for the General Election to be held on November 2, 2010.” Plaintiffs Passa and Stewart did not receive such Notices of Nomination.

20. On or about June 29, 2010, Plaintiff Ames contacted the office of Defendant Jaeger by telephone, and was informed that Defendant Jaeger’s office had sent the Notice of Nomination to Plaintiff Ames in error. Plaintiff Ames was further informed that Plaintiffs Ames, Passa and Stewart would not be included on the November 2, 2010 General Election ballot – even though they are the undisputed winners of the primary election for their respective offices – because they did not receive the minimum number of votes specified by Section 16.1-11-36.

21. Section 16.1-11-36 provides that:

A person may not be deemed nominated as a candidate for any office at any primary election unless that person receives a number of votes equal to the number of signatures required, or which would have been required had the person not had the person’s name placed on the ballot through a certificate of endorsement, on a petition to have a candidate’s name for that office placed on the primary ballot.

N.D.C.C. § 16.1-11-36.

22. In order to be placed on the primary ballot as candidates for the state legislature, Plaintiffs Ames, Passa and Stewart were required to submit a petition containing the signatures of at least one percent of the total resident population of their respective legislative districts, as determined by the most recent federal decennial census, but not more than 300 signatures.

N.D.C.C. § 16.1-11-11 (“Section 16.1-11-11”).

23. Under Section 16.1-11-36 and Section 16.1-11-11, Plaintiff Ames was required to receive 142 votes, Plaintiff Passa was required to receive 132 votes, and Plaintiff Stewart was required to receive 130 votes in the primary election, in order to be deemed nominated by Plaintiff LPND. N.D.C.C. §§ 16.1-11-11, 16.1-11-36; *see* Declaration of Richard Winger ¶ 6 (attached as Exhibit A).

24. 933 voters voted in the North Dakota primary election for the North Dakota State Senate, 25th district. Section 16.1-11-36 therefore required Plaintiff Ames to receive 15.21 percent of the total votes cast in the election in order to be deemed nominated by Plaintiff LPND.

25. 1654 voters voted in the North Dakota primary election for the North Dakota State House of Representatives, 43rd district. Section 16.1-11-36 therefore required Plaintiff Passa to receive 7.98 percent of the total votes cast in the election in order to be deemed nominated by Plaintiff LPND.

26. 2960 voters voted in the North Dakota primary election for the North Dakota State House of Representatives, 17th district. Section 16.1-11-36 therefore required Plaintiff Passa to receive 4.39 percent of the total votes cast in the election in order to be deemed nominated by Plaintiff LPND.

27. A total of 102,031 voters voted in North Dakota's June 8, 2010 primary election. North Dakota has 47 legislative districts. An average of 2,171 primary voters thus voted in each district in 2010. In the average district, therefore, Section 16.1-11-36 requires primary candidates for the state legislature to receive more than 6 percent of the total votes cast in that district.

28. As the undisputed winners of Plaintiff LPND's 2010 primary election for their respective offices, Plaintiffs Ames, Passa and Stewart qualify in all respects for placement upon North Dakota's 2010 General Election ballot, and would be included, but for Defendant Jaeger's determination that they did not meet the requirements imposed by Section 16.1-11-36.

COUNT I

VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH AMENDMENTS

**(Request for Declaratory Judgment Pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983
Holding N.D.C.C. § 16.1-11-36 Unconstitutional as Applied)**

29. Plaintiffs incorporate and reassert paragraphs 1- 28 as if set forth fully herein.

30. Plaintiffs Ames, Passa and Stewart qualified for placement on the primary election ballot of Plaintiff LPND, a ballot-qualified political party.

31. Plaintiffs Ames, Passa and Stewart each won their primary election races and became the duly selected nominees of Plaintiff LPND for their respective offices.

32. Defendant Jaeger, acting under color of state law in his official capacity as Secretary of State, declined to recognize Plaintiffs Ames, Passa and Stewart as the nominees of Plaintiff LPND, on the ground that they did not receive the minimum number of votes in the primary election required by Section 16.1-11-36.

33. Section 16.1-11-36, as applied, impermissibly burdens Plaintiffs' freedoms of speech, petition, assembly and association for political purposes, and Plaintiffs' right to equal protection of the law, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

34. WHEREFORE, Plaintiffs respectfully request that the Court enter a judgment holding Section 16.1-11-36 unconstitutional as applied to deny Plaintiffs Ames, Passa and Stewart access to North Dakota's 2010 General Election ballot as nominees of Plaintiff LPND.

COUNT II

VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH AMENDMENTS

(Request for Injunction Pursuant to 42 U.S.C. § 1983 Requiring Defendant Jaeger to Certify Plaintiffs Ames, Passa and Stewart for Inclusion as Candidates of Plaintiff LPND on North Dakota's General Election Ballot)

35. Plaintiffs incorporate and reassert paragraphs 1- 34 as if set forth fully herein.

36. Plaintiffs Ames, Passa and Stewart qualified for placement on the primary election ballot of Plaintiff LPND, a ballot-qualified political party.

37. Plaintiffs Ames, Passa and Stewart each won their primary election races and became the duly selected nominees of Plaintiff LPND for their respective offices.

38. Defendant Jaeger, acting under color of state law in his official capacity as Secretary of State, declined to recognize Plaintiffs Ames, Passa and Stewart as the nominees of Plaintiff LPND, on the ground that they did not receive the minimum number of votes in the primary election required by Section 16.1-11-36.

39. Section 16.1-11-36, as applied, impermissibly burdens Plaintiffs' freedoms of speech, petition, assembly and association for political purposes, and Plaintiffs' right to equal protection of the law, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

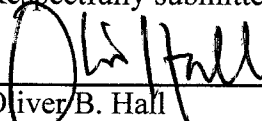
40. WHEREFORE, Plaintiffs respectfully request that the Court enter an order directing Defendant Jaeger to certify the names of Plaintiffs Ames, Passa and Stewart for inclusion on North Dakota's 2004 General Election ballot as nominees of Plaintiff LPND.

PRAYER FOR RELIEF

41. WHEREFORE, Plaintiffs respectfully request that this Court:
- A. Enter a declaratory judgment holding N.D.C.C. § 16.1-11-36 unconstitutional as applied;
 - B. Enter an injunction directing Defendant Jaeger to certify Plaintiffs Ames, Passa and Stewart for inclusion on North Dakota's 2010 General Election ballot as nominees of Plaintiff LPND for the offices of North Dakota State Senate 25th District, North Dakota House of Representatives, 43rd District, and North Dakota House of Representatives, 17th District, respectively;
 - C. Award any such other and further relief as the Court shall deem just and proper;
 - D. Award attorneys' fees pursuant to 42 U.S.C. § 1988.

Dated: July 14, 2010

Respectfully submitted,



Oliver B. Hall

D.C. Bar No. 976463

(Motion for Admission Pro Hac Vice Pending)

CENTER FOR COMPETITIVE DEMOCRACY

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EXHIBIT A

Declaration of Richard Winger (July 14, 2010)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

LIBERTARIAN PARTY OF NORTH
DAKOTA, RICHARD AMES, THOMMY
PASSA AND ANTHONY STEWART,

Plaintiffs,

v.

ALVIN A. JAEGER,

Defendant.

Civil No. _____

DECLARATION OF RICHARD WINGER

I, Richard Winger, hereby declare under penalty of perjury that the following are true and correct to the best of my knowledge and belief:

1. I am above the age of 18 and a resident of San Francisco, California.

2. I am the editor of Ballot Access News, a 23-year-old print publication that covers, among other matters, election returns for all minor party candidates for federal and state office. See www.ballot-access.org. Also see my c.v. attached as Exhibit A. I have studied the ballot access laws of all fifty states for the past forty years.

3. North Dakota is the only state in the nation in which no one may be nominated in a partisan primary, even though he or she outpolled all opponents in that primary, unless the candidate polls a certain minimum number of votes.

4. North Dakota is also the only state in the nation in which no minor party candidate for state legislature has appeared on a general election ballot, with the party label, during the last ten years. The last time any minor party candidate for North Dakota legislature appeared on the general election ballot was in 1976, when the American Party successfully placed some of its legislative nominees on the November ballot. See Exhibit B, which names one minor party legislative candidate who appeared on the ballot with the party label, and gives the year of that instance, for each state. Nebraska is omitted from the chart because it has non-partisan

legislative elections. Among the remaining 48 states other than North Dakota, some minor party legislative candidate has appeared on the general election ballot, with the party label, during the last ten years.

5. Minor parties in the United States, together, run over 1,000 nominees for state legislature in each election year. Minor parties are especially interested in legislative races because they sometimes win state legislative elections. Minor party nominees (who were not also the nominees of any major party) have been elected to state legislatures since 1990 in Alaska, Arkansas, California, Illinois, Maine, Minnesota, Montana, New Hampshire, New York, and Vermont. The complete absence of minor party legislative nominees from North Dakota general election ballots for the last 34 years is an indication that North Dakota election laws are flawed.

6. That flaw is the excessively restrictive North Dakota law found in section 16.1-11-36, in conjunction with section 16.1-11-11. Those two sections, together, require a candidate running in a partisan primary for state legislature to poll between 130 and 143 votes in that primary. The number of votes for each district can be found on the Secretary of State's web page at www.nd.gov/sos/forms/pdf/leg-dist-stats.pdf. The number is based on population, and does not change from year to year, but changes after a new census is taken. For the 25th legislative district, candidates need 142 votes. For the 17th legislative district, they need 130 votes; for the 43rd legislative district, they need 132 votes.

7. At the June 8, 2010 primary, 102,031 voters participated. North Dakota has 47 legislative districts. Therefore, in the average legislative district in the June 2010 primary, 2,171 voters voted. The number of votes required for candidates running in a legislative primary, for each district in the state, is in excess of 6% of the number of voters who voted in June 2010.

8. Minor party primaries have been conducted since 1992 in Alaska, Arizona, California, Colorado, Florida, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, Wisconsin,

and Wyoming. Some states not mentioned in this paragraph provide that minor parties nominate by convention. Other states not mentioned in this paragraph do give primaries to minor parties that have appeared on the ballot in those states since 1992, but those states cancel that party's primary if there are no contests, and all minor parties in such states have been entirely with primary contests, so no primary was actually held.

9. With the exception of Minnesota, in none of the states that actually held primaries for any minor party in the period between 1996 and the present day, was there ever any instance at which as many as 1% of the statewide primary voters participated in any minor party's primary.

10. Even though minor parties almost always have very small turnouts in their own primaries, their nominees frequently poll large votes in the general election. The clearest illustration of that point comes from Vermont. Vermont has a recognized party called the Progressive Party, which is the nation's most successful minor party, because ever since 1996, it has elected some state legislators in each election. In 2008 it nominated twelve candidates for the legislature, and elected six of them. Vermont has an open primary, just as North Dakota does. This chart lists the 2008 Progressive Party legislative candidates, and tells how many votes each got in the Progressive Party primary, and how many each received in the general election:

CANDIDATE	PRIMARY VOTE	GENERAL VOTE	GENERAL VOTE %
John Bloch	33	3,487	13.26%
Chris Pearson	22	1,494	44.24%
David Zuckerman	23	2,316	68.58%
Paul Cook	4	472	17.60%
Cindy Weed	27	601	32.28%
Susan Hatch Davis	10	1,874	58.82%
Winston Dowland	4	567	17.30%
Nancy Potak	19	1,916	55.81%

Dexter Randall	8	754	35.45%
Ellen Garneau	6	617	33.62%
Mollie S. Burke	6	1,683	100.00%
Sarah Edwards	17	1,625	100.00%
Sandy Haas	23	1,349	56.44%

Here are some examples from other states than Vermont: (a) in Minnesota's open primary in 1996, Tom Viken got 8 votes in the Reform Party primary for State Representative, district 30B, but in the general election he received 2,706 votes; (b) in Ohio's open primary in 2000, Richard Pierce got 7 votes in the Libertarian Party primary for State Representative, 14th district, but in the general election he got 5,672 votes; (c) in Missouri's open primary in 2008, Larry Busby got 5 votes in the Libertarian Party primary for State Representative, 154th district, but in the general election he got 3,640 votes; (d) in Illinois' open primary in 2008, Kevin M. O'Connor got 32 votes in the Green Party primary, but in the general election he got 15,865 votes (which was 33.2% of the total vote cast for that office in November 2008); (e) in Hawaii's open primary in 2006, Aaron Anderson got 28 votes in the Libertarian Party primary, but he got 609 votes in the general election; (f) in Michigan's open primary in 2008, Paul Jensen got 8 votes in the Reform Party primary for State House, 53rd district, but he got 494 votes in the general election. There would be similar examples from Arkansas, Idaho, Montana, and Rhode Island, except that those states don't actually hold primaries for parties that have no contested primaries.

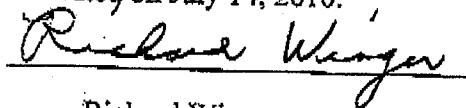
11. The reason that voters do not vote in minor party primaries is because such primaries are almost always uncontested, so their primaries are not interesting to most voters. The fact that a minor party may have a low turnout in its own primary, even in open primary states in which all voters are free to choose that minor party's primary, should not be taken as a sign that the voters are not interested in voting for that minor party's nominees in the general election.

12. The Libertarian Party qualified as a party in North Dakota in 2010 by submitting more than 7,000 valid signatures, in accordance with section 16.1-11-30. The number of signatures to qualify a new party in North Dakota is relatively difficult, compared to the average state. In North Dakota, 7,000 signatures is more than 1% of the eligible signers. The only other states in which the mandatory petition to recognize a new party is in excess of 1% of the eligible voters are Alabama, Idaho, North Carolina, Oklahoma, and Wyoming. See Appendix C. All other states have some procedure by which a previously unqualified party may place its nominees on the November ballot, with the party label, by a petition or other showing of support that is under 1% of the number of registered voters. Therefore, the Libertarian Party in 2010 has already demonstrated that it has a modicum of voter support in North Dakota. The Libertarian Party is the only party that is recognized in North Dakota this year, other than the Democratic and Republican Parties.

13. Before 1983, minor parties in North Dakota were able to place their nominees for the state legislature on the November ballot, with the party label, by using the independent candidate procedure contained in North Dakota election law section 16.1-12-02. However, in 1983, the independent candidate law was changed to provide that candidates who use the independent procedure may not have a partisan label printed on the ballot next to their names. Instead, the word "independent" appears on the ballot next to their names. The 1983 law change is in Chapter 242 of the Session Laws, on page 628.

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

Executed on July 14, 2010.



Richard Winger

WINGER DECLARATION EXHIBIT A

Richard Winger Curriculae Vitae

Richard Winger Curriculae Vitae
3201 Baker Street
San Francisco, California 94123
Updated September 28, 2009

EDUCATION

BA, Political Science, University of California, Berkeley, 1966
Graduate study, Political Science, UCLA, 1966-67

EMPLOYMENT

Ballot Access News, Editor 1985-Present
Editor of newsletter covering legal, legislative and political developments of interest to minor parties and independent candidates. Researcher of ballot access laws of all 50 states from years 1888-present; well versed in how ballot access laws of each state work historically and how they compare to each other. Responsible for reading all statutes, regulations, legal opinions, and state attorney general opinions on rights of political parties and the publications of minor parties.

On the Editorial Board of *Election Law Journal*, published by Mary Ann Liebert, Inc., Larchmont, N.Y., since 2001.

PUBLICATIONS

Wrote a chapter or two in each of these books:

Others, Vol. 2, Third Parties During The Populist Period, by Darcy G. Richardson (2007: iUniverse, Inc., New York). Wrote the book's Appendix, "Early Ballot Access Laws for New and Minor Parties."

Democracy's Moment

edited by Ronald Hayduk and Kevin Mattson (2002: Rowman & Littlefield, Lanham, Md.)

The Encyclopedia of Third Parties in America

edited by Immanuel Ness and James Ciment (2000: M.E. Sharpe, Inc., Armonk, N.Y.)

Multiparty Politics in America

edited by Paul S. Herrnson (1997: Rowman & Littlefield, Lanham, Md.)

The New Populist Reader

edited by Karl Trautman (1997: Praeger, Westport, Ct.)

Additional articles published in these periodicals:

University of Arkansas Little Rock Law Review

Wall Street Journal

American Review of Politics

The Long Term View

University of Mass. Law Review

California Journal
Election Law Journal (two articles)
Cleveland State Law Review
Chronicles Magazine
Price Costco Connection
Fordham Urban Law Journal

Also, I have written "Election Law Decisions" in each issue of the newsletter of the American Political Science Association's Section on Representation and Electoral Systems, which appears twice a year, starting with the 2005 issues.

NATIONAL INTERVIEWS on Minor Parties, Independents, Ballots and Ballot Access

<i>NBC</i>	<i>National Public Radio</i>
<i>ABC</i>	<i>Pacifica Radio</i>
<i>CNN</i>	<i>MSNBC</i>

CASES: TESTIMONY or AFFIDAVITS (political party or candidate prevailing, or case pending)

Alaska: Libertarian Party v Coghill, state superior court, 3rd dist., 3AN-92-08181, 1992
Court issued injunction enjoining enforcement of petition deadline for minor parties

Arizona (3 cases): Campbell v Hull, 73 F Supp 2d 1081 (1999); Az. Libt. Party v Hull, superior ct., Maricopa Co. 96-13996, 1996. Nader v Brewer, 531 F 3d 1028 (9th cir., 2008)

Arkansas (3 cases): Citizens to Establish a Reform Party v Priest, 970 F Supp 690 (E.D. Ark. 1996); Green Party of Ark. v Priest, 159 F.Supp.2d (E.D. Ark. 2001); Green Party of Ark. v Daniels, U.S. District Court, 448 F.Supp 2d 1056 (E.D.Ark. 2006).

California: California Democratic Party v Jones, 530 US 567 (2000).

Colorado: Ptak v Meyer, 94-N-2250, U.S. Dist. Ct., 1994. Court ordered Secretary of State to place Libertarian legislative candidate on ballot.

Connecticut: Green Party of Connecticut v Garfield, U.S. Dist. Ct., 2008, 2:06cv-1030. Decided August 27, 2009. Court held public funding law unconstitutional because it discriminates against minor party and independent candidates.

Florida (2 cases): Libt. Party of Fla. v Mortham, 4:96cv258-RH, U.S. Dist. Ct., N.D., 1996. Court ordered Secretary of State to place Libertarian vice-presidential candidate on ballot. Reform Party v Black, 885 So.2d 303 (Fla. 2004).

Georgia: Bergland v Harris, 767 F 2d 1551 (11th cir., 1985). U.S. Court of Appeals remanded case back to U.S. District Court. Before U.S. District Court acted, legislature substantially eased law, so case became moot.

Hawaii: Libt. Party of Hi. v Waihee, cv 86-439, U.S. Dist. Ct., 1986. Court ordered Lieutenant Governor to extend petition deadline for new parties.

Illinois: (2 cases): Nader v Ill. State Bd. of Elections, 00-cv-4401, U.S. Dist. Ct., N.D., 2000. Court ordered State Board of Elections to place candidate on ballot. Lee v Ill. State Bd. of Elections, 463 F.3d 763 (7th cir. 2006).

Iowa: Oviatt v Baxter, 4:92-10513, U.S. Dist. Ct., 1992. Court ordered Secretary of State to put Grassroots Party candidate for Congress on ballot.

Kansas: Merritt v Graves, 87-4264-R, U.S. Dist. Ct., 1988. State did not defend three election laws and signed consent decree on independent petition deadline,

requirement that independent petitions not be circulated outside of circulator's home precinct, and requirement that voters could only register in qualified parties. This case should not be confused with another by the same name decided in December, 1988.

Kentucky: Libt. Pty. of Ky. v Ehrler, 776 F Supp 1200 (E.D. 1991)

Maryland (2 cases): Dixon v Md. State Adm. Bd. of Elec. Laws, 878 F 2d 776 (1989, 4th cir.); Green Party v Bd. of Elections, 832 A 2d 214 (Md. 2003).

Montana: Kelly v Johnson, U.S. Dist. Ct. 08-25 (pending).

Nevada (2 cases): Libt Pty. of Nev. v Swackhamer, 638 F Supp 565 (1986); Fulani v Lau, cv-N-92-535, U.S. Dist. Ct., 1992. Court ordered Secretary of State to put various minor parties on ballot.

New Jersey (2 cases): Council of Alternative Political Parties v Hooks, 999 F Supp 607 (1998); Council of Alternative Political Parties v State Div. of Elections, 781 A 2d 1041 (N.J.Super. A.D. 2001).

New York (3 cases): Molinari v Powers, 82 F Supp 57 (E.D.N.Y. 2000); Schulz w Williams, 44 F 3d 48 (2nd cir., 1994); Green Party of N.Y. v N.Y. State Bd. of Elections, 389 F.3d 411 (2nd cir., 2004).

North Carolina: Obie v N.C. Bd. of Elections, 762 F Supp 119 (E.D. 1991); DeLaney v Bartlett, 370 F.Supp.2d 373 (M.D. 2004).

Ohio: Libertarian Party of Ohio v Blackwell, 462 F.3d 579 (6th cir. 2006).

Oklahoma: Atherton v Ward, 22 F Supp 2d 1265 (W.D. Ok. 1998).

Pennsylvania: Patriot Party of Pa. v Mitchell, 826 F Supp 926 (E.D. 1993).

South Dakota: Nader v Hazeltine, 110 F Supp 2d 1201 (2000).

Tennessee: Libt Party v Thompson, U.S. Dist. Ct. (pending)

Texas: Pilcher v Rains, 853 F 2d 334 (5th cir., 1988).

Virginia: Libt. Pty of Va. v Quinn, 3:01-cv-468, U.S. Dist. Ct., E.D. (2001). Court ordered State Board of Elections to print "Libertarian" party label on ballot next to name of Libertarian candidates.

West Virginia (3 cases): State ex rel Browne v Hechler, 476 SE 2d 559 (Supreme Court 1996); Nader v Hechler, 112 F.Supp.2d 575 (S.D.W.V., 2000); McClure v Manchin, 301 F Supp 2d 564 (2003).

CASES: TESTIMONY or AFFIDAVITS (political party or candidate not prevailing)

Alabama: Swanson v Bennett, 490 F.3d 894 (11th cit. 2007).

Arizona: (2 cases) Indp. Amer. Party v Hull, civ 96-1240, U.S. Dist. Ct., 1996; Browne v Bayless, 46 P 3d 416 (2002).

Arkansas (2 cases): Langguth v McKuen, LR-C-92-466, U.S. Dist. Ct., E.D., 1992; Christian Populist Party v Sec. of State, 650 F Supp 1205 (E.D. 1987).

California: Socialist Workers Party v Eu, 591 F 2d 1252 (9th cir., 1978).

Florida (2 cases): Fulani v Smith, 92-4629, Leon Co. Circuit Court, 1992; Libertarian Party of Fla. v State of Fla., 710 F 2d 790 (11th cir., 1983).

Georgia (2 cases): Libertarian Party of Ga. v Cleland, 1:94-cv-1503-CC, U.S. Dist. Ct., N.D. (1994); Esco v Secretary of State, E-53493, Fulton Co. Superior Court, 1998.

Idaho: Nader v Cenarrusa, cv 00-503, U.S. Dist. Ct., 2000.

Illinois: Libt Party v Rednour, 108 F 3d 768 (7th cir., 1997).

Kansas: Hagelin for President Committee v Graves, 804 F Supp 1377 (1992).

Maine (2 cases): *Maine Green Party v Diamond*, 95-318, U.S. Dist. Ct., 1995; *Maine Green Party v Secretary of State*, 96-cv-261, U.S. Dist. Ct., 1996.
Maryland (2 cases): *Ahmad v Raynor*, R-88-869, U.S. Dist. Ct., 1988; *Creager v State Adm. Bd. of Election Laws*, AW-96-2612, U.S. Dist. Ct., 1996.
Missouri: *Manifold v Blunt*, 863 F 2d 1368 (8th cir. 1988).
New Hampshire: *Werme v Gov. of N.H.*, 84 F 3d 479 (1st cir., 1996).
North Carolina: *Nader v Bartlett*, 00-2040, 4th cir., 2000.
Ohio: *Schrader v Blackwell*, 241 F 2d 783 (6th cir., 2001).
Oklahoma (3 cases): *Rainbow Coalition v Okla. State Elec. Bd.*, 844 F 2d 740 (1988); *Nader v Ward*, 00-1340, U.S. Dist. Ct., 1996; *Clingman v Beaver*, __US__ (May 2005).
Oregon: *Libt Party v Roberts*, 737 P 2d 137 (Ore. Ct. of Appeals, 1987).
Texas (2 cases): *Texas Indp. Party v Kirk*, 84 F 3d 178 (5th cir., 1996); *Nat. Comm. of U.S. Taxpayers Party v Garza*, 924 F Supp 71 (W.D. 1996).
Virginia: *Wood v Meadows*, 207 F 3d 708 (4th cir., 2000).
West Virginia: *Fishbeck v Hechler*, 85 F 3d 162 (4th cir., 1996).
Wyoming: *Spiegel v State of Wyoming*, 96-cv-1028, U.S. Dist. Ct., 1996.

QUALIFIED EXPERT WITNESS

Fishbeck v Hechler, 85 F 3d 162 (4th cir. 1996, West Virginia case)
Council of Alternative Political Parties v Hooks, 999 F Supp 607 (1998, N.J.)
Citizens to Establish Reform Party v Priest, 970 F Supp 690 (E.D. Ark, 1996)
Atherton v Ward, 22 F Supp 2d 1265 (W.D.Ok. 1998)
Calif. Democratic Party v Jones, 530 US 567 (2000)
Swanson v Bennett, not reported, U.S. Dist. Ct., m.d.Ala. (02-T-644-N)
Beaver v Clingman, 363 F 3d 1048 (10th cir., 2004, Okla. case)
Green Pty v N.Y. Bd. Elec., 267 F Supp 2d 342 (EDNY 2003), 389 F.3d 411 (2nd 2004)
Lawrence v Blackwell, 430 F.3d 368 (6th cir. 2005)

In all cases in which I was presented as an expert, the opposition accepted that designation, except in the Green Party of New York case. The U.S. District Court ruled that I qualify as an expert. See headnote #1 at page 342, and footnote nine on page 350. The 2nd circuit agreed, 389 F.3d 411 (2004), at 421.

SPEAKING ENGAGEMENTS: Colleges and Scholarly Meetings

Panel of New York City Bar Association, 1994. Ballot access.
Amer. Political Science Assn., nat. conventions of August 1995 and August 1996.
Papers.
Capital University School, law school class, Columbus, Ohio, 1996. Guest lecturer.
Cal. State U., course in political science, Hayward, 1993 and 1996. Guest lecturer.
San Francisco City College, course in political science, 1996 and 1997. Guest lecturer.
Providence College, R.I., Oct. 1997, seminar on ballot access.
Harvard U., JFK School of Gov't, Oct. 18, 1995, guest lecturer, ballot access.
Voting Integrity Project national conference, Apr. 1, 2000, speaker on ballot access.
Center for Voting & Democracy nat. conference, Nov. 30, 2003, speaker on ballot access.
Robert Dole Institute of Politics, U. of Kansas, one of 5 panel members, Oct. 25, 2007.

WINGER DECLARATION EXHIBIT B

Chart: When Did a Minor Party Candidate for Legislature Last Appear on Ballot With the Party Label?

**WHEN DID A MINOR PARTY CANDIDATE FOR LEGISLATURE LAST APPEAR ON
BALLOT WITH THE PARTY LABEL?**

State	Candidate	District	Vote Total	Vote %	Year	Party
Alabama	Dick Clark	House 79	396	3.12%	2006	Libertarian
Alaska	Scott Kohlhaas	House 20	812	19.46%	2008	Libertarian
Arizona	Mike Renzulli	Senate 14	3,391	17.44%	2008	Libertarian
Arkansas	Richard Carroll	House 39	4,261	89.33%	2008	Green
California	Pamela J. Brown	Assembly 40	18,239	14.76%	2008	Libertarian
Colorado	James Frye	House 42	1,207	6.91%	2008	Libertarian
Connecticut	Marc L. Guttman	Senate 20	700	1.59%	2008	Libertarian
Delaware	Robert E. Brown	House 2	349	5.74%	2008	Independent Party
Florida	Sarah Roman	House 44	4,825	6.02%	2008	Green
Georgia	Ken Parmalee	House 76	1,487	9.48%	2004	Libertarian
Hawaii	John Blumer-Buell	Senate 6	3,653	20.66%	2008	Independent Party
Idaho	Mikel Hautzinger	House 17A	3,298	23.27%	2008	Libertarian
Illinois	Kevin O'Connor	House 41	15,865	33.32%	2008	Green
Indiana	Rex Bell	House 54	8,374	33.49%	2008	Libertarian
Iowa	Eric Cooper	House 46	3,124	20.72%	2008	Libertarian
Kansas	Yvonne Cunningham	House 26	2,981	21.22%	2008	Libertarian
Kentucky	J. Lance Combe	House 81	2,754	18.50%	2008	Libertarian
Louisiana	Richard Fontanesi	Senate 16	3,995	9.03%	2007	Libertarian
Maine	Sandy L. Amborn	House 120	251	30.20%	2008	Green
Maryland	Jan E. Danforth	House 40	2,606	24.55%	2006	Green
Massachusetts	John I. Lebeaux	Sen, Wor 2	4,806	4.82%	2008	Green
Michigan	Terry Ashcraft	House 89	2,322	4.45%	2008	Libertarian
Minnesota	Paul Gaston	House 54B	2,556	12.18%	2008	Independence
Mississippi	Parker Dykes	Senate 35	4,542	29.05%	2007	Constitution
Missouri	Larry S. Busby	House 154	3,640	26.16%	2008	Libertarian
Montana	Paul W. O'Leary	House 25	239	4.96%	2008	Libertarian
Nebraska	(non-partisan)	--	--	--	--	--
Nevada	Nathan Santucci	Assembly 22	14,930	22.33%	2008	Libertarian
New Hampshire	Lisa M. Wilber	Rep, Hills 7	2,242	22.79%	2008	Libertarian
New Jersey	Daryl Brooks	Assembly 15	775	2.10%	2009	Libertarian
New Mexico	Donald E. Thompson	House 19	1,465	24.11%	2006	Green
New York	Miochael Boncella	Senate 47	8,562	11.45%	2008	Working Families
North Carolina	Brian Irving	Senate 17	17,441	18.80%	2008	Libertarian
North Dakota	Clarence Jaeger	Senate 33	999	16.98%	1976	American
Ohio	Timothy McNeil	House 65	3,846	7.88%	2008	Libertarian
Oklahoma	Christopher Powell	House 100	1,556	14.72%	2000	Libertarian
Oregon	Jim Karlock	House 45	2,932	11.33%	2008	Libertarian
Pennsylvania	Mary Lea Lucas	Senate 21	13,987	15.42%	2008	Libertarian
Rhode Island	Jonathan Osborne	Senate 34	2,494	21.60%	2008	Socialist
South Carolina	Victor Kocher	House 76	1,335	9.44%	2008	Libertarian
South Dakota	Steve Willis	Senate 15	356	6.03%	2008	Constitution
Tennessee	Robert Callaway	House 23	4,108	23.47%	2000	Libertarian
Texas	Tom Davis	Senate 14	40,847	18.05%	2008	Libertarian
Utah	Dave Nelson	House 1	905	14.07%	2008	Libertarian
Vermont	Jeffrey Pascoe	House, Ch 7	648	37.85%	2008	Libertarian
Virginia	Matt Cholko	House 39	580	3.15%	2009	Libertarian
Washington	Ruth E. Bennett	House 37(2)	5,017	10.56%	2008	Libertarian
West Virginia	Robert Mills	House 51	1,666	24.51%	2008	Mountain
Wisconsin	Keith Deschler	Assembly 62	3,217	15.24%	2008	Libertarian
Wyoming	Richard Brubaker	House 34	770	19.85%	2008	Libertarian

WINGER DECLARATION EXHIBIT C

Chart: Nomination Petition Requirements for New Party Ballot Access By State

**NOMINATION PETITION REQUIREMENTS FOR NEW PARTY BALLOT ACCESS
BY STATE***

STATE	LEGAL REQUIREMENT	ELECTION CODE REFERENCE	REQUIRED	%
Ala	3% of 2006 gub. vote	17-19-2(a)	37,513	1.99
Alas	1% of 2006 vote cast	15.30.025	2,374	.76
Az	1.33% of 2006 gub. vote	16-802	20,449	1.02
Ark	number stated in law	7-7-103(2)	10,000	.95
Cal	1% of 2006 gub. vote	elec. code	(reg.) 88,991	.72
Colo	number stated in law	1-4-801	1,000	.05
Ct	number stated in law	9-453(d)	7,500	.48
Del	.05% of Dec. 2007 registration	Title 15, §3001	(reg.) 284	.08
Fla	file list of officers, hold nat. conv.	97.021(12)	0	.00
Ga	1% of no. of reg. voters as of 2004	21-2-180	42,489	1.29
Hi	one-tenth of 1% of reg. voters, 2006	Tit. 2, 11-62	663	.15
Id	number stated in law	34-708	11,968	2.00
Il	number stated in law	10 ILCS 5/10-3	25,000	.47
In	2% of 2006 sec of state vote	3-8-6-3	32,742	1.33
Io	number stated in law	Tit 4, §45.1	1,500	.10
Kan	2% of 2006 gub. vote	25-303	16,994	1.43
Ky	number stated in law	Title 10, §118.315(2)	5,000	.28
La	number stated in law	Title 18, §464.B(1)	(reg.) 1,000	.05
Me	number stated in law	Title 21, §494.5	4,000	.54
Md	number stated in law	4-102(b)(2), 5-302(g)	10,000	.42
Ma	number stated in law	Chap. 53, §6	10,000	.34
Mi	1% of 2006 gub. vote	168.685(1)	38,024	.79
Mn	number stated in law	204B.08	2,000	.07
Ms	just be organized	23-15-359	0	.00
Mo	number stated in law	Tit 9, §115.321	10,000	.37
Mt	number stated in law	13-10-502(2)	5,000	1.11
Neb	1% of 2006 gub. vote	32-504(1)(b)	5,921	.76
Nev	number stated in law	Tit 24, §293.1715(3)(c)(1)	250	.03
N H	number stated in law	Title 4, §655:42	3,000	.44
N J	number stated in law	19:13-5	800	.02
N M	1.5% of 2006 gub. vote	1-8-2.B & 1-7-2.A	8,382	1.11
N Y	number stated in law	Chap. 17, §6-142	15,000	.20
N C	2% of 2004 gub. vote	163-122	69,734	1.99
N D	number stated in law	16.1-12-02	7,000	2.24
Oh	no valid law exists	<i>Libt Pty of Ohio v Brunner</i>	0	.00
Ok	5% of 2006 gub. vote	Title 26, sec. 5-112 & 6-106	46,324	3.16
Ore	1.5% of 2006 US House vote	Title 23, §249.735	20,640	1.12
Pa	2% of 2007 judge winner's vote	Title 25, §2911	24,666	.43
R I	number stated in law	17-14-7	1,000	.23
S C	number stated in law	7-11-70	10,000	.62
S D	2.5% of 2006 gub. vote	12-7-1	8,389	2.16
Tn	2.5% of 2006 gub. vote	2-505	45,254	1.86
Tx	1% of 2006 gub. vote	Elec. code 142.007	43,991	.59
Ut	number stated in law	20-3-38	1,000	.11

*"Requirement" shows the number of signatures or registered members to get a new or previously unqualified party on the ballot for US Senate in the Nov. 2008 election. "%" means the requirement, divided by the number of votes cast for president in November 2004. Chart prepared Nov. 5, 2008. The percentage is the number of signatures divided by the number of votes cast for president in that state in November 2004.

**NOMINATION PETITION REQUIREMENTS FOR NEW PARTY BALLOT ACCESS
BY STATE***

STATE	LEGAL REQUIREMENT	ELECTION CODE REFERENCE	REQUIRED	%
Vt	just be organized	Title 17, §2402(b)	20	.01
Va	number stated in law	24.2-506	10,000	.31
Wa	pay fee, then place 1 st or 2nd	29.24.030	indeterminate	- -
W V	2% of 2006 Senate vote	3-5-23	9,198	1.22
Wis	number stated in law	Title 2, §8.20(4)	2,000	.07
Wy	2% of 2006 US House vote	22-4-402(d)	3,868	1.59
DC	number stated in law	1-1308(f)	3,000	1.32

*"Requirement" shows the number of signatures or registered members to get a new or previously unqualified party on the ballot for US Senate in the Nov. 2008 election. "%" means the requirement, divided by the number of votes cast for president in November 2004. Chart prepared Nov. 5, 2008. The percentage is the number of signatures divided by the number of votes cast for president in that state in November 2004.