

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

THE LIBERTARIAN PARTY,)
2600 Virginia Avenue NW, Suite 200)
Washington, DC, 20037,)

GARY JOHNSON,)
850 C. Camino Chamisa)
Santa Fe, NM 87501)

BRUCE MAJORS,)
1200 23rd Street NW)
Washington, DC 20037)

DARRYL BONNER,)
6151 Reach Street)
Philadelphia, Pennsylvania, 19111)

VERNON VAN,)
509 Ohio Avenue)
Long Beach, California 90814)

Plaintiffs,)

v.)

DEBORAH NICHOLS,)
DC Board of Elections & Ethics)
441 4th Street, NW, Suite 250 North)
Washington, DC 20001,)

STEPHEN DANZANSKY,)
DC Board of Elections & Ethics)
441 4th Street, NW, Suite 250 North)
Washington, DC 20001,)

DEVARIESTE CURRY)
DC Board of Elections & Ethics)
441 4th Street, NW, Suite 250 North)
Washington, DC 20001,)

DISTRICT OF COLUMBIA BOARD OF)
ELECTIONS & ETHICS,)
441 4th Street, NW, Suite 250 North)
Washington, DC 20001,)

Defendants.)

Case No. _____

COMPLAINT

INTRODUCTION

Plaintiffs Libertarian Party, Gary Johnson, Bruce Majors, Darryl Bonner and Vernon Van (the “Libertarians”) hereby file this Complaint against Defendants Deborah Nichols, Stephen Danzansky, Devarieste Curry and the District of Columbia Board of Elections & Ethics (collectively, “the Board”) in their official capacities only. The Libertarians allege that D.C. Code § 1-1001.08(b)(2) (2012) violates rights guaranteed to them by the First and Fifth Amendments to the Constitution. The challenged provision prohibits individuals from circulating nomination petitions in the District of Columbia unless they are residents of, and registered to vote in, the District of Columbia. The Libertarians claim that such prohibition is unconstitutional as applied. They seek declaratory and injunctive relief against the prohibition in the 2012 election and in future elections.

THE PARTIES

1. Plaintiff Libertarian Party is the third largest political party in the United States, with more than 250,000 registered voters. It was founded in 1971 for the purpose of influencing public policy by a variety of means, including running candidates for public office and disseminating its views through its candidates’ campaigns. The Libertarian Party is active in every state in the nation, as well as the District of Columbia. In 2010, more than 15 million votes were cast for Libertarian Party candidates nationwide. The Libertarian Party maintains its national headquarters in Washington, DC.

2. Plaintiff Gary Johnson is the Libertarian Party nominee for President of the United States in the 2012 general election. Johnson was elected Governor of New Mexico in 1994 and served in that position from 1995 to 2003, when he retired due to New Mexico's term limit. Johnson resides in New Mexico.

3. Bruce Majors is the Libertarian Party nominee for District of Columbia Delegate to the United States House of Representatives. Majors resides in Washington, DC.

4. Darryl Bonner is a professional petition circulator with 20 years of experience. In the 2012 election cycle, Bonner circulated petitions on behalf of the Libertarian Party in Pennsylvania and in New York, and he would do so in the District of Columbia if he were not prohibited by law. Bonner intends to circulate petitions in future election cycles, including in the District of Columbia, provided he may do so without violating applicable laws. Bonner resides in Pennsylvania.

5. Vernon Van is a professional petition circulator with 16 years of experience. In the 2012 election cycle, Van circulated petitions on behalf of the Libertarian Party in Pennsylvania and in New York, and he would do so in the District of Columbia if he were not prohibited by law. Van intends to circulate petitions in future election cycles, including in the District of Columbia, provided he may do so without violating applicable laws. Van resides in California.

6. Deborah Nichols is Chair of the District of Columbia Board of Elections & Ethics. She is named as a defendant in her official capacity only.

7. Stephen Danzansky is a member of the District of Columbia Board of Elections & Ethics. He is named as a defendant in his official capacity only.

8. Devarieste Curry is a member of the District of Columbia Board of Elections & Ethics. She is named as a defendant in her official capacity only.

9. The District of Columbia Board of Elections & Ethics is an agency of the District of Columbia government. It is responsible for the administration of elections, ballot access and voter registration in the District of Columbia.

JURISDICTION AND VENUE

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

11. Venue lies in the District of Columbia pursuant to 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

The District of Columbia Election Code

12. To place Gary Johnson on the 2012 general election ballot as its nominee for President of the United States, the Libertarian Party is required to submit a nomination petition signed by at least 1 percent of registered voters in the District of Columbia. D.C. Code § 1-1001.08(f). In 2012, the number of signatures required is 4,667.

13. To place Bruce Majors on the 2012 general election ballot as its nominee for Delegate to the United States House of Representatives, the

Libertarian Party is required to submit a separate nomination petition signed by at least 3,000 registered voters in the District of Columbia. D.C. Code § 1-1001.08(j)(1) (B).

14. Only registered, qualified electors in the District of Columbia may circulate nomination petitions for candidates for public office in the District of Columbia. D.C. Code § 1-1001.08(b)(2).

15. A “qualified elector” is defined, *inter alia*, as a United States citizen over the age of 18, who has resided in the District of Columbia for at least 30 days preceding the next general election, and who does not claim voting residence or the right to vote in any other state or territory. D.C. Code § 1-1001.02(2).

16. The D.C. Election Code thus prohibits anyone from circulating nomination petitions in the District of Columbia unless they are both a resident of the District of Columbia, and registered to vote in the District of Columbia. D.C. Code §§ 1-1001.08(b)(2); 1-1001.02(2) (the “residency and registration requirement”).

17. The Board considers invalid any signature on a petition sheet circulated by someone who is not, at the time of circulation, a registered, qualified elector of the District of Columbia. D.C. Code § 1-1001.08(b)(2).

18. Any circulator who knowingly and willfully violates the residency and registration requirement is subject to a fine of not more than \$10,000, or imprisonment for not more than 6 months, or both, for each such violation. D.C. Code §§ 1-1001.08(b)(4).

The Residency and Registration Requirement as Applied to the Libertarians

19. The Libertarians are currently conducting petition drives to place Gary Johnson and Bruce Majors on the District of Columbia's 2012 general election ballot.

20. Due to the residency and registration requirement, the pool of potential petition circulators available to the Libertarians is sharply reduced. Perhaps most important, Libertarian Party members and supporters who are not District of Columbia residents are prohibited from circulating the Libertarians' nomination petitions in the District of Columbia. This prevents the Libertarians from using reliable and experienced petition circulators who would work for free and collect a high rate of valid signatures. Moreover, as members and supporters of the Libertarian Party, such circulators are the most effective at disseminating the Libertarians' political views.

21. The residency and registration requirement also prohibits the Libertarians from hiring reliable professional circulators, such as Plaintiffs Darryl Bonner and Vernon Van, and any other professional circulator who resides outside of Washington, DC. Both Bonner and Van have worked on Libertarian petition drives in other states in 2012, and the Libertarians rely on them because they collect a high rate of valid signatures.

22. The residency and registration requirement thus injures the Libertarians by prohibiting them from recruiting reliable and qualified volunteer

petition circulators, and by prohibiting the Libertarians from hiring reliable and qualified professional petition circulators.

23. As a consequence, the Libertarians' 2012 petition drive is significantly more expensive than it otherwise would be. It is also more burdensome, because the Libertarians are prohibited from recruiting and hiring the petition circulators of their choice, and must instead hire and train new and untested petition circulators.

24. The Libertarians' 2012 nomination petitions must be submitted to the Board no later than August 8, 2012. As of the date of this Complaint, they have not yet collected enough signatures to place either Gary Johnson or Bruce Majors on the ballot in the District of Columbia.

25. If the Libertarians are unable to collect enough signatures to qualify for the District of Columbia's 2012 general election ballot by relying exclusively on petition circulators who comply with the residency and registration requirement, they will face a choice: either they submit signatures collected by petition circulators who do not comply with that requirement, or they forego ballot access in the District of Columbia.

Other Allegations

26. If it were not prohibited by law, the Libertarians would be using petition circulators who are not residents of and registered to vote in the District of Columbia in their 2012 petition drive, and they would also do so in future elections.

27. In addition, Plaintiffs Darryl Bonner and Vernon Van would circulate

nomination petitions in the District of Columbia in 2012, and in future elections, if they were not prohibited by law from doing so.

28. The Libertarians intend to circulate nomination petitions and place their nominees on the ballot in the District of Columbia in future elections.

COUNT I

VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FIFTH AMENDMENTS

(Request for Declaratory Judgment Pursuant to 42 U.S.C. § 1983 Holding D.C. Code § 1-1001.08(b)(2) Unconstitutional as Applied)

29. Plaintiffs reassert each preceding allegation as if set forth fully herein.

30. The requirement imposed by D.C. Code § 1-1001.08(b)(2), that circulators of nomination petitions in the District of Columbia must reside and be registered to vote in the District of Columbia, sharply limits the number of volunteer and paid petition circulators the Libertarians may engage in the District of Columbia.

31. By limiting the number of petitioners the Libertarians may engage in the District of Columbia, D.C. Code § 1-1001.08(b)(2) violates the Libertarians' speech, petition, voting and associational rights, which are guaranteed to them by the First Amendment. D.C. Code § 1-1001.08(b)(2) also violates the Libertarians' right to due process of law, which is guaranteed to them in the District of Columbia by the Fifth Amendment.

32. Such violations cause Plaintiffs injury.

COUNT II

VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FIFTH AMENDMENTS

(Request for Declaratory Judgment Pursuant to 42 U.S.C. § 1983 Holding D.C. Code § 1-1001.08(b)(2) Unconstitutional as Applied)

33. Plaintiffs reassert each preceding paragraph as if set forth fully herein.

34. The requirement imposed by D.C. Code § 1-1001.08(b)(2), that circulators of nomination petitions in the District of Columbia must reside and be registered to vote in the District of Columbia, prohibits Plaintiffs Bonner and Van from circulating petitions in the District of Columbia.

35. By prohibiting Plaintiffs Bonner and Van from circulating petitions in the District of Columbia, D.C. Code § 1-1001.08(b)(2) violates their speech, petition, voting and associational rights, which are guaranteed to them by the First Amendment. D.C. Code § 1-1001.08(b)(2) also violates the rights of Plaintiffs Bonner and Van to equal protection and due process of law, which are guaranteed to them in the District of Columbia by the Fifth Amendment.

36. Such violations cause Plaintiffs injury.

PRAYER FOR RELIEF

37. WHEREFORE, Plaintiffs respectfully request that the Court:
- A. Enter a declaratory judgment holding D.C. Code § 1-1001.08(b) (2) unconstitutional as applied to Plaintiffs;
 - B. Enter an injunction directing the Board to accept any valid signatures the Libertarians submit in 2012, whether or not the petition circulator resides or is registered to vote in the District of Columbia, provided the petition circulator is otherwise qualified under District of Columbia law;
 - C. Award such other and further relief as the Court deems proper;
 - D. Award attorneys' fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

Oliver B. Hall
D.C. Bar No. 976463
Center for Competitive Democracy
1835 16th Street NW #5
Washington, DC, 20009
(202) 248-9294 (ph)
(202) 248-9345 (fx)
oliverhall@competitivedemocracy.org