FIRST JUDICIAL DISTRICT COURT

COUNTY OF SANTA FE

STATE OF NEW MEXICO

BOB PERLS, Janice Ellen Arnold-Jones,

Laurie Rivera, Sarah Cobb, Paul J. Gessing

Plaintiffs,

vs.

THE STATE OF NEW MEXICO,

THE OFFICE OF THE SECRETARY OF STATE,

BRAD WINTER, SECRETARY OF STATE

Defendants.

# VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUCTIVE RELIEF

COMES NOW, Plaintiffs, Bob Perls, Janice Ellen Arnold-Jones, Laurie Rivera, Sarah Cobb, Paul J. Gessing, by and through their attorney of record, Roderick T. Frechette, of Frechette & Associates, P.C. and alleges:

#### introduction

Defendants, under NMSA 1978 § 1-8-51(E) (2016), denied Mr. Perls’s petition for placement on the 2016 election ballot as a candidate for District 1 of the New Mexico Public Regulation Commission. The petition contained less than the required number of signatures. As an independent candidate, Mr. Perls was required to gather three times more signatures than a minor party candidate, nearly five times more signatures than a Democratic Party candidate, and eight times more signatures than a Republican Party candidate. Unfortunately, Mr. Perls’ resources did not allow him to meet this heavy burden. Defendants have neither a compelling interest in, nor rational basis for, requiring Mr. Perls to meet so high a burden while giving preferential treatment to other candidates of office. Therefore, NMSA 1978 § 1-8-51(E) (2016), facially and as applied to Mr. Perls, violates the New Mexico constitution.

#### JURISDICTION AND VENUE

1. Plaintiff, Bob Perls, is a resident of Corrales, Sandoval County, New Mexico and is an independent candidate for office. Plaintiff is seeking to appear on the November 2016 general election ballot as an "independent" candidate for the Public Regulation Commission under New Mexico law. NMSA 1978, §1-8-45.
2. Plaintiffs Janice Ellen Arnold –Jones, Laurie Rivera, Sarah Cobb and Paul J. Gessing are all qualified registered voters within PRC District 1, three being from Bernalillo County and one from Sandoval County. Two are registered as Republicans and two as Democrats. They are harmed by the State not allowing them to vote for Mr. Perls by keeping his name off the ballot.
3. Defendant, the Office of the Secretary of State, is constitutionally and statutorily obliged to implement portions of the election code, as the Legislature provides. His 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.
4. Plaintiffs file this action to protect their constitutional right of access to the voters of the State of New Mexico.
5. This Court has jurisdiction over the subject matter, the parties, and venue is properly in the First Judicial District Court.

#### STATEMENT OF FACTS

1. 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.
2. Major party candidates for the Public Regulation 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).
3. Mr. Perls is not a member of a political party. Accordingly, no way existed for him to be placed on the primary ballot.
4. A candidate for PRC 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 [PRC] district." NMSA 1978 § 1-8-2(B).
5. In stark contrast, for the upcoming 2016 general election, Mr. Perls as an independent candidate needs to submit a number of signatures equal to or greater than three percent of the 2014 gubernatorial vote in his PRC district in order to be placed on the ballot. NMSA 1978 § 1-8-51.E (2016). 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.
6. Defendant rejected Mr. Perls’ nominating petition due to an inadequate number of signatures. In its rejection letter, Defendant set the number of required signatures for an independent candidate seeking placement on the 2016 ballot for District 1 of the Public Regulation commission at 3,643.
7. Mr. Perls submitted 1,350 signatures to Defendant, which would be more than sufficient for a minor party candidate or a major party candidate, but 2,293 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.
8. 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 Mr. Perls' case, the law requires that he submit 2,429 more signatures than a similarly situated minor party candidate in order to appear on the ballot.
9. The higher number of signatures presented a tremendous hurdle to Mr. Perls' candidacy, an unconstitutional barrier to the ballot that Plaintiff could not meet with his available resources.
10. For district offices 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 1.
11. 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. During the last six 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. 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.
12. Mr. Perls timely submitted signatures for the general election ballot on June 26, 2016. On July 1, 2016, Mr. Perls 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 as Exhibit 2.

#### COUNT I: DECLARATORY JUDGMENT

1. Plaintiffs incorporate the preceding paragraphs herein.
2. NMSA 1978 § 1-8-51(E) (2016), facially and as applied, discriminates against Plaintiffs 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.
3. NMSA 1978 § 1-8-51(E) (2016), facially, and as applied, unconstitutionally interferes with the rights of voters to vote for candidates not affiliated with any political party.
4. NMSA 1978 § 1-8-51(E) (2016) unconstitutionally interferes with Plaintiffs’ right to free and open elections, as guaranteed by Article II § 8 of the New Mexico Constitution which requires: “*All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”*
5. NMSA 1978 § 1-8-51(E) (2016), facially, and as applied, unconstitutionally interferes with Plaintiffs’ expression and association rights under Article II, § 17 of the New Mexico Constitution.
6. NMSA 1978 § 1-8-51(E) (2016), facially, and as applied, violates Plaintiffs’ rights to due process and equal protection, as guaranteed by Article II § 18 of the New Mexico Constitution.
7. The New Mexico Constitution provides broader protection than the United States Constitution in election law.
8. Defendants lack both a compelling interest and rational basis to justify the discriminatory and greatly disproportionate petition signature gathering requirements that NMSA 1978 § 1-8-51(E) (2016) imposes on independent candidates seeking access to the general election ballot, as opposed to the much lighter burden on minority party candidates.
9. NMSA 1978 § 1-8-51(E) (2016) is not the least restrictive means to accomplish a compelling state interest.

#### COUNT II: INJUNCTIVE RELIEF

1. Plaintiffs incorporate the preceding paragraphs herein.
2. Plaintiffs are likely to succeed on the merits of their allegations, that NMSA 1978 § 1-8-51(E), is unconstitutional both facially and as applied.
3. The threatened injury to Plaintiffs outweighs any damage an injunction would cause the Defendant.
4. Plaintiffs would suffer irreparable injury in the absence of equitable relief.
5. The balance of hardships favors the Plaintiff.

WHEREFORE, Plaintiffs request that this Court:

1. Declare that, facially and as applied to Bob Perls, NMSA 1978 1-8-51(E) is unconstitutional under Article II, §§ 8, 17, and 18 of the New Mexico Constitution;
2. Enjoin Defendant from denying Mr. Perls’s nominating petition and to direct the Defendant to place Mr. Perls’s name on the ballot as an independent candidate for Public Regulation Commission District 1;
3. Grant such other and further relief as this Court deems appropriate.

Respectfully submitted,

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**VERIFICATION**

STATE OF NEW MEXICO

COUNTY OF SANDOVAL

Bob Perls, being first duly sworn upon oath, deposes and says that he is the plaintiff in the above-entitled cause, and that he has read over, knows and understands the contents of the foregoing Verified Complaint for Declaratory Judgment and Injunctive Relief*;* and that the statements therein made are true of his own knowledge, information and belief.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BOB PERLS

Subscribed and sworn to before me this \_\_\_\_\_day of July, 2016 by Bob Perls.

My commission expires:

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