

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Green Party, et al.,

Plaintiffs,

-vs-

NYS Board of Elections, et al,

Defendants.

Libertarian Party of New York,

Third Party Plaintiff

02-CV-6465 (JG)

**Third Party Complaint for
Declaratory and Injunctive Relief**

Introduction

1. Third Party Plaintiff: Libertarian Party of New York (also referred herein as “Libertarian Party”) challenges Sections 5-300, 5-302(1) and 5-302(3) of New York’s Election Law. Those provisions as applied by the Defendants, prevent Libertarian voters from registering to vote as Libertarian, and prevents such voters from declaring an affiliation with the Libertarian Party. Because these provisions severely and unequally burdens the voters’ and the Libertarian Party’s rights to communicate and associate as a political party, and do so unequally and without reasonable justification, they violate the first and 14th amendments to the United States Constitution and 42 U.S.C. § 1983.

Jurisdiction and Venue

2. The Third Party Plaintiff Libertarian Party may intervene under the Federal Rules of Civil Procedure, Rule 24(b) Permissive Intervention.
3. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1334(a)(3), and 2201.
3. Venue in the action is properly in this district, pursuant to 28 U.S.C. § 1391 (b), on the grounds that a defendants may be found and reside in this district, and a substantive part of the events or omissions giving rise to the events alleged occurred in this district.

Parties

4. Third Party Plaintiff, the **Libertarian Party of New York**, Intervenor, is a private political organization, which represents all members of the New York Libertarian Party, and is vested with the charter to promote and protect all members of the voting class who would identify themselves as Libertarians in New York State under the law. It is represented herein by its attorney, Christopher B. Garvey, subscribed below.
5. The First Party Plaintiffs, **Green Party, et al.**, are fully identified in the First Party Complaint.
6. The Defendants, **New York State Board of Elections, et al.**, are fully identified in the First Party Complaint.

The Challenged Provision of the Law

7. New York State Election Law §§ 5-300, 5-302(1), 5-302(3), taken together as interpreted by Defendants, prohibit voters from associating themselves with the Libertarian Party, given the registration forms currently in use.

Facts

8. The facts of this case are as set forth in this Court's *Memorandum and Order including Preliminary Injunction*, dated May 30, 2003. Additional facts follow:
9. The Libertarian Party of New York regularly effects placement of its candidates onto the voting ballot, and is obligated to participate under the current rules promulgated by the New York State Board of Elections, thus giving the Libertarian Party further standing in the instant action to proceed.
10. Intervenor and the citizens that make up its membership, individually as class members and in combination as a private political organization, belong to the same affected and aggrieved class that the Green Party represents, and Intervenor thereby has similar standing and has suffered similar prejudice due to the inequitable conditions, being prosecuted against by the Plaintiff Green Party in this case, and due to the inequitable conditions claimed by the Green Party.
11. Current Board of Election rules, ostensibly given power under New York State Election law, are in violation of the U.S. Constitution, as to Amendments 1st, 5th, 14th, 15th and the 24th. Specifically and

substantively, Intervenor is unconstitutionally prejudiced by the method by which the Board of Elections (BOE) issues Voter Registration forms, mandates the form and presentation therein, and collects the State's Voter Registration data, to wit:

12. - Equal Protection violations are built into the process, ways and means, by which the BOE collects voter registration data, tabulates said information into a comprehensive database and then shares the voter party affiliation, legal address and contact information with only a select few Political Entities or Parties, e.g. Democratic Party, Republican Party, etc.. BOE arbitrarily and unconstitutionally denies that same information to other Political Entities or Parties, e.g. Right to Life Party, Libertarian Party, etc.. This unconstitutionally deprives the latter entities or parties of equal access to said voter demographics and contact information, and grants unequal favoritism to a select few Political Entities or Parties, in violation of Federal Constitutional law.
13. - Infringement of the voters' right to free association, insofar as the BOE's publishing and promulgating a Voter's Registration form that unconstitutionally coerces a constraint and limitation of a voter's choice of political enrollment to a choice of 5 (or so) listed Political Entities or Parties, or to be alternately involuntarily relegated to having no Party enrollment at all. Said constraint unconstitutionally prohibits a voter's proclamation of party or independent body political affiliation.
14. - Denial of a New York State voter's freedom of expression of party affiliation, as per par. 12 above.
15. The current form instructs registrants to "Chose a Party - Check one box only". Those who wish to enroll in the Libertarian Party, but do not wish to enroll in a listed party, may subject themselves to a \$5,000 fine and 4 years in prison, by untruthfully checking a box that states: "I DO NOT WISH TO ENROLL IN A PARTY", when they do, in fact, wish to enroll in the Libertarian Party. No truthful alternative is provided, and attempts to insert truthful statements have been rejected as "defacing" of the enrollment form.
16. The Libertarian Party has demonstrated at least a modicum of support in New York State. Much of

this support can be demonstrated from the public election records.

17. After it first received write-in votes in 1972 for Presidential Candidate John Hospers and Vice Presidential Candidate Toni Nathan (The first woman Candidate for Vice-President to receive an electoral vote), the Libertarian Party has obtained at least 15,000 petition signatures and placed statewide candidates on the ballot in every statewide election between 1974 and 2002, except 1986.
18. In the Gubernatorial Elections, Libertarian candidates included a full slate of the possible statewide candidates: Governor, Lt. Governor, Attorney General, Comptroller, and, when one was up for election: Senator. In the Presidential races, candidates included the full number of Electors for President and Vice President, and when one was up for election, Senator. This regular achievement of statewide ballot status by a full slate of candidates for 29 years indicates a modicum of support.
19. In 1992, Libertarian Norma Segal received 108,530. votes for US Senator. In 1980, Ed Clark's New York Libertarian Presidential Electors received 52,648 votes.
20. In 2002 Libertarian Dan Conti received 23,213 votes for Attorney General, and Libertarian James Eisert received 19,235 votes for Comptroller.
21. Vote totals for governor were:

year -	votes
1974	Jerome Tuccille 10,503; votes
1978	Gary Greenberg 18,990
1982	John Northrup 16,913
1990	Gary Johnson 24,611
1994	Robert Schulz 9,506
1998	Christopher Garvey 4,722
2002	Scott Jeffrey 5,013

22. In 1998 Daniel A. Conti - Libertarian for Attorney General received 19,864 votes. In 1994 Daniel A. Conti - Libertarian for Attorney General received 19,202 votes. William P. Mc-Millen received 8,223 votes for Senate. In 2000, NY Libertarian Presidential Electors for Harry Browne received 7,649 votes. John Clifton received 4,734 votes for Senate. We have at various times petitioned and placed local candidates on local ballots in New York, such as in the last New York City Mayoral election.
23. Nationally, the Libertarian Party has 208,456 voters registered by the respective state boards of election, as compared to the Green Party total of 274,740.
24. The Libertarian Party of New York is part of the national Libertarian Party, having 21,739 dues-paying members in areas with currently recognized affiliates in all these United States, as of 31 March 2003. 736 of those were dues paying members of The Libertarian Party of New York.
25. NY Libertarian Party Officials have heard numerous complaints from voters who were upset at not being able to register Libertarian.
26. The special impediments in NY Election Law are responsible for our relatively slow progress when compared to the Libertarian Parties in other states, whose members currently hold 585 public offices, as compared to only 10 in New York Nationally in the year 2000, Libertarian candidates for U.S. House won 1.6 million votes -- a new record for any third party.
27. There is an anomalous unfairness of using the 50,000 vote threshold in a race for governor, as the sole means to qualify as a recognized party.
28. Refusal to permit Libertarians to enroll as Libertarian precludes us from one means of showing that such support has been achieved. Achievement of ballot status in an election would be a better criterion of support than vote totals of a single election. Voter enrollment totals would also be a better indicia of support.
29. The history of New York's Republican and Democratic Parties, which each control a house of the NY State Legislature, is one of placing the unfair impediments in the way of struggling, small minority, start-up, and upstart political parties.

Prayer for Relief

Wherefor, Third Party Plaintiff Intervenor Libertarian Party respectfully asks this court:

1. To order Defendants to modify the *Voter's Registration Form's* Party Box so as to be substantively the same as Exhibit 1, attached to the *Intervenor's Brief in Support of: Second Motion to Intervene and Request for Relief*. Or,
2. **In the Alternative to relief request 1:** To order Defendants to modify the *Voter's Registration Form's* Party Box so as to provide a check-box for "other", with a blank line, so that we and all New Yorkers might express our political preferences. And:
3. To order Defendants to record the party name, checked by each registrant, or written on the blank line, in Defendants' databases, and make the data be similarly available and accessible to the Libertarian Party, as are the Republican and Democratic enrollments accessible to those parties.
4. To grant these orders as soon as convenient in the form of a preliminary injunction, and later as a permanent injunction.
5. To award to third party plaintiff its costs and disbursements including reasonable attorney fees under 42 U.S.C. § 1988.
6. To award such other equitable relief as this Court deems just and proper.

Dated: June 19, 2003

Respectfully submitted:

/ss/ _____
Christopher B. Garvey
Nolte, Nolte & Hunter
1077 Northern Boulevard
Roslyn, New York 11576
Phone: 1 516 365 9802
Fax: 1 516 365 9805
email: CGarvey@CollardRoe.com

Certificate of Service

I, Christopher B. Garvey do hereby swear that I have served the below listed parties with a copy of this Proposed *Third Party Complaint*, and letter on this June 19, 2003:

By first class mail to:
Deborah Goldberg
Brennan Center For Justice
at New York University School of Law
161 Avenue of the Americas
12th Floor
New York, NY 10013

and will be served electronically on
Jeremy Micah Creelan, Esq. by email
jeremy.creelan@nyu.edu
Counsel for Plaintiffs
Brennan Center for Justice at NYU School of Law
161 Ave of Americas, 12th Fl. NY, NY 10013

Todd D. Valentine, Esq. by email
tvalentine@elections.state.ny.us
Special Counsel for Defendants
New York State Board of Elections
40 Steuben St.
Albany, NY 12207

Christopher B. Garvey