

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

CITIZENS IN CHARGE, MICHAEL GROENE,  
and DONALD SLUTI,

Plaintiffs,

LIBERTARIAN PARTY OF NEBRASKA and  
LIBERTARIAN NATIONAL COMMITTEE, Inc.

Plaintiffs-Intervenors,

v.

JOHN A. GALE, in his official capacity as  
Secretary of State of the State of Nebraska,

Defendant.

CIVIL ACTION NO. 09-3255

**VERIFIED COMPLAINT IN INTERVENTION**

**NATURE OF THE CASE**

1. This is an action to enforce rights that lie at the core of protected political speech. At issue are two provisions of Nebraska law: Neb. Rev. Stat. §§ 32-629(2) and 32-628(4). The first requires petition circulators to be “electors” of the State of Nebraska. The second requires all petitions to contain certain language in large, red type. The plaintiffs-intervenors claim that these provisions violate various rights guaranteed by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983, and they ask this Court for declaratory and injunctive relief prohibiting state officials from enforcing the unconstitutional statutes now and in the future.

**JURISDICTION AND VENUE**

2. This action arises under the First and Fourteenth Amendments to the United States Constitution.

3. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (providing for jurisdiction over federal questions). The Court has subject-matter jurisdiction under 28 U.S.C.

§§ 1343(a)(3) and (4) (providing for jurisdiction over suits involving civil rights and the elective franchise).

4. For purposes of jurisdiction under 28 U.S.C. § 1343, this suit is “authorized” by 42 U.S.C. § 1983.

5. This Court has authority to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

6. The defendant resides within the boundaries of the District of Nebraska.

7. Venue is therefore proper in the District of Nebraska under 28 U.S.C. § 1391(b).

### **PARTIES**

8. Plaintiff-Intervenor Libertarian Party of Nebraska is a group of voters of the State of Nebraska that share a similar political philosophy. The Party would like to form a new political party recognized by the State of Nebraska through the petition process.

9. Plaintiff-Intervenor Libertarian National Committee, Inc. is a grassroots political organization with members nationwide. The Committee would like to hire out-of-state, paid petition circulators to assist the Libertarian Party of Nebraska in forming a new political party recognized by the State of Nebraska through the petition process.

10. Defendant John A. Gale is the Secretary of State of the State of Nebraska. Under the Nebraska Election Act, Neb. Rev. Stat. §§ 32-101 through 32-1551 (2008, Supp. 2009), Secretary Gale supervises the conduct of primary and general elections in Nebraska, and enforces the Act. He also has authority to decide disputed points of election law in Nebraska, and his decisions in that regard have the force of law until changed by the courts. Secretary Gale is sued in his official capacity only.

### **FACTUAL BACKGROUND**

### **The 2010 Election**

11. The Libertarian Party of Nebraska and the Libertarian National Committee, Inc. want to petition for recognition as a new political party in time for the 2010 election in order to run candidates in that election.

12. In order to qualify for the general election in November 2010, the deadline for submitting new-party petitions is August 1, 2010. Neb. Rev. Stat. § 32-716.

13. A new-party petition must contain signatures totaling at least one percent of the votes cast for governor in the last general election. Neb. Rev. Stat. § 32-716. The number of signatures required for a new-party petition in 2010 is 5,934. These signatures must be distributed so as to include one percent of the votes cast for governor in each of the three congressional districts. Neb. Rev. Stat. § 32-716.

14. The Libertarian Party of Nebraska and the Libertarian National Committee, Inc. need approximately 4-8 weeks to gather signatures.

15. The Libertarian Party of Nebraska and the Libertarian National Committee, Inc. are unlikely to be able to meet the petition requirements without the use of paid petition circulators.

16. Hiring a petition-gathering firm to conduct the petition drive using only in-state petition circulators would be prohibitively expensive.

### **The Residency Requirement**

17. On February 6, 2008, Nebraska's Unicameral Legislature adopted Legislative Bill 39 by a vote of 31-14-4.

18. On February 19, 2008, by a vote of 30-17-2, Legislative Bill 39 became law notwithstanding the objections of the Governor.

19. Among other things, Legislative Bill 39 amended Section 32-629(2) of the Revised Statutes of Nebraska to provide that “only an elector of the State of Nebraska may qualify as a valid circulator of a petition and may circulate petitions under the Election Act.”

20. Neb. Rev. Stat. § 32-110 (2008) defines the term “elector” and states:

Elector shall mean a citizen of the United States whose residence is within the state and who is at least eighteen years of age or is seventeen years of age and will attain the age of eighteen years on or before the first Tuesday after the first Monday in November of the then current calendar year.

21. Neb. Const. art. VI, § 1 states:

Every citizen of the United States who has attained the age of eighteen years on or before the first Tuesday after the first Monday in November and has resided within the state and the county and voting precinct for the terms provided by law shall, except as provided in section 2 of this article, be an elector for the calendar year in which such citizen has attained the age of eighteen years and for all succeeding calendar years.

22. Signatures gathered by individuals who are not electors, as defined by law, will not be counted in determining whether sufficient valid signatures have been gathered in support of a candidacy or initiative petition.

23. In light of Nebraska’s definition of “elector,” Legislative Bill 39 had the effect of imposing a residency requirement for petition circulators.

24. One of the purposes of Legislative Bill 39 was to prohibit the circulation of petitions in Nebraska by individuals from out of state.

25. The residency requirement imposed by Legislative Bill 39 applies to new party petitions, candidacy petitions and to initiative or referendum petitions.

26. The circulation of petitions is core political speech.

27. The residency requirement imposed by Legislative Bill 39 reduces the pool of circulators available to support new parties, candidates or issue campaigns.

28. The residency requirement imposed by Legislative Bill 39 places a severe burden on the plaintiffs-intervenors' First Amendment rights by making it more difficult for new parties, candidates and issue campaigns to disseminate their political views, to choose the most effective means of conveying their message, to associate in a meaningful way with the prospective solicitors for the purposes of eliciting political change, to gain access to the ballot, and to utilize the endorsement of their candidacies which can be implicit in a solicitor's efforts to gather signatures on the candidates' behalf.

29. The residency requirement imposed by Legislative Bill 39 is not justified by a sufficiently weighty state interest.

30. The residency requirement imposed by Legislative Bill 39 is not narrowly tailored to advance a compelling state interest.

#### **The "Scarlet Letter" Provision**

31. Section 32-628 of the Revised Statutes of Nebraska sets out some of the required contents of petitions prepared under Nebraska's Election Act.

32. Subsection 4 of Section 32-628 (hereinafter the "Scarlet Letter" provision) provides as follows: "Each sheet of a petition shall have upon its face and in plain view of persons who sign the petition a statement in letters not smaller than sixteen-point type in red print on the petition. If the petition is circulated by a paid circulator, the statement shall be as follows: This petition is circulated by a paid circulator. If the petition is circulated by a circulator who is not being paid, the statement shall be as follows: This petition is circulated by a volunteer circulator."

33. The statement required by the Scarlet Letter provision is the only part of Election-Act petitions that is required to appear in red type.

34. The statement required by the Scarlet Letter provision is the only part of Election-Act petitions required to appear in sixteen point type.

35. As a practical matter, the statement required by the Scarlet Letter provision will usually be the largest and most prominent text on petitions prepared under the Election Act.

36. The type-size and color requirement of the Scarlet Letter provision is designed to direct the voter's attention to the Scarlet-Letter statement.

37. All petitions for recognition of new political parties by the state must contain the statement required by the Scarlet Letter provision.

38. Signatures on petitions that do not contain the statement required by Neb. Rev. Stat. § 32-628(4) will not be counted in determining whether sufficient valid signatures have been gathered in support of a candidacy or initiative petition.

39. The statement required by the Scarlet Letter provision conveys the State's view that the paid or unpaid status of a petition-circulator is an important issue that Nebraska voters should consider in deciding whether or not to sign the petition.

40. The Scarlet-Letter statement "This petition is circulated by a paid circulator," is intended to be derogatory or pejorative.

41. The Scarlet-Letter statement "This petition is circulated by a paid circulator," is derogatory or pejorative.

42. The Scarlet-Letter statement "This petition is circulated by a paid circulator," dissuades some voters from signing petitions containing that statement and makes it more difficult for a paid circulator to gather signatures.

43. The Scarlet-Letter statement "This petition is circulated by a volunteer circulator," is not intended to be derogatory or pejorative.

44. The Scarlet-Letter statement “This petition is circulated by a volunteer circulator,” is not derogatory or pejorative.

45. The Scarlet-Letter statement “This petition is circulated by a volunteer circulator,” does not dissuade voters from signing petitions containing that statement.

46. The Scarlet Letter provision favors political parties, candidates and issue campaigns that use volunteer circulators and disfavors political parties, candidates and issue campaigns that use paid circulators.

47. The Scarlet Letter provision disadvantages political parties, candidates and issue campaigns that use paid circulators and advantages political parties, candidates and issue campaigns that use volunteer circulators.

**INJUNCTIVE AND DECLARATORY RELIEF IS NECESSARY**

48. An actual and justiciable controversy exists as to which the plaintiffs-intervenors require a declaration of their rights.

49. Unless the requested injunctive relief issues, the defendant will continue to infringe the constitutional rights of plaintiffs-intervenors and other voters.

50. The plaintiffs-intervenors have no adequate remedy at law for the defendant’s violations of their rights.

51. The plaintiffs-intervenors are suffering irreparable harm as a result of the defendant’s violations of the law and Constitution and the harm will continue unless declared unlawful and enjoined by this Court.

**COUNT ONE**

**First and Fourteenth Amendments**

52. The residency requirement contained in Legislative Bill 39 (2008) and codified at Section 32-629(2) of the Revised Statutes of Nebraska violates the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the United States Constitution and enforced by 42 U.S.C. § 1983.

**COUNT TWO**

**First and Fourteenth Amendments**

53. The Scarlet Letter provision codified at Section 32-628(4) of the Revised Statutes of Nebraska violates the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the United States Constitution and enforced by 42 U.S.C. § 1983.

**COUNT FOUR**

**Equal Protection**

54. The Scarlet Letter provision codified at Section 32-628(4) of the Revised Statutes of Nebraska violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, as enforced by 42 U.S.C. § 1983.

**REQUEST FOR RELIEF AS TO ALL COUNTS**

WHEREFORE, Plaintiffs-intervenors respectfully request that this Court:

- a. enter a declaratory judgment that the residency requirement contained in Legislative Bill 39 (2008) and codified at Section 32-629(2) of the Revised Statutes of Nebraska and the Scarlet Letter provision codified at Section 32-628(4) of the Revised Statutes of Nebraska violate the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the United States Constitution;



- b. enter a declaratory judgment that the Scarlet Letter provision codified at Section 32-628(4) of the Revised Statutes of Nebraska violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- c. enjoin the defendants from enforcing the distribution residency requirement and Scarlet Letter provision;
- d. award the plaintiffs-intervenors the cost of this action together with their reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1973l(e) and 1988; and
- e. retain jurisdiction of this action and grant the plaintiffs-intervenors such other relief which may in the determination of this Court be necessary and proper.

Dated: May 27, 2010.

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ATTORNEYS FOR THE  
PLAINTIFFS-INTERVENORS

**VERIFICATION**

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

Executed on May 25, 2010.

William Redpath