

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

SHAWN WILMOTH,	:	
	:	Civil Action
Plaintiff,	:	
	:	No. 3:16-cv-0223-JCH
v.	:	
	:	
DENISE MERRILL,	:	
SECRETARY OF THE STATE OF	:	
CONNECTICUT,	:	
	:	
Defendant.	:	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff, SHAWN WILMOTH, by and through his undersigned legal counsel, file this civil action for prospective equitable relief against defendant, Denise Merrill, in her official capacity as the Secretary of State for the State of Connecticut to enforce rights guaranteed to plaintiff by the First and Fourteenth Amendments to the United States Constitution. Plaintiff requests declaratory and injunctive relief to prevent defendant’s enforcement of Connecticut statutes that unconstitutionally restrict core political speech by requiring circulators of election nominating petitions to be Connecticut residents.

NATURE OF THE COMPLAINT

2. This is a civil rights action brought pursuant to 42 U.S.C. §1983, alleging, based on information and belief, that the requirement of Conn. Gen. Stat.

§§ 9-410, 9-412 and 9-468 requiring that circulators of Presidential nomination petitions must be residents of the State of Connecticut impairs clearly establish rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution.

3. Plaintiff asks this court for an emergency temporary restraining order, preliminary injunctive relief and declaratory and permanent injunctive relief to permit plaintiff, a professional circulator of election petitions and resident of the State of Michigan, to circulate Connecticut election nominating petitions for President of the United States set to commence at noon on February 16, 2016.

JURISDICTION

4. Jurisdiction lies in this Court under 28 U.S.C. § 1331, providing that district courts shall have original jurisdiction of all civil actions arising under the Constitution of the United States.

5. Moreover, jurisdiction lies under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a), the jurisdictional counterpart of 42 U.S.C. § 1983 as plaintiff alleges violation of rights guaranteed to him under the First Amendment, as applied to the states by the Fourteenth Amendment to the United States Constitution.

VENUE

6. Venue is proper in the United States District Court for the District of Connecticut under 28 U.S.C. § 1391 as the defendant exercises her authority in the State of Connecticut and maintains her principal office within this district.

PARTIES

7. Plaintiff, Shawn Wilmoth, 28 years old and is a professional circulator and resident of the State of Michigan, residing at 218 Tuscany Avenue, Eastpointe, Michigan, 48021. Plaintiff has been contracted by the campaign of Rocky De La Fuente, candidate for the Democrat nomination for President of the United States. Plaintiff intends to circulate election nomination petitions in the State of Connecticut starting at noon on Tuesday, February 16, 2016 for Rocky De La Fuente. Plaintiff has personally circulated election nomination petitions for Rocky De La Fuente in Michigan, Massachusetts, North Carolina, Illinois, Wisconsin, Maryland, Kentucky and New York. Plaintiff views the circulation of election nominating petitions as a means to associate with voters to advance the message and political agenda of candidate Rocky De La Fuente.

8. Defendants Denise Merrill is the Secretary of State for Connecticut. Defendant Merrill is Connecticut's chief election official charged with the ultimate responsibility to enforce the unconstitutional statutory provisions challenged in the above captioned action. Defendant Merrill is sued in her official capacity only.

Defendant Merrill, in relevant part, is statutorily responsible for: (1) voter registration; (2) Connecticut's electoral process; (3) the form, content, and instructions of nomination petitions; (4) enforcement of all statutory requirements for filing election nominating petitions; and (5) the striking of any election nominating petition that fails to comply with any of the unconstitutional requirements challenged in this action at the time nomination petitions are filed with her office.

FACTS

9. Plaintiff is a professional circulator of, among other things, election nomination petitions.

10. Plaintiff is Chief Relations officer of "Signature Masters, Inc." a Michigan based company that specializes in petition management solutions on a national level. The management staff at SMI has collectively worked on petition drives in nearly every state in the United States over the past 10 years.

11. Plaintiff is a resident and registered voter of the State of Michigan.

12. Plaintiff has been hired by the campaign of Rocky De La Fuente, candidate for the Democrat nomination for President of the United States to circulate election nominating petitions in the State of Connecticut.

13. Plaintiff has personally circulated election nominating petitions on behalf of Rocky De La Fuente in Michigan, Massachusetts, North Carolina, Illinois, Wisconsin, Maryland, Kentucky and New York.

14. Plaintiff intends to personally circulate election nominating petitions in the State of Connecticut for Rocky De La Fuente beginning at about noon on Tuesday, February 16, 2016.

15. Plaintiff's circulation of election nominating petitions is plaintiff's way to associate with voters across the county, and the State of Connecticut, to communicate the political message and agenda of the candidates for public office that he supports, including the candidacy of Rocky De La Fuente for the Democrat nomination for President of the United States.

16. A major political party is either a "political party...whose candidate for Governor at the last-preceding election...received...at least twenty per cent of the whole number of votes cast for all candidates for Governor," or, "a political party having, at the last-preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state." Conn. Gen. Stat. § 9-372(5).

17. Plaintiff seeks to circulate election nominating petitions in Connecticut for the candidacy of Rocky De La Fuente for the Democrat

nomination for President of the United States. The Democrat Party of Connecticut is currently qualified as a major political party in Connecticut.

18. In Connecticut, candidates seeking the nomination of major political parties for the Office of President of the United States may appear on the state's primary election ballot in one of two ways.

(a) First, defendant Secretary of State, may place the name of a candidate of a major political party in Connecticut directly onto the state's primary election ballot if, in the Secretary's opinion, the person's candidacy for the party's presidential nomination is "generally and seriously advocated or recognized according to reports in the national or state news media. Defendant Secretary of State must announce at 10:00 A.M. on Tuesday, February 16, 2016 the candidates she is placing on the ballot directly (without the need to circulate nomination petitions).

(b) Second, in the event that defendant Secretary of State refuses to place the name of a candidate directly on the 2016 Presidential Preference Primary election ballot, a candidate for the nomination of a major political party candidate may have his/her name appear on the ballot upon the filing of election nominating petitions signed by at least 1% of the enrolled members of the major political party in Connecticut according to the most recent *active-list* enrollment records on file with the Secretary of State. Beginning at 12:00 noon on Tuesday, February 16,

2016 defendant Secretary of State will issue election nominating petition forms for candidates not directly designated for inclusion on the ballot by defendant Secretary of State. Each election nominating petition page must be filed not later than 4:00 P.M. on Friday, March 4, 2016 with the local Registrar of Voters of the appropriate party in the town in which the signers of the page are enrolled in such party.

19. A person who collects signatures on election nominating petitions for candidates in Connecticut is defined by state statute as a “circulator.” Conn. Gen. Stat. § 9-453e.

20. Every circulator of election nominating petitions must be “a United States Citizen” and “a resident of a town in this state.” Conn. Gen. Stat. §§ 9-468, 9-410 & 9-412.

21. Election nominating petitions for candidates not placed directly on the ballot by defendant Secretary of State are distributed, upon proper application, by defendant, in a format prescribed by her, and no petitioning candidate for President of the United States is permitted to begin collecting signatures prior to noon, February 16, 2016. Conn. Gen. Stat § 9-467 provides (and not challenged in this action) under the heading “Issuance of petition” that:

“On or after twelve o’clock noon of the seventy-fourth day preceding the day of the primary, any person seeking the nomination of a party for President, whose name is not included in the list of candidates announced by the Secretary pursuant to section 9-466, or any person

advocating the nomination of such person, by such party, may obtain petition pages from the Secretary in the manner provided by this section. Such pages shall be in a form prescribed by the Secretary and shall conform, as nearly as may be, to the requirements for primary petition forms provided in section 9-410. Any person requesting the petition pages shall give to the Secretary, in writing, his name and address, the name and address of the candidate for whom the petition is to be circulated and the party holding the primary, and shall also file, or caused to be filed, with said Secretary a written statement, signed by such candidate, to the effect that he consents to the inclusion of his name on the primary ballot of such party. Upon completion of these requirements, the Secretary shall give to the person so requesting such petition pages one petition page, suitable for duplication...The Secretary shall also fill in on each petition page the name and address of the candidate, the words 'nomination for President of the United States' as the designation of the office sought, and the name of the party conducting the primary."

22. Circulation of election nominating petitions for the Presidential

Preference Primary is governed by Sections 9-410 and 9-412 of the Connecticut

General Statutes. Specifically, Conn. Gen. Stat. § 9-468 provides, in relevant part,

under the heading "Circulation, filing and verification of petition" that

"Except as hereinafter provided, such petitions shall be circulated, filed with the registrars of voters, and verified by said registrars, as nearly as may be, in accordance with the provisions of sections 9-410 and 9-412. Each page of such a petition shall be filed with the registrar of voters of the party holding the primary in the town of voting residence of the signers thereof, not later than four o'clock p.m. of the fifty-third day preceding the day of the primary."

23. Circulators of election nominating petitions for the Presidential

Preference Primary must be registered voters and residents of the State of

Connecticut and defendants must reject any page of an election nominating petition

circulated by a non-resident of Connecticut. Specifically, Conn Gen. Stat. § 9-410(c) provides, in relevant part:

“Each circulator of a primary petition page shall be an enrolled party member of a municipality in this state who is entitled to vote. Each petition page shall contain a statement signed by the registrar of the municipality in which such circulator is an enrolled party member attesting that the circulator is an enrolled party member in such municipality. Unless such a statement by the registrar appears on each page so submitted, the registrar shall reject such page.”

Furthermore, Conn. Gen. Stat. § 9-412 provides, in relevant part: “The registrar shall reject any page of a petition which does not contain the certificates provided in § 9-410, or which the registrar determines to have been circulated in violation of any other provision of § 9-410.”

24. The requirement that circulators reside in the State of Connecticut means that any non-resident wishing to gather signatures on election nominating petitions for Connecticut’s Presidential Preference Primary must be accompanied at all times by a Connecticut resident.

25. The requirement that out-of-state circulators must be accompanied at all times by a Connecticut resident reduces plaintiff’s ability to work efficiently to gather signatures at the times and places that plaintiff, as an out-of-state circulator, wishes to gather signatures for the candidate he wants to help gain access to the State’s Presidential Preference Primary.

26. As a direct and proximate result of the challenged statutory provisions requiring that circulators must reside in Connecticut, plaintiff is effectively prohibited from circulating election nominating petitions in Connecticut.

27. Limiting the circulation of election nominating petitions to Connecticut residents limits the pool of circulators available to associate with the voters of Connecticut and the pool of persons able to communicate the political speech and agenda of candidates running for public office.

28. The requirement that all circulators be Connecticut residents places a severe burden on plaintiff by making it more difficult for plaintiff to disseminate his political views, to choose the most effective mode of conveying his message, to associate with the voters of Connecticut in a meaningful way to elicit political change, to secure ballot access to the candidates of his choice – all of which is implicit is plaintiff's circulation of election nominating petitions.

29. As a result of defendant's threatened enforcement of the unconstitutional requirements of the challenged provisions, plaintiff is unable to effectively plan for the circulation of election nominating petitions for Rocky De La Fuente for the full period of time allowed by Connecticut law to circulate election nominating petitions, starting at noon on February 16, 2016 and ending at 4:00 P.M. on March 4, 2016.

30. The short period of time allowed by statute to circulate election nominating petitions imposes a severe burden on plaintiff's First Amendment rights for any amount of time that plaintiff, as a non-resident, is not permitted to freely circulate election nominating petitions for Rocky De La Fuente as a direct and proximate result of the challenged provisions in this action.

31. The short period of time allowed by statute to circulate and file election nominating petitions virtually forecloses any opportunity to effectively challenge defendant's enforcement of the challenged provisions against plaintiff once the period allowed by law to circulate election nominating petitions begins at noon on February 16, 2016.

32. Plaintiff will suffer immediate and irreparable harm to rights guaranteed to him under the First and Fourteenth Amendments to the United States Constitution if this Court does not grant immediate *ex parte* relief as a result of the short period of time between the time this complaint is filed and the date on which the period begins to lawfully circulate election nominating petitions for the 2016 Connecticut Presidential Preference Primary, especially since this Court issued a Temporary Restraining Order and Preliminary Injunction on January 26, 2016 enjoining a cognate statutory provisions imposing the same restriction on out-of-state circulators with respect to the election nominating petitions required to be circulated by minor political parties in the State of Connecticut.

(a) The legal arguments that defendant will (of necessity) offer in support of the challenged provisions will be identical to the arguments rejected by this Court in granting the requested Temporary Restraining Order and Preliminary Injunction in *Libertarian Party of Connecticut v. Denise Merrill*, 15-cv-1851 (January 26, 2016);

(b) In-state residency requirement for the circulation of nomination petition of the kind at issue in Connecticut have been rejected by virtually every federal district court and courts of appeal to have considered the issue;

(c) Defendant's continued enforcement of the in-state circulator requirement challenged in this action with respect to the 2016 Connecticut Presidential Preference Primary is without any legal support;

(d) Accordingly, summary action to grant an emergency temporary restraining order before noon, February 16, 2016 is appropriate.

33. Plaintiff has no other adequate remedy at law.

34. The declaratory and injunctive relief requested by plaintiff will provide plaintiff complete relief as defendant's enforcement of the statutory provisions at issue in this action is the sole reason for the harm caused to rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution.

35. Plaintiff is expressly willing to consent to the jurisdiction of the State of Connecticut and execute any document determined necessary to submit to the executive and judicial authority of the State of Connecticut in the investigation and/or judicial review of any allegation of election petition fraud as a condition precedent to the circulation of election nominating petitions in the State of Connecticut

COUNT I

(Facial Challenge to the In-State Residency Requirement of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468)

36. Plaintiff reasserts each preceding allegation as if set forth fully herein.

37. The circulation of nomination petitions is core political speech provided the highest level of protection by the First Amendment to the United States Constitution.

38. Signatures recorded on nomination petitions is core political speech protected by the First Amendment to the United States Constitution.

39. The state residency requirement imposed on circulators of election nominating petitions in Connecticut as a direct and proximate result of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468 places a severe burden on plaintiff's core political speech and is subject to strict scrutiny.

40. Because the state residency requirement imposed on the circulation of election nominating petitions is not narrowly tailored to further a compelling

governmental interest, the provision facially violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution and enforced by 42 U.S.C. § 1983.

41. Furthermore, no state regulatory interest justifies the state residency requirement imposed on the circulation of election nominating petitions in Connecticut in violation of the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution and enforced by 42 U.S.C. § 1983.

42. Defendant is a state actor charged with enforcement of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468 against plaintiff.

43. Accordingly, defendant's enforcement of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468 is the direct and proximate cause of the impairment of rights guaranteed to plaintiff under the First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

COUNT II

(As-Applied Challenge to the In-State Residency Requirement of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468)

44. Plaintiff reasserts each preceding allegation as if set forth fully herein.

45. The circulation of nomination petitions is core political speech provided the highest level of protection by the First Amendment to the United States Constitution.

46. Signatures recorded on nomination petitions is core political speech protected by the First Amendment to the United States Constitution.

47. The state residency requirement imposed on circulators of election nominating petitions in Connecticut is the direct and proximate result of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468 and imposes a severe burden on plaintiff's core political speech and is subject to strict scrutiny.

48. Because the state residency requirement imposed on the circulation of election nominating petitions is not narrowly tailored to further a compelling governmental interest, the challenged provisions, as applied to plaintiff, violates the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution and enforced by 42 U.S.C. § 1983.

49. Furthermore, no state regulatory interest justifies the state residency requirement imposed on plaintiff's circulation of election nominating petitions in Connecticut in violation of the First Amendment to the United States Constitution, as incorporated to the States by the Fourteenth Amendment to the United States Constitution and enforced by 42 U.S.C. § 1983.

50. Defendant is a state actor charged with enforcement of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468 against plaintiff.

51. Accordingly, defendant's enforcement of Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468, as applied to plaintiff, is the direct and proximate cause of the impairment of rights guaranteed to plaintiff under the First Amendment to the United States Constitution of the United States for which plaintiffs request relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Grant an Emergency Temporary Restraining Order, on or before noon February 16, 2016 enjoining defendant from enforcing the in-state residency requirement on the circulation of election nominating petitions imposed by Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468.

(2) Grant a Preliminary Injunction enjoining defendant from enforcing the in-state residency requirement on the circulation of election nominating petitions imposed by Conn. Gen. Stat. §§ 9-410, 9-412 & 9-468.

(3) Enter a declaratory judgment against all challenged provisions of the Connecticut General Statutes detailed above, including, but not limited to:

(a) Declaring Conn. Gen. Stat. § 9-410(c) unconstitutional to the extent that it prohibits non-residents of the State of Connecticut from serving as a circulator or in any other way prohibits non-Connecticut residents from executing any document or section of an election nominating petition required to be executed to lawfully file an election nominating petition with defendant;

(b) Declaring Conn. Gen. Stat. § 9-410(c) unconstitutional to the extent that it requires election nominating petitions to contain a certification that the circulator is a Connecticut resident;

(c) Declaring Conn. Gen. Stat. §§ 9-410(c) and 9-412 unconstitutional to the extent that it prohibits defendant and town clerks from accepting election nominating petitions that do not contain the unconstitutional certification required under Conn. Gen. Stat. § 9-410(c); and

(d) Declaring Conn. Gen. Stat. § 9-410(c) unconstitutional to the extent that it requires defendant to reject any election nominating petition that does not comply with the unconstitutional requirements of §9-410(c).

(4) Enter a permanent injunction enjoining defendant from enforcing the challenged provisions of the Connecticut General Statutes detailed above, including, but not limited to:

(a) Enjoining defendant from enforcing Conn. Gen. Stat. § 9-410(c) to the extent that it prohibits non-residents of the State of Connecticut from serving as a circulator or in any other way prohibits non-Connecticut residents from executing any document or section of an election nominating petition required to be executed to lawfully file an election nominating petition with defendant;

(b) Enjoining defendant from enforcing Conn. Gen. Stat. § 9-410(c) to the extent that it requires election nominating petitions to contain a certification that the circulator is a Connecticut resident;

(c) Enjoining defendant from enforcing Conn. Gen. Stat. §§ 9-410(c) and 9-412 to the extent that it prohibits defendant and town clerks from accepting election nominating petitions that do not contain the unconstitutional certification required under Conn. Gen. Stat. § 9-410(c); and

(d) Enjoining defendant from enforcing Conn. Gen. Stat. § 9-410(c) to the extent that it requires defendant to reject any election nominating petition that does not comply with the unconstitutional requirements of §9-410(c).

(5) Award plaintiff the costs of this action together with reasonable attorney fees and expenses pursuant to 42 U.S.C. § 1988; and

(6) Retain jurisdiction over this action and grant plaintiff any other relief that this Court deems appropriate.

Dated: February 8, 2016

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