

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY**

THE LIBERTARIAN PARTY OF KENTUCKY : Case No.
P.O. Box 432
Independence, KY 41051 :

AND :

LIBERTARIAN NATIONAL COMMITTEE, :
INC. :
1444 Duke St. :
Alexandria, VA 22314 :

AND :

KEN MOELLMAN, JR. :
475 Hickory Grove Road :
Foster, KY 41043 :

AND :

CONSTITUTION PARTY OF KENTUCKY :
PO BOX 23703 :
Lexington, KY 40523 :

PLAINTIFFS :

v. :

ALISON LUNDERGAN GRIMES :
SECRETARY OF STATE OF THE :
COMMONWEALTH OF KENTUCKY :
in her official capacity :
as Secretary of State and :
Chair of the State Board of Elections :
Serve: JACK CONWAY, Attorney General :
700 Capitol Avenue, Suite 118 :
Frankfort, Kentucky 40601 :

AND :

JOSHUA G. BRANSCUM, MEMBER :
STATE BOARD OF ELECTIONS :
in his official capacity :

Serve: JACK CONWAY, Attorney General
700 Capitol Avenue, Suite 118 :
Frankfort, Kentucky 40601 :

AND :

JOHN HAMPTON, MEMBER STATE BOARD
OF ELECTIONS, :
in his official capacity :

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AND :

STEPHEN HUFFMAN, MEMBER STATE
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AND :

DONALD BLEVINS, MEMBER STATE
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AND :

ALBERT B. CHANDLER, III, MEMBER
STATE BOARD OF ELECTIONS, :
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AND :

GEORGE RUSSELL, MEMBER STATE
BOARD OF ELECTIONS, :
in his official capacity :

Serve: JACK CONWAY, Attorney General

700 Capitol Avenue, Suite 118 :
Frankfort, Kentucky 40601 :

AND :

MARYELLEN ALLEN, EXECUTIVE :
DIRECTOR, KENTUCKY STATE BOARD :
OF ELECTIONS, :

in her official capacity :
Serve: JACK CONWAY, Attorney General :
700 Capitol Avenue, Suite 118 :
Frankfort, Kentucky 40601 :

AND :

JACK CONWAY, ATTORNEY GENERAL :
in his official capacity :
700 Capitol Avenue, Suite 118 :
Frankfort, Kentucky 40601 :

DEFENDANTS :

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR
CONSTITUTIONAL VIOLATIONS

Plaintiffs the Libertarian Party of Kentucky, Inc., the Libertarian National Committee, Inc., Ken Moellman, Jr., and the Constitution Party of Kentucky, (“Plaintiffs”) by and through counsel, for their *Verified Complaint for Declaratory and Injunctive Relief for Constitutional Violations* (the “Complaint”), states and alleges as follows:

INTRODUCTION

1. This action involves the deprivation of Plaintiffs First and Fourteenth Amendment rights by the official and individual capacity Defendants named herein. Specifically this action challenges the Kentucky ballot access regime for political parties in Kentucky, other than the Republican and Democratic Parties, which are unconstitutional under prevailing Sixth Circuit and U.S. Supreme Court case law, as set forth in *Green Party of Tenn. v. Hargett*, 791 F.3d 684 (6th Cir. 2015); *Green Party v. Hargett*, 700 F.3d 816 (6th Cir. 2012); *Green Party of*

Tenn. v. Hargett, 493 Fed. Appx. 686 (6th Cir. 2012); and *Green Party v. Hargett*, 953 F. Supp. 2d 816 (MD Tenn. 2013). The action does not challenge the ability of independent or even individual candidates to obtain ballot access, but rather challenges the regime insofar as political parties, and specifically minor parties, are concerned. The suit raises facial and as-applied challenges. This suit seeks injunctive and declaratory relief under 42 U.S.C. § 1983, and attorney fees and costs under 42 U.S.C. § 1988.

PARTIES

2. At all relevant times herein, Plaintiff, The Libertarian Party of Kentucky (“LPKY”) is chartered by the National Libertarian Party, and is an Executive Committee under Kentucky Election Finance Laws. Its mission is threefold: (a) Electing candidates of the Libertarian Party to public office; (b) Educating the public about Libertarian ideas through whatever means available; and (c) Providing the organizational structure for Libertarians to interact with one another. As explained herein, LPKY, and its members, have suffered an individualized and group harm from the acts and practices herein complained of, and, in particular, it is unable to consistently place its candidates on the ballot in Kentucky through petition or otherwise. Furthermore, the actions complained of herein will cause future harm and are likely to recur in the future, as the LPKY typically fields candidates for local, state, and national elections, who will be subject to similar actions of those complained of herein. LPKY is headquartered in Kenton County, Kentucky, and its address is P.O. Box 432, Independence, KY 41051.
3. At all relevant times herein, Plaintiff, Mr. Ken Moellman, Jr. was and is a resident of Pendleton County, Kentucky, and was and is a registered Libertarian voter, whose rights to

associate and vote for candidates from his political party are impaired by the actions and omissions complained of herein.

4. At all relevant times herein, Plaintiff, Libertarian National Committee, Inc. (“LNC”) is the duly authorized national party organization of the Libertarian Party, registered with the Federal Elections Commission. The Libertarian Party is America's third largest and fastest growing political party. Libertarians engage in a variety of projects, working for everyone's liberty on every issue. The Libertarian Party, created in December of 1971, vision is the same as that of America's founders -- a world where individuals are free to follow their own dreams in their own ways, a world of peace, harmony, opportunity, and abundance. As explained herein, LNC, and its members, have suffered an individualized and group harm from the acts and practices herein complained. Furthermore, the actions complained of herein will cause future harm and are likely to recur in the future, as the LNC typically fields candidates for local, state, and national elections, who will be subject to similar actions and restrictions similar to those complained of herein. In particular, the LNC is significantly impaired in running its candidates for office under the restrictive ballot access laws complained of herein.
5. At all relevant times herein, Plaintiff, the Constitution Party of Kentucky (“CPKY”) is chartered by the National Constitutional Party, and is an Executive Committee under Kentucky Election Finance Laws. Its mission is twofold: (a) To restore American Jurisprudence to the implied Biblical premises of the Founding Fathers; and (b) To limit all of government to the boundaries set by the Constitution as legally amended. As explained herein, CPKY, and its members, have suffered an individualized and group harm from the acts and practices herein complained of, and, in particular, it is unable to consistently place

its candidates on the ballot in Kentucky through petition or otherwise. Furthermore, the actions complained of herein will cause future harm and are likely to recur in the future, as the CPKY typically fields, or attempts to field, candidates for certain state and national elections, who will be subject to similar actions of those complained of herein. CPKY is headquartered in Fayette County, Kentucky.

6. Defendant Alison Lundergan Grimes is and was at all relevant times herein the duly elected Kentucky Secretary of State, the Chairwoman of the Kentucky State Board of Elections, and pursuant to K.R.S. 117.015 and other laws is responsible for administering and enforcing the election laws of the state, and is the Chief Elections Officer for the state. Defendant Grimes is sued in her official capacity only.
7. Defendants Joshua G. Branscum, John W. Hampton, Stephen Huffman, Albert B. Chandler, III, George Russell, and Donald W. Blevins, are Board Members of the Kentucky State Board of Elections, and, pursuant to K.R.S. 117.015 and other laws, is responsible for administering and enforcing the election laws of the state. Defendants Branscum, Hampton, Huffman, Chandler, Russell, and Blevins are sued in their official capacities only.
8. Defendant Maryellen Allen is the Executive Director of the Kentucky State Board of Elections, and, pursuant to K.R.S. 117.025 is the Chief Administrative Officer of the Kentucky State Board of Elections, which, pursuant to K.R.S. 117.015 and other laws, is responsible for administering and enforcing the election laws of the state. Defendant Allen is sued in her official capacity only.
9. Defendant, Jack Conway, is the Attorney General for the Commonwealth of Kentucky, and, pursuant to K.R.S. 15.242 and 15.243, is empowered and authorized, as well as charged with the enforcement of the election laws of the Commonwealth of Kentucky. He is further

provided notice under K.R.S. 418.075 since the constitutionality of a statute is at issue in this matter. He is sued in his official capacity only.

10. Among other things Defendants enforce and are charged with the enforcement or administration of Kentucky's election laws, including the ballot access provisions that are complained of herein.

JURISDICTION AND VENUE

11. Subject matter jurisdiction over the claims and causes of action asserted by Plaintiffs in this action is conferred on this Court pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988, 28 U.S.C. §1331, 28 U.S.C. § 1343, 28 U.S.C. §§ 2201 and 2202, and other applicable law.
12. Venue in this District and division is proper, pursuant to 28 U.S.C. §1391 and other applicable law, because all of the deprivations of Plaintiffs' Constitutional Rights occurred in counties within this District within Kentucky, and future deprivations of their Constitutional Rights are threatened and likely to occur in this District.

Additional Allegations Concerning Standing

13. Defendants are empowered, charged with, and authorized to enforce and carry out Kentucky's election laws. Moreover, Defendants actually do enforce and administer Kentucky's election laws, including the ballot access provisions challenged herein.
14. Furthermore, on November 17, 2015, counsel for the Plaintiffs sent a letter to Defendant Allen, and counsel for Defendant Grimes, seeking to have Plaintiffs' candidates placed on the ballot for the 2016 election cycle. The letter gave a deadline to respond by November 24, 2015. Defendants declined to place the candidates on the ballot, and declined to respond, demonstrating their enforcement of the laws challenged herein, and the deprivation of Plaintiffs rights as a consequence.

FACTS COMMON TO ALL CLAIMS

Background on Kentucky's Ballot Access Laws

15. Kentucky utilizes a three tiered system for political groups and ballot access. At the top of the tier are "Political Parties." They are defined in K.R.S. 118.015(1) as follows: "A 'political party' is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and whose candidate received at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for."
16. Next are "Political Organizations." They are defined in K.R.S. 118.015(8) as follows: "'Political organization' means a political group not constituting a political party within the meaning of subsection (1) of this section but whose candidate received two percent (2%) or more of the vote of the state at the last preceding election for presidential electors."
17. Finally, there are "Political Groups." They are defined in K.R.S. 118.015(9) as follows: "'Political group' means a political group not constituting a political party or a political organization within the meaning of subsections (1) and (8) of this section."
18. Pursuant to K.R.S. 118.305(1)(a),(b),(c), and (d), candidates for Political Parties and Political Organizations automatically earn ballot access, and do so for a four year period following the presidential election.
19. While the statutes are not specific, the Board of Elections has determined that third party candidates, such as those of the Libertarian and Constitution parties, are to be treated as "independent candidates" under K.R.S. 118.305(1)(e), and thus may individually qualify for

ballot access by obtaining the number of signatures required in K.R.S. 118.315(2). For statewide office, 5,000 signatures are required; for a Congressional district, 400 signatures are required; for a state house or senate district, 100 signatures are required.

20. A separate petition, with signatures, is required for each candidate and there is no method for a political group to become ballot qualified across the board, except through the results of the Presidential election. The only time and method by which a political group can become a Political Party or Political Organization, is by receiving votes in the Presidential election. There is no method to obtain, by petition or otherwise, ballot access generally, or on a blanket basis for a political group, under Kentucky law.

Kentucky's History of Ballot Access for Third Parties

21. Historically in Kentucky, at least for the past 100 years, with four exceptions, the only Political Parties or Political Organizations that qualified for automatic ballot access was the Democratic and Republican Parties. The first exception was 1924 (91 years ago), when Robert La Follette received 4.72% in Kentucky under the Progressive party, which qualified that party as a Political Organization. In 1968 George Wallace was the nominee of the American Party in Kentucky, and received 18.3% of the vote, which qualified that party as a Political Organization. In 1980 John Anderson used the ballot label "Anderson Coalition" in Kentucky and received over 2% of the vote, so that party was a Political Organization and qualified that party for ballot access in 1981, 1982, 1983, and 1984. In 1996 Ross Perot ran under the "Reform" party, received over 2% of the vote, qualifying that party as a Political Organization gave that party ballot access in 1997, 1998, 1999, and 2000.

22. Moreover, as further evidence of the burden of Kentucky's ballot access scheme, Kentucky is one of only 4 states that hasn't had any ballot-qualified parties, other than from the Democratic or Republican parties, in the last 15 years.

Political Participation of the Plaintiffs

23. The LNC, LPKY and CPKY have each engaged in repeated and systemic political activities in Kentucky, including fielding candidates for Presidential and other races. For instance, the LNC and LPKY have each participated in petition signature drives placing their candidates on the ballot for President every Presidential Election year since 1988.

24. Mr. Moellman, as a individual voter and member of the LPKY, likewise has been active in politics in Kentucky.

25. The cost – both monetary and as a time commitment associated with Kentucky's ballot access laws, generally results in LPKY and LNC only being able to undertake one petition drive per year for one of their candidates, foreclosing them and their candidates from other opportunities. But for the challenged ballot access laws, LPKY and LNC would field more than one candidate, per year, for statewide and national office.

26. In addition to Presidential races, LPKY and LNC have also fielded candidates for Congress and U.S. Senate. In 2014, LPKY and LNC ran David Patterson for United States Senate. Despite the significant cost of petitioning, which drained funds that would otherwise be available for waging his campaign, Mr. Patterson received 44,240 votes, amounting to 3.1% of the vote in the Commonwealth of Kentucky. If the U.S. Senate race counted towards qualification as a Political Organization or Political Party, it would have qualified Libertarian Candidates for ballot access as a Political Organization.

27. For its part, The Constitution Party qualified its candidate for ballot access in 2008 for the Presidential election. The Constitution Party of Kentucky would, but for the challenged ballot access laws, field candidates for state and federal office on a regular basis.
28. In 2010, the Constitution Party of Kentucky ran a candidate for the 79th State House District, Robert Thornsberry, who secured 27.4% of the vote in that election. If the State House race counted towards qualification as a Political Organization or Political Party, it would have qualified Constitution Party Candidates for ballot access as a Political Party.
29. Notwithstanding the fact that there is a method to place individual candidates on the ballot, there is *no method*, other than receiving over 2% of the vote in the Presidential race, to qualify a political party for “blanket” ballot access. A party cannot gain general ballot access for a four year period except through this election-results basis. In turn, these restrictions violate Plaintiffs rights under the First Amendment to Freedom of Speech and Association, as well as Equal Protection of Law under the Fourteenth Amendment.
30. The challenged provisions impermissibly freezes the status quo and does not allow for a real and equal opportunity for ballot qualification.
31. The actions set forth herein have and continue to deprive Plaintiffs of their constitutional rights.

COUNT I – VIOLATION OF FIRST AND FOURTEENTH AMENDMENTS

32. Plaintiffs hereby reincorporates the preceding paragraphs of his Complaint as if fully set forth herein.
33. Plaintiff Moelleman is a citizen of the United States of America; the members of Plaintiffs LPKY, LNC and CPKY are citizens of the United States of America and each is an

organization registered and/or authorized to act as a political party in the United States of America.

34. Plaintiffs have clearly established rights and protections under the United States Constitution and its statutes to Freedom of Speech, Association, and Expression and other First Amendment guarantees, as well as their guarantees of Equal Protection of Law under the Fourteenth Amendment to the U.S. Constitution.
35. Defendants, using their respective offices and acting under color of state law, violated and are violating Plaintiffs' First Amendment Rights, which have deprived, are depriving, and will deprive them of their rights to Free Speech, Expression, and Association guaranteed to them under the First Amendment of the U.S. Constitution, which rights are clearly established; as well as their rights to Equal Protection of Law under the Fourteenth Amendment to the U.S. Constitution. Defendants thereby subjected themselves under 42 U.S.C. § 1983, to prospective injunctive relief and declaratory relief under 28 U.S.C. §§ 2201, *et seq.*, and the individual capacity Defendants subjected themselves to be liable for monetary damages sought herein.
36. The First Amendment of the U.S. Constitution provides, in relevant part, that "Congress shall make no law ... abridging the freedom of speech..." The Fourteenth Amendment has incorporated the First Amendment to apply to the states, including the Commonwealth of Kentucky, under *Gitlow v. New York*, 268 U.S. 652 (1925).
37. Defendants abused the authority of their respective offices and, while acting under color of law and with knowledge of Plaintiffs' established rights, used their offices to violate their First and Fourteenth Amendment rights.

38. The United States Supreme Court in *Storer v Brown*, 415 US 724 (1974) and *Mandel v Bradley*, 432 US 173 (1977) held that states must treat independent candidates separately from political parties, and had to have procedures for ballot access for each. Furthermore, the Sixth Circuit Court of Appeals, in *Green Party of Tenn. v. Hargett*, 791 F.3d 684 (6th Cir. 2015), *Green Party v. Hargett*, 700 F.3d 816 (6th Cir. 2012) and *Green Party of Tenn. v. Hargett*, 493 Fed. Appx. 686 (6th Cir. 2012) held that a state must provide for a means and mechanism by which a political party can qualify for blanket ballot access, whether by petition or otherwise.
39. Kentucky's ballot access laws, and specifically K.R.S. 118.015 and K.R.S. 118.305, afford no method, other than through the results of a Presidential Election, in which a party or group must achieve at least 2% of the vote, for a political group to obtain blanket ballot access.
40. Kentucky's ballot access provisions, facially and as applied to minor or smaller political parties, such as the LNC, LPKY, and CPKY, constitute a severe burden on the rights of the Plaintiffs, are not narrowly tailored to advance a compelling state interest, and are therefore unconstitutional under the prevailing U.S. Supreme Court cases of *Anderson v. Celebrezze*, 460 U.S. 760 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992).
41. In the alternative, if the Court finds that Kentucky's ballot access provisions, facially and as applied to minor or smaller political parties, such as the LNC, LPKY, and CPKY, do not constitute a severe burden on the rights of the Plaintiffs, then they constitute more than a minimal burden, and do not pass muster under the flexible analysis that weights the burdens of Plaintiffs against the Commonwealth's asserted interest and chosen means of asserting it, under the prevailing U.S. Supreme Court cases of *Anderson v. Celebrezze*, 460 U.S. 760 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992).

42. Plaintiffs seek declaratory relief, and prospective injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202, declaring the challenged Kentucky Ballot Access laws unconstitutional, in contravention of the First and Fourteenth Amendments of the United States Constitution. Plaintiffs further seek their costs and reasonable attorney fees under 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as prayed for, including:

- A. That this Court issue a declaration that Kentucky’s ballot access laws, and specifically K.R.S. 118.015 and K.R.S. 118.305, facially, and as applied to minor political parties such as the LPKY, LNC, and CPKY, are unconstitutional, in contravention of the First and Fourteenth Amendments of the United States.
- B. That this Court enter permanent injunctive relief to prohibit enforcement of the Kentucky’s ballot access laws, and specifically K.R.S. 118.015 and K.R.S. 118.305, facially, and as applied to minor political parties such as the LPKY, LNC, and CPKY, and direct that LPKY, LNC, and/or CPKY be permitted to nominate, through the procedures of each party, their nominees to federal, state, and local office, as if they were a “political organization” under Kentucky’s ballot access regime.
- C. That Plaintiffs be awarded their costs in this action, including reasonable attorney fees under 42 U.S.C. § 1988; and
- D. Such other relief as this Court shall deem just and proper.

Respectfully submitted,

/s/ Christopher Wiest

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