

voters at the time of qualification of the party. Furthermore, the 250-signature threshold may, in effect, require the participation of such a large percentage of the pool of eligible signatories as to create an unconstitutional burden on the rights of the individual who would be a candidate on behalf of the new party.

This suit also asks for a declaration that, even if the statute is constitutionally adequate, the defendant has impermissibly construed the statute in such a way as to exclude the applicable voting history of a party merely because the party lost official ballot status after the last general election. In so doing, the defendant is acting under color of state law to deprive plaintiffs of speech, voting and associational rights secured by the fourteen amendment to the Constitution of the United States and to deprive the candidate plaintiff of the right to be free of qualifications for congressional office other than those found in Art. I, sec. 2, cl. 2 thereof.

This statute unduly burdens the plaintiffs' first and fourteenth amendment rights to cast their votes effectively, to seek election to public office, to associate for the advancement of political beliefs and to enjoy equal protection of the laws. Plaintiffs further assert that there is no state interest which makes it necessary to burden these rights.

Jurisdiction

1. The court has jurisdiction of plaintiffs' claims for relief because the action arises out of an infringement of rights guaranteed under the first and fourteenth amendments to the Constitution of the United States; and pursuant to 28 U.S.C. §1343(3) because plaintiffs' claims are brought under 42 U.S.C. § 1983 as hereinafter more fully appears.

Parties

2. The plaintiffs in this action are:
 - The Libertarian Party of South Dakota ("Libertarian Party"), a political party organized in South Dakota which is running candidates in the 2000 election;
 - Brian Lerohl ("candidate plaintiff"), an individual who has filed a petition to be the Libertarian Party candidate for the office of United States Congressman for South Dakota at the primary election to be held June 6, 2000;
 - Bob Newland ("voter plaintiff"), a registered voter, citizen and resident of South Dakota who wants to support and vote for the Libertarian Party of South Dakota and its candidates for public office.
3. The defendant in this action, Joyce Hazeltine, is the South

Dakota Secretary of State and, in that capacity, has substantial responsibilities in the field of state elections, including the task of certifying parties and candidates for a position on the ballot.

Factual Allegations

4. The Libertarian Party organized as a new political party in South Dakota in 1991 under SDCL 12-5-1 and ran candidates under the party name in the 1992, 1994, 1996 and 1998 elections.
5. From the time of its initial organization in South Dakota and continuing to the present, the Libertarian Party has been philosophically affiliated with the Libertarian National Committee, Inc., the governing body of the national Libertarian Party and has at all times espoused its aims and principles.
6. Under the bylaws of the national Libertarian Party, the Libertarian National Committee is charged with designating an affiliate in each state. The political party which qualified as the Libertarian party in South Dakota in 1991 is the same which exists today.
7. The name "Libertarian Party" has been in continuous use by the Libertarian National Committee since January of 1972. Under

the Bylaws of the national Libertarian party, and federal law, only the Libertarian National Committee has the right to license use of that name to state affiliates.

8. The Libertarian Party, which existed in South Dakota from 1991 through 1998 as a ballot qualified party and which has recently re-qualified for the ballot, is the sole and exclusive licensee of the name in South Dakota.
9. The constitution, bylaws, party platform and all manifestos of any nature which have been adopted by the Libertarian Party of South Dakota since its official organization in South Dakota in 1991 have remained unchanged.
10. With the exception of one individual who has moved out of state, the individuals who serve as the party central committee of the Libertarian Party have served in that capacity since before the 1998 gubernatorial election.
11. The Libertarian Party has maintained the same post office box since well before 1998.
12. The office of the defendant appears to have recognized the continuity of the Libertarian Party, as it continued to send notices demanding the filing of financial reports required of political parties during the hiatus between the 1998 gubernatorial election and the recent official re-qualification of the Libertarian Party as an official South

Dakota political party.

13. No official of the State of South Dakota and no county auditor, with the exception of one, has ever required that individuals who identified themselves on voter registration cards at any time prior to 1991, or since, as being affiliated with the Libertarian Party would have to re-register party affiliation after formal recognition of the Libertarian Party as an official political party in South Dakota.
14. In 1998, the Libertarian Party candidate for Governor failed to receive at least two and one-half percent of the total votes cast for Governor, and the Libertarian Party ceased to meet the definition of a political party under SDCL 12-1-3.
15. On March 23, 2000, in order to participate as a ballot qualified party in the 2000 primary election, the Libertarian Party filed in the office of defendant a written "Declaration of New Political Party" in the form required by SDCL 12-5-1, which was signed by at least two and one-half percent of the voters of the state as shown by the total vote cast for Governor at the last preceding gubernatorial election.
16. South Dakota law provides no other method for the Libertarian Party to regain official status as a political party on the 2000 election ballot.
17. The candidate plaintiff, simultaneously with the Libertarian

Party's filing of the "Declaration of New Political Party" or shortly thereafter, filed a nominating petition for the office of United States Congressman for South Dakota at the primary election to be held June 6, 2000. The petition bore the signatures of 109 registered voters of the Libertarian Party.

18. It is believed that the signatures of all but 30 of the 109 registered voters who signed the nominating petition of the candidate plaintiff were of individuals who registered affiliation with the Libertarian Party prior to March 23, 2000.

19. The defendant accepted the petition of the Libertarian Party and granted it recognition as a political party under the laws of South Dakota but refused to file the petition submitted by the candidate plaintiff because his petition did not contain the signatures of 250 registered voters of the Libertarian Party. The defendant did acknowledge that the petition of the candidate plaintiff contained 109 signatures.

20. In rejecting the petition of the candidate plaintiff, the defendant cited SDCL 12-5-1.4, which provides, in part:

If a political party qualifies for the primary ballot under § 12-5-1, candidates intending to participate in the primary election the first year of qualification shall file nominating petitions pursuant to § 12-6-4. However, **if no voting history exists** to determine the number of signatures required, state or federal candidates shall file petitions bearing **signatures of at least two hundred fifty registered voters in the new**

party . . . [emphasis added]

and asserted that, as a political party which has recently qualified as a "new" political party under SDCL 12-5-1, the Libertarian Party has no voting history, and that its state or federal candidates are therefore subject to the 250-signature threshold.

Improper Statutory Construction

21. In so doing, the defendant ignored the continuity of organizational existence of the Libertarian Party from the time of its organization in 1991 through its re-qualification in 2000 and the fact that it is the same party which ran a candidate for Governor in 1998.
22. The defendant has also ignored standard principles of statutory construction which attempt to give effect to all components of a statute. The legislature would not have included the conditional words "**however, if** no voting history exists" unless it recognized that not all "new" political parties will be truly new. Defendant has ministerially excised those words by requiring that any re-qualifying political party such as the Libertarian Party, even though it ran a candidate for Governor in 1998, be treated as not having a voting history.

23. The defendant's interpretation and application of SDCL 12-5-1.4 is erroneous and deprives the plaintiffs of speech, voting and associational rights secured by the fourteen amendment to the Constitution of the United States, deprives the candidate plaintiff of the right to be free of qualifications for congressional office other than those found in Art. I, sec. 2, cl. 2 thereof and unduly burdens the plaintiffs' first and fourteenth amendment rights to cast their votes effectively, to seek election to public office, to associate for the advancement of political beliefs and to enjoy equal protection of the laws.
24. To determine the number of signatures needed to support the candidate plaintiff's petition, the defendant should have consulted SDCL 12-6-7, which requires that a petition for political public office be signed by "not less than one percent of the voters who cast their vote for that party's gubernatorial candidate at the last gubernatorial election in the . . . state electing a candidate to fill the office."
25. The Libertarian Party did run a candidate for governor in the last gubernatorial election, being the 1998 election. That candidate received 4,389 votes. One percent of the votes cast for that candidate is 44. The candidate plaintiff's petition is therefore sufficient and should have been accepted for

filing.

SDCL 12-5-1.4 is Unconstitutional in Application

26. As of October 1998, official South Dakota records reflect 924 registered members of the Libertarian Party. Plaintiffs are informed that defendant is in the process of compiling a new official tally which is expected to be available at the end of May, 2000.
27. Under the holding of *Storer v. Brown*, 415 U.S. 724, 738-740 (1974), petition requirements for ballot access are unconstitutional and infringe on first and fourteenth amendment freedoms if they substantially exceed 5% of the eligible pool.
28. The requirement that Libertarian primary candidates for statewide or federal office obtain the signatures of 250 registered Libertarians from a pool of 924 amounts to 27% of the pool and therefore violates the *Storer* rule (Accord, *Consumer Party v. Davis*, 778 F.2d 140 (3rd circuit, 1985) (candidate could not be required to collect 2,000 signatures from party members when party only had 6,000 registered members in the state)).
29. Furthermore, since the concept of a primary contemplates multiple contenders and SDCL 12-6-8 prohibits party members

from signing multiple petitions for the primary election in which the candidate plaintiff is involved, a true primary of at least two candidates in the 2000 election would have required valid signatures from 54% of known party numbers, thus effectively stunting the possibility of a primary for a new party with few registered members.

30. Upon information and belief, voter registration records of party affiliation are kept in county auditors' offices throughout the state and are not centrally available or easy to research. Locating the names and addresses of members of the pool of eligible signatories to support a petition for statewide or federal office would require the candidate of a small political party to make a painstaking and exhaustive inquiry resulting in uncertainty as to whether all the pool has been located.

SDCL 12-5-1.4 Unconstitutional on its Face

31. South Dakota law allows voters who are unaffiliated with a new political party to sign a petition which allows it to be recognized officially. It does not require a minimum number of registered party members for party existence.
32. The 250 signature threshold of SDCL 12-5-1.4 unreasonably burdens and prevents a new political party which may not have

even 250 registered members from fielding candidates for state and federal office even though it has demonstrated adequate public support by securing adequate signatures from voters to gain official ballot recognition.

33. With a 250 signature threshold which is unrelated to the number of registered members of a new political party, it is conceivable that a party could gain official status by filing the number of required signatures for party status but stand no chance of satisfying the requirement for continued status because the absence of at least 250 valid signatures would prevent it from running a candidate for Governor, the success of which determines the standard for continued existence.

Simultaneous Filing Deadlines of SDCL 12-6-4 and 12-5-1

34. According to SDCL 12-6-4, a petition to place a candidate's name on a primary ballot must be filed not later than the first Tuesday of April at five p.m. prior to the date of the primary election. This filing deadline is the same as for organization of a new political party under SDCL 12-5-1.
35. If defendant's contention is accepted that the Libertarian Party is a new party with no prior history, then it would follow that its members must re-register party affiliation before they may be considered registered members of the "new"

party.

36. In this event, simultaneous filing deadlines for both party recognition and its state and federal candidates could render qualification nearly impossible, especially if at least 250 voters are expected to re-register and sign petitions effectively simultaneously with new party qualification.
37. Therefore, if the 250-signature requirement of SDCL 12-5-1.4 is found to be constitutionally appropriate, the simultaneous filing deadlines of SDCL 12-6-4 and 12-5-1 should be declared unconstitutional for creating an excessive burden on plaintiffs' first and fourteenth amendment rights.

Additional Points

38. Since the candidate plaintiff is the only individual who filed a petition for the Libertarian Party nomination for the office of United States Congressman for South Dakota at the primary election to be held June 6, 2000, if it is determined that the nominating petition of the candidate plaintiff should have been certified by the defendant, the candidate plaintiff shall, by virtue of SDCL 12-6-9, automatically become the nominee of his party in the general election, and it is not necessary that his name appear on the primary ballot.
39. By implementing the restrictions complained of, defendant is

acting under color of state law to deprive plaintiffs of speech, voting and associational rights secured by the fourteen amendment to the Constitution of the United States and to deprive the candidate plaintiff of the right to be free of qualifications for congressional office other than those found in Art. I, sec. 2, cl. 2 thereof. Defendant is therefore liable to plaintiffs pursuant to 42 U.S.C. sec. 1983.

Relief Requested

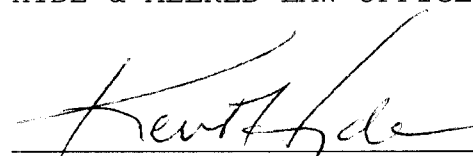
WHEREFORE, plaintiffs request the following relief:

- a. a declaration that the statutory language complained of herein is unconstitutional on its face and as applied to plaintiffs;
- b. a declaration that defendant is in violation of 42 U.S.C. sec. 1983;
- c. preliminary and permanent injunctions prohibiting defendant from enforcing the statutory language complained of herein;
- d. preliminary and permanent injunctions directing defendant to list the candidate plaintiff on the November 2000 general election ballot as the Libertarian Party candidate for United States

Congressman for South Dakota.

- e. reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.
- f. such other relief as may be just and proper.

HYDE & ALLRED LAW OFFICE, LLP



Kent Hyde, Attorney for Plaintiffs
1001 First Avenue SE
Aberdeen, SD 57401
(605) 225-3933