

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES T. PARKER,

Plaintiff,

vs.

No. _____

DIANNA J. DURAN, in her official
capacity as New Mexico Secretary of
State.

Defendants.

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

PLAINTIFF, James T. Parker, through his undersigned counsel, for his Complaint for Declaratory and Injunctive Relief, states as follows:

Nature of the Action

1. This lawsuit challenges New Mexico law pertaining to ballot access for independent candidates for the Public Education Commission. Specifically, Plaintiff James T. Parker contends that NMSA 1978, §1-8-51.E of the New Mexico Election Code unlawfully requires an independent candidate to obtain nearly three times more signatures in order to appear on the general election ballot than a similarly situated member of a minor party would have to obtain. This is an unconstitutional and unlawful infringement of Plaintiff's right to run for office.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to the First and Fourteenth Amendments to the United States Constitution, 28 U.S.C. §§ 1331, 1343(a)(4) and 42 U.S.C. §§ 1983 and 1988.

3. Venue is proper in this district under 28 U.S.C. § 1391(b).

Parties

4. Plaintiff James T. Parker is a New Mexico citizen and registered voter who has declined to state a party affiliation in connection with his voter registration. James T. Parker is the incumbent Commissioner for Public Education District No. 4. He was appointed by Governor Martinez to fill a vacancy caused by the failure of any candidate to seek that position in the 2010 or 2012 elections. James T. Parker intends to be a candidate in 2014 for the New Mexico Public Education Commission (“PEC”), for District No. 4. Declaration of James T. Parker attached hereto as Exhibit 1, at ¶¶ 1-3.

5. Defendant Dianna J. Duran is the duly elected Secretary of State of the State of New Mexico and is formally named as the Defendant only because of the office she occupies and her constitutional and statutory obligation to implement portions of the election code, as the Legislature provides. Her duties include ensuring that elections in New Mexico are conducted in a fair and lawful manner, determining whether candidates for state office have met the minimum requirements of the Election Code to qualify for ballot access, keeping records of state elections, giving notice of elections, receiving filings from candidates for office, preparing ballots, receiving election returns, enforcing measures to secure the elective franchise and the integrity of the electoral system, and various other election duties. *See, e.g.*, NMSA 1978, § 1-2-2.

GENERAL ALLEGATIONS

6. Plaintiff's voter registration did not show that he was affiliated with any political party on the date of the governor's proclamation for the 2014 primary election. Plaintiff remains unaffiliated with any political party. Plaintiff is seeking to become a candidate for PEC as an "independent" candidate under New Mexico law. NMSA 1978, § 1-8-46, *et seq.*

7. The New Mexico Election Code separates candidates running for state office into three classes: major party candidates, minor party candidates and independent candidates. Each class has separate requirements that candidates belonging to that class must meet to obtain a place on the general election ballot.

8. Major party candidates for the Public Education Commission participate in the primary election. To get on the ballot, these candidates must file a declaration of candidacy and submit a certain number of signatures of New Mexico registered voters on nominating petitions. NMSA 1978, § 1-8-21.B.

9. James T. Parker is not a member of a political party. Accordingly, no way existed for him to be placed on the primary ballot.

10. A candidate for PEC who is a member of a minor political party who seeks to be nominated by a party convention for the general election ballot would only need to submit nominating petitions signed by a number of voters "totaling not less than one percent of the total number of votes cast at the last preceding general election for the Office of Governor or President of the United States, as the case may be... in the [PEC] district." NMSA 1978, § 1-8-2.B.

11. In stark contrast, for the upcoming 2014 general election, James T. Parker as an independent candidate needs to submit a number of signatures equal to or greater than three percent of the 2010 gubernatorial vote in his PEC district in order to be placed on the ballot. NMSA 1978, § 1-8-51.E. In any given year, this will be exactly three times the number of signatures that a minor party candidate would have to submit, or approximately three times the number if, as in this case, there has been an intervening general election.

12. The total vote for Governor of New Mexico in PEC District No. 4 was 73,200. A minor party candidate, therefore, would need to submit 732 signatures to run for PEC in that district. Plaintiff, on the other hand, would need to submit 2,196 signatures.

13. James T. Parker submitted 1,379 signatures, which would be more than sufficient for a minor party candidate or a major party candidate, but 817 signatures short of the disparate three percent standard applied to independent candidates. The shortfall is due to the significant burden, the unconstitutional burden, of gathering so many more signatures than candidates for minor or major parties. Exhibit 1, Declaration of James T. Parker at ¶ 4, 6.

14. The State of New Mexico requires substantially more signatures be obtained by an independent candidate than by a minor party candidate for the same office. In James T. Parker's case, the law requires that he submit 1,464 more signatures than a similarly-situated minor party candidate in order to appear on the ballot.

15. The higher number of signatures presented a tremendous hurdle to James T. Parker's candidacy, an unlawful barrier to the ballot that Plaintiff could not meet with his available resources.

16. Applying the Election Code, James T. Parker would have had to collect 2,196 valid signatures from registered voters in PEC District 4.

17. For statewide office other than President, New Mexico's 3% of the last presidential or gubernatorial vote is tied with Alabama and Montana for having the highest percentage requirement. Alabama also requires 3% of the last gubernatorial vote, although it has a substantially easier petition requirement for independent presidential candidates. Montana requires 5% of the winning candidate's vote, which is approximately between 2.5% and 3% of the total vote cast. *See*, Declaration of Richard Winger attached as Exhibit 2.

18. New Mexico law is unusually inhospitable toward independent candidates and, in fact, procedures to allow independent candidates to appear on the general election ballot at all have only been in place since 1977. Declaration of Richard Winger, *Id.* at ¶ 3. During the last four years, New Mexico voters have had fewer independent and minor party candidates for federal and state office on their general election ballots than the voters of any other state except for Nebraska. Declaration of Richard Winger, *Id.* at ¶ 8. Nebraska, however, has a "non-partisan" Legislature, so there are never any minor party or independent candidates for the Nebraska Legislature, which lowers the total number of party-affiliated candidates. *Id.*

19. The PEC and District 4 of the PEC in particular, have performed poorly in terms of attracting candidates for office. Many times, nobody at all has sought election, requiring the Governor to select commissioners to fill vacant seats. Until this year, District 4 had never had a candidate, and has never had a contested election. Declaration of Richard Winger, *Id.* at Attachment 1.

20. The Election Code, facially and as applied, discriminates against James T. Parker by imposing significantly disproportionate and more burdensome petition signature gathering requirements on independent candidates, as opposed to the more modest petition signature gathering requirements imposed on candidates of political parties, including minor political parties. The additional requirements create a tremendous barrier to ballot access and have the effect of discouraging independent candidates from making the effort to gain ballot access.

21. The Election Code, facially, and as applied, also unconstitutionally interferes with the rights of voters to vote for candidates not affiliated with any political party.

22. The Election Code, facially, and as applied, violates James T. Parker's rights to due process and equal protection, as guaranteed by the United States Constitution as well as the New Mexico Constitution.

23. The State of New Mexico lacks any compelling reason to justify the discriminatory and greatly disproportionate petition signature gathering requirements that it imposes on independent candidates seeking access to the general election ballot, as opposed to the much lighter burden on minority party candidates.

24. The Defendant and her employees are lawfully required to proceed as directed by the Legislature and, in doing so, have exercised and will be obliged to continue to exercise their authority under color of state law to enforce the Election Code for the 2014 general election in violation of the First and Fourteenth Amendments to the United States Constitution.

25. James T. Parker's submitted signatures for the general election ballot on June 26, 2014. On July 1, 2014, James T. Parker received a letter from the Secretary of

State advising him that he had fallen short of submitting the required number of signatures and that he would not be placed on the general election ballot. A copy of the letter is attached to the Declaration of James T. Parker, Exhibit 1 hereto and is incorporated herein by this reference.

26. A justiciable controversy exists among the parties and Plaintiff is entitled to a declaratory judgment under 28 U.S.C. §2201 *et seq.*

27. Plaintiff is likely to succeed on the merits of his allegations contained herein, would suffer irreparable injury in the absence of equitable relief, and the balance of hardships favors the Plaintiff. Therefore, Plaintiff is entitled to injunctive relief enjoining the Defendant from enforcing NMSA 1978, §1-8-51.E.

WHEREFORE, Plaintiff respectfully request that this Court:

1. Declare that, as applied to James T. Parker § 1-8-51.E of the New Mexico Election Code is unconstitutional as inconsistent with the First and Fourteenth Amendments to the United States Constitution as well as Article II, §18 of the New Mexico Constitution;
2. Enter a preliminary injunction and permanent order enjoining Defendant to place the name of James T. Parker on the 2014 general election ballot as a candidate for the PEC, District 4;
3. Award Plaintiff the reasonable cost and expense of this action, including attorney's fees pursuant to 42 U.S.C. §1988; and
4. Grant such other and further relief as this Court deems appropriate.

Respectfully submitted:

PATRICK J. ROGERS, LLC

By: /s/ Patrick J. Rogers

Patrick J. Rogers

P.O. Box 2168

Bank of America Centre

500 Fourth Street NW, Ste. 1000

Albuquerque, NM 87102

Tel: 505-848-1800

-and-

David A. Garcia

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Attorneys for Plaintiff James T. Parker

IN THE UNITED STATES DISTRICT COURT
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DIANNA J. DURAN, in her official
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Defendants.

DECLARATION OF JAMES T. PARKER

I, James T. Parker, being over the age of 18 and competent, provide this declaration upon personal knowledge under penalty of perjury, according to 28 USC 1746:

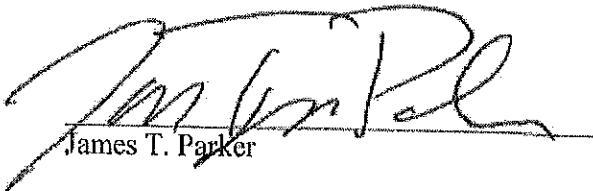
1. I am presently a Commissioner for the Public Education Commission, District 4. I would like to be a candidate for the same position, in the upcoming November 2014 election.
2. I have been registered in New Mexico as an independent since at least February 25, 1999.
3. Governor Martinez appointed me to the PEC position on November 7, 2013. I am the father of two school age daughters and I am concerned about their education. I am an advocate for charter schools and for expanding educational opportunities and choices.
4. I spent a considerable number of hours and friends and family have spent a considerable number of hours trying to obtain signatures on my nominating petitions. I estimate that more than 200 hours (total) were spent trying to gather signatures. When we could locate registered voters, my experience was more than 90% would sign my petition, when asked.



5. On June 26th, I submitted petitions with approximately 1,379 signatures.
6. As she was required to do by law, the New Mexico Secretary of State has informed me that I did not reach the statutory requirement of 3% and, therefore, absent action by the Court to address the constitutionality of the 3% requirement, I will not be on the ballot. A copy of the Secretary of State's letter, dated July 1, 2014, is attached to this affidavit.
7. I think the voters in PEC District 4 deserve the opportunity to vote and to choose between two candidates. I think the voters would be well-served to have a choice and a real election for the District 4 PEC position.

Pursuant to 28 USC 1746, I declare under penalty of perjury that the statements above are true and correct.

Dated: July 3, 2014



James T. Parker



STATE OF NEW MEXICO
DIANNA J. DURAN
SECRETARY OF STATE

July 1, 2014

James T Parker
124 Las Paredes
Corrales, NM 87048

*by e-mail: tyson@swcp.com
and by US Mail
delivery confirmation*

Re: Ballot disqualification

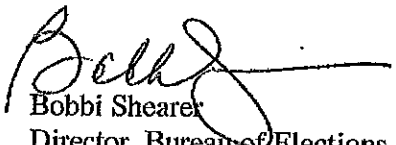
Dear Mr. Parker:

Pursuant to Section 1-8-26 (E) NMSA 1978, we have reviewed the declaration of candidacy and nominating petitions submitted by you on June 26, 2014, as well as your certificate of voter registration on file. You submitted 87 pages of nominating petitions, and our office counted 1,379 signatures. The number of signatures required is 2,196 for independent candidacy (§1-8-51 (E) NMSA 1978). By our calculations you are 817 signatures short of that requirement.

You are not qualified to have your name appear on the general election ballot for the office of Public Education Commissioner District 4.

The Secretary of State's office does not determine the validity of signatures, but counts all those submitted which appear to conform to the minimum statutory requirements of §1-8-50 NMSA 1978. However, any voter may file a court action challenging any nominating petition pursuant to §1-8-35 NMSA 1978 and §1-8-31 NMSA 1978.

Best regards,


Bobbi Shearer
Director, Bureau of Elections
Office of the Secretary of State

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Defendants.

DECLARATION OF RICHARD WINGER

I, Richard Winger, being over the age of 18 and competent, provide this declaration upon personal knowledge and the research I have conducted, under penalty of perjury, according to 28 USC 1746:

1. I have been recognized as an expert witness in federal courts in ten jurisdictions, in the areas of independent candidates and ballot access. I provided testimony, by telephone in *Jones v. McGuffage*, 921 F.Supp.2d 888 (N.D. Ill. 2013) in which the District Court Judge issued an injunction for the Plaintiff and significantly reduced the number of signatures required to make the ballot. A copy of my c.v. is attached, as Exhibit A.

History of the Ballot Access Procedure for Independent Candidates in New Mexico

2. New Mexico did not have government-printed general election ballots until 1917. The law that created such ballots is in the 1917 Session Laws, chapter 89, p. 245. The law did not have any procedures for independent candidates to get on the ballot. New Mexico was one of only three states in which the original law setting up government-printed ballots did not permit independent candidates to run. The others were Delaware and Michigan.



independent candidates who ever qualified in New Mexico were Betty Turrietta-Koury in 1996, and Carol Miller in 2008. New Mexico has held 52 U.S. House elections since 1977 (not counting special elections), so two independent candidates in 52 elections is a very sparse record of independent candidate activity.

7. In the 37 years since New Mexico created independent candidate procedures, only fifteen legislative independent candidates have qualified for the ballot: one in 1984, one in 1992, three in 1996, four in 2000, one in 2004, one in 2008, and four in 2012. There have been 1,638 legislative elections in New Mexico since 1977 (not counting special legislative elections), so fifteen independent candidates in 1,638 elections is an even sparser record of independent candidate activity.

8. During the last four years, New Mexico voters have had fewer independent and minor party candidates for federal and state office on their general election ballots than the voters of any other state except for Nebraska. It is not surprising that Nebraska has fewer such candidates, because Nebraska has a non-partisan legislature, so there are never any minor party or independent candidates for the Nebraska legislature. The chart below shows how many independent and minor party candidates appeared on the general election ballot in each state for President, other statewide office, U.S. House, and state legislature, in regularly-scheduled elections 2010 through 2013 (New Mexico voters also have fewer major party candidates on their general election ballots than the voters of almost any other state. Every year, a great many legislative elections in New Mexico have only one candidate on the November ballot).

NUMBER OF INDEPENDENT AND MINOR PARTY CANDIDATES ON THE BALLOT

STATE	2010	2011	2012	2013	TOTAL
Alabama	10	--	3	--	13
Alaska	12	--	8	--	20
Arizona	41	--	27	--	68

Arkansas	19	--	25	--	44
California	109	--	12	--	121
Colorado	33	--	99	--	132
Connecticut	56	--	25	--	81
Delaware	14	--	23	--	37
Florida	71	--	44	--	115
Georgia	11	--	4	--	15
Hawaii	8	--	5	--	13
Idaho	16	--	18	--	34
Illinois	35	--	10	--	45
Indiana	49	--	22	--	71
Iowa	22	--	22	--	44
Kansas	27	--	20	--	47
Kentucky	11	2	13	--	26
Louisiana	15	21	18	--	54
Maine	27	--	29	--	56
Maryland	23	--	14	--	37
Massachusetts	55	--	22	--	77
Michigan	140	--	83	--	223
Minnesota	48	--	30	--	78
Mississippi	8	21	13	--	42

Missouri	53	--	30	--	83
Montana	15	--	17	--	32
Nebraska	2	--	2	--	4
Nevada	46	--	17	--	63
New Hamp.	11	--	22	--	33
New Jersey	25	25	46	26	122
New Mexico	1	--	10	--	11
New York	64	--	73	--	137
No. Carolina	14	--	14	--	28
No. Dakota	7	--	7	--	14
Ohio	75	--	23	--	98
Oklahoma	9	--	9	--	18
Oregon	24	--	43	--	67
Pennsylvania	36	--	20	--	56
Rhode Island	50	--	45	--	95
So. Carolina	36	--	47	--	83
So. Dakota	15	--	7	--	22
Tennessee	66	--	48	--	114
Texas	108	--	129	--	237
Utah	39	--	40	--	79
Vermont	54	--	64	--	118

Virginia	14	19	12	20	65
Washington	9	--	14	--	23
West Virginia	10	--	17	--	27
Wisconsin	35	--	24	--	59
Wyoming	10	--	17	--	27

9. A set of candidates for President, Vice-President, and presidential electors is counted as one candidate. A set of candidates for Governor and Lieutenant Governor who are elected jointly is also considered one candidate. The chart does not count candidates in special elections. Most states don't have regularly-scheduled elections (for the offices covered in the chart) in odd years, so for most states, the odd year columns are blank.

10. I included both minor party and independent candidates in this chart because in some states, there is no clear distinction between them in the law. Although New Mexico law differentiates between minor parties and independent candidates, the laws of many states do not. In 26 states, independent candidates are free to choose a partisan label other than just the word "independent", such as "Green" or "Natural Law". Frequently minor parties use the independent candidate procedures to qualify their nominees, because the independent candidate procedures are easier than the newly-qualifying party procedures. Therefore, it can be difficult to draw a distinct line between independent candidates and minor party candidates; it is often more helpful and more accurate and objective to count both minor party and independent candidates. A "minor party or independent candidate", in this chart, is any candidate who appeared on the ballot in a partisan election (for Congress, or President, or other statewide partisan office, or state legislature) who is not the nominee of either the Republican Party or the Democratic Party. I limited the chart to elections for statewide partisan office, Congress, and state legislature, because all states have such elections. It didn't seem fair to include other partisan offices, such as judicial races, because I only

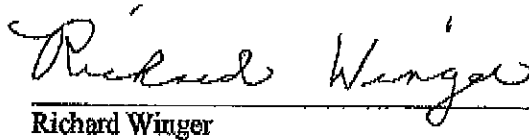
desired to include offices that are elected in partisan elections in all states. "Statewide" means an office in which the candidates for a particular seat appear on the ballot all across the state, so it does not include offices in which each region of the state elects its own office-holder.

NM PUBLIC EDUCATION COMMISSION ELECTIONS: NO INDEPENDENTS EVER

No independent candidate has ever been elected, or run for the office of Public Education Commission. Often times no candidate runs in the PEC election and sometimes the vacant positions are appointed and sometimes they remain unoccupied. See Exhibit B.

Pursuant to 28 USC 1746, I declare under penalty of perjury that the statements above are true and correct.

Dated: July 3, 2014


Richard Winger

Richard Winger Curriculae Vitae
3201 Baker Street
San Francisco, California 94123
Updated Sep. 15, 2013

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:

America Votes! A Guide to Modern Election Law and Voting Rights, 2nd edition, 2012, published by the American Bar Association's Section of State and Local Government Law, editor Benjamin E. Griffith.

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); California Justice Committee v Bowen, 2012 WL 5057625 (C.D.Cal.).

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

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: (3 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). Jones v McGuffage, 921 F Supp 2d 888 (N.D. Il, 2013).

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 (2012).

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., 793 F Supp 1064 (M.D. 2010); Green Party of Tennessee v Hargett, 882 F Supp 2d 959 (M.D..Tn. 2012).

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.

Washington: Washington State Democratic Central Committee v Washington State Grange, pending in U.S. Supreme Court, 11-1263.

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.

Presidential Cycles
Gubernatorial Cycles

PEC Amendment adopted September 23, 2003

State Board of Education

Public Education

2002				Incumbents at time of Amendment				Transition Phase	
Last Election for Board of Education								2004	
1				1	2001-2004	Flora M. Sanchez	D	1	2004
2	2002	Millie Pogna	R	2	2003-2006	Millie Pogna	R	2	
3	2002	Christine Trujillo	D	3	2003-2006	Christine V. Trujillo	D	3	
4				4	2001-2004	Eleanor V. Ortiz	D	4	2004
5	2002	Johnny R. Thompson	D	5	2003-2006	Johnny R. Thompson	D	5	
6	2002	Catherine M. Smith	D	6	2003-2006	Catherine M. Smith	D	6	
7	2002	John A. Darden	R	7	2003-2006	John A. Darden	R	7	
8				8	2001-2004	John R. Lankford	R	8	2004
9				9	2001-2004	Scott R. Barthel	R	9	2004
10				10	2001-2004	Alfred J. Herrera	D	10	2004

Democratic Primary	
1	2004
	2004
4	2004
8	2004
9	2004
10	2004



Republican Primary	
1	2004
4	2004
8	2004
9	2004
	2004
10	2004

General Election	
1	2004
	2004
4	2004
8	2004
	2004
9	2004
	2004
10	2004
	2004

Black: Board of Education Members

Red: PEC Members

Navy: 2014 first-time candidates

on Commission

Transition Phase

			<u>2006</u>				<u>2008</u>			
Martin Andrew Garrison	D		1					1	2008	
			2	2006	Millie Pogna	R		2		
			3	2006	Kathryn E. Krivitzky	D	W-I	3		
NO ONE RAN			4		No one ran to fill			4	2008	
			5	2006	Mavis V. Price	D	W-I	5		
			6	2006	Catherine M. Smith	D		6		
			7	2006	Eugene E. Gant	D		7		
Karen R. Haughness	D	W-I	8					8	2008	
Dennis James Roch	R		9					9	2008	
Rose Martinez	D	W-I	10					10	2008	
<u>Full, 4-year term, for Presidential Cycle</u>			<u>Democratic Primary</u>				<u>Full, 4-year term, for Gubernatorial Cycle</u>			
M. Andrew Garrison	D	8,655	2	2006	No candidates			1	2008	
Unopposed			3	2006	No candidates				2008	
No candidates			5	2006	No candidates			4	2008	
No candidates			6	2006	Catherine M. Smith	D	13,843	8	2008	
No candidates					Unopposed			9	2008	
No candidates			7	2006	Eugene E. Gant	D	3,689		2008	
					Unopposed			10	2008	

Full, 4-year term, for Presidential Cycle			Republican Primary		Full, 4-year term, for Gubernatorial Cycle			Republican Primary	
No candidates			2	2006	Millie Pogna	R	7,836	1	2008
No candidates					<i>Unopposed</i>			4	2008
No candidates			3	2006	No candidates			8	2008
Dennis James Roch	R	6,142	5	2006	No candidates				2008
<i>Unopposed</i>			6	2006	No candidates			9	2008
No candidates			7	2006	No candidates			10	2008
			General Election					General Election	
M. Andrew Garrison	D	56,813	2	2006	Millie Pogna	R	49,457	1	2008
<i>Unopposed</i>					<i>Unopposed</i>				
No nominees from either party			3	2006	Kathryn E. Krivitzky	WRITE	5,346	4	2008
Karen R. Haughness, WRITE-IN	D	491			<i>Unopposed</i>			8	2008
<i>Unopposed</i>			5	2006	Mavis V. Price	WRITE	1,723		2008
Dennis James Roch	R	45,440			<i>Unopposed</i>			9	2008
<i>Unopposed</i>			6	2006	Catherine M. Smith	D	38,978		2008
Rose Martinez, WRITE-IN	D	1,453		2006	<i>Unopposed</i>			10	2008
Viola M. Lopez, WRITE-IN	R	260	7	2006	Eugene D. Gant	D	27,709		
					<i>Unopposed</i>				

			<u>2010</u>				<u>2012</u>			
M. Andrew Garrison	D		1					1	2012	
			2	2010	Millie Pogna	R		2		
			3	2010	NO ONE RAN			3	2012	
NO ONE RAN			4		No one ran to fill			4	2012	
			5	2010	NO ONE RAN			5	2012	
			6	2010	Gilbert G. Peralta	D		6		
			7	2010	Eugene E. Gant	D		7		
Vince N. Bergman	R		8					8	2012	
Carolyn Kennedy Shearman	D		9					9	2012	
NO ONE RAN			10		No one ran to fill			10	2012	
<u>Full, 4-year term, for Presidential Cycle</u>			<u>Democratic Primary</u>				<u>Full, 4-year term, for Gubernatorial Cycle</u>			
M. Andrew Garrison	D	13,664	2	2010	No candidates			1	2012	
Unopposed			3	2010	Kathryn E. Krivitzky, WRITE-IN	D	207	4	2012	
No candidates				2010	Unopposed			8	2012	
No candidates			5	2010	No candidates			9	2012	
Carolyn Kennedy Shearman	D	7,349	6	2010	Gilbert G. Peralta	D	8,329		2012	
Unopposed				2010	Mary Lou Cameron	D	7,757	10	2012	
No candidates			7	2010	Eugene E. Gant	D	3,566		2012	
				2010	Alexander Cotoia	D	2,043			
			<u>Democratic Primary</u>				<u>Partial, 2-year term, to fill unexpired term</u>			
								<u>Democratic Primary</u>		

Full, 4-year term, for Presidential Cycle			Republican Primary				Full, 4-year term, for Gubernatorial Cycle				Republican Primary	
No candidates			2	2010	Millie Pogna	R	15,846	1	2012			
No candidates				2010	Unopposed			4	2012			
Vince N. Bergman	R	13,285	3	2010	No candidates			8	2012			
Unopposed			5	2010	No candidates							
No candidates			6	2010	No candidates			9	2012			
No candidates			7	2010	No candidates			10	2012			
			Republican Primary				Partial, 2-year term, to fill unexpired term				Republican Primary	
			4	2010	No candidates			3	2012			
			10	2010	No candidates			5	2012			
			General Election				General Election					
M. Andrew Garrison	D	66,328	2	2010	Millie Pogna	R	48,115	1	2012			
Unopposed				2010	Unopposed			3	2012			
No nominees from either party			3	2010	No nominees from either party				2012			
Vince N. Bergman	R	48,103	4	2010	No nominees from either party			4	2012			
Unopposed			5	2010	No nominees from either party			5	2012			
Carolyn Kennedy Shearman	D	38,345	6	2010	Gilbert G. Peralta	D	35,853					
Unopposed				2010	Unopposed			8	2012			
No nominees from either party			7	2010	Eugene D. Gant	D	30,817					
				2010	Unopposed			9	2012			
			10	2010	No nominees from either party							
								10	2012			

While Ms. Krivitzky did "win" the primary, she did not receive enough votes to qualify as a nominee for PEC

2014

NO ONE RAN			1		Eleanor Chavez	D	2-year
			2	2014	Millie Pogna	R	4-year
Carmie Lynn Toulouse	D	2-year	3	2014	Carmie Lynn Toulouse	D	4-year
NO ONE RAN			4		Karyl Ann Armbruster	D	2-year
James F. Conyers	D	2-year	5	2014	James F. Conyers	D	4-year
			6	2014	Gilbert G. Peralta	D	4-year
			7	2014	Patricia E. Gipson	D	4-year
Vince N. Bergman	R		8				
Carolyn Kennedy Shearman	D		9				
Jeff Carr	D		10				
Full, 4-year term, for Presidential Cycle							
No candidates							
No candidates							
No candidates							
Carolyn Kennedy Shearman	D						5,140
Unopposed							
Jeff Carr	D						22,598
Unopposed							

Partial, 2-year term, to fill unexpired term

Carmie Lynn Toulouse	D	13,473
<i>Unopposed</i>		
James F. Conyers, WRITE-IN	D	988
<i>Unopposed</i>		

Full, 4-year term, for Presidential Cycle		
No candidates		
No candidates		
Vince N. Bergman	R	11,276
<i>Unopposed</i>		
No candidates		
No candidates		
Partial, 2-year term, to fill unexpired term		
No candidates		
No candidates		

No nominees from either party		
Carmie Lynn Toulouse	D	62,188
Vanessa Leigh Gutierrez, WRITE	D	821
No nominees from either party		
James F. Conyers	D	42,941
<i>Unopposed</i>		
Vince N. Bergman	R	49,790
<i>Unopposed</i>		
Carolyn Kennedy Shearman	D	36,157
<i>Unopposed</i>		
Jeff Carr	D	66,860
<i>Unopposed</i>		