

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Case No.: 1:17-cv-00147 WO/JLW**

M. PETER LEIFERT, the NORTH CAROLINA)	
GREEN PARTY, the GREEN PARTY OF THE)	
UNITED STATES,)	
)	FIFTH AMENDED
)	COMPLAINT
Plaintiffs)	
Vs.)	
)	
KIM WESTBROOK STRACH in her official capacity)	
as Executive Director of the North Carolina State)	
Board of Elections)	
<u>Defendant</u>)	

COME NOW, Plaintiffs, **M. PETER LEIFERT, NORTH CAROLINA GREEN PARTY** and the **GREEN PARTY OF THE UNITED STATES** and sue Defendant **KIM WESTBROOK STRACH** in her official capacity as Executive Director of the North Carolina State Board of Elections (herein referred to as “Defendant” or “State” as the context requires) and say:

Action and Jurisdiction:

1. This is an action for legal and equitable relief pursuant to 42 U.S.C. §1983 for violation of Plaintiffs rights under the First and Fourteenth Amendments of the United States Constitution.
2. This Court has jurisdiction pursuant to 28 U.S.C. §1331.

Parties:

3. Plaintiff **M. PETER LEIFERT** is a registered voter in North Carolina who desires to identify his preference for, and affiliation with, a currently unrecognized party on his voter registration and to be a candidate for statewide office as a candidate of the that party.
4. Plaintiff **NORTH CAROLINA GREEN PARTY**:
 - a. Is a political organization in North Carolina desiring to be a “recognized” party for purposes of nominating candidates for political office.
 - b. Is the official state affiliate of the **GREEN PARTY OF THE UNITED STATES**.

- c. Brings this action on part of itself Greensboro – Winston Salem Chapter, its prospective candidates for statewide office, including indigent candidates, and its members and the voters who support it.
5. Plaintiff GREEN PARTY OF THE UNITED STATES:
- a. Was organized in 1982 and has been in continuous existence since then.
 - b. Has had a presidential candidate in every presidential election since 1996.
 - c. Had candidates on the ballot in sufficient states in 2016 to qualify as a recognized party in North Carolina pursuant to N.C. Gen. Stat. [Herein “NCGS”] 163A-96(a)(3) in 2018.
6. Defendant KIM WESTBROOK STRACH is the Executive Director of the North Carolina State Board of Elections.
7. The NORTH CAROLINA STATE BOARD OF ELECTIONS, “NCBOE,” is the State agency established for the purposes of administering North Carolina’s election laws.
8. Plaintiffs have been required to engage an attorney to represent them in this matter and have agreed to compensate him for his services.

COUNT I-A:
North Carolina’s Requirements for Ballot
Access by “Unaffiliated” Candidates Imposes
Unconstitutional Burdens on Candidates:

9. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 8 and further allege as follows
10. NCGS §163A-1005 (2018) provides, in relevant part:
- (a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. - Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall
- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting the voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the State equal in number to one and one half (1.5%) of the total number of voters who voted in the most recent general election for Governor. ...
11. NCGS §163A-950 (2018) provides, in relevant part:

- a. Definition. -- A political party within the meaning of the election laws of this State shall be one of the following
 - (1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential electors; or
 - (2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor. ... To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate.
 - (3) Any group of voters which shall have filed with the State Board of Elections documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election. ...
- 12. The signature requirement of NCGS §163A-1005 to become candidate for statewide office is six (6) times the petition signature requirement to become a recognized political party.
- 13. Satisfying the requirements of NCGS §§163A-1005(1):
 - a) Is an exercise in futility for all but the wealthiest candidates.
 - b) Imposes a severe and unconstitutional burden on Independent ["Unaffiliated"] candidates for statewide office
- 14. By its terms, NCGS §163A-1005 only applies to "qualified voters" who wish to be Unaffiliated candidates.
- 15. Candidates for federal office are not required to be "voters."
- 16. Pursuant to NCGS §163A-1005, Unaffiliated candidates must file their petitions by the date of the primary election.
- 17. The primary election is held on the Tuesday following the first Monday in May.
- 18. In its pre-2017 amendment form, NCGS §163A-1005 provided that Unaffiliated candidate petitions did not have to be filed until "the last Friday in June preceding the general election."

19. Pursuant to NCGS §163A-953 for the first election following their recognition newly recognized parties have until “the first day of July prior to the general election” to certify the names of its candidates to the NCSBOE.
20. Candidates who are nominated by an unrecognized party:
 - a) Cannot achieve ballot inclusion by satisfying the requirements of NCGS §163A-1005.
 - b) Have no statutory means of achieving ballot inclusion.
21. Unaffiliated candidates can only achieve ballot inclusion by satisfying the petition requirements of NCGS §163A-1005.
22. Candidates who are unable to satisfy the requirement of §163A-1005 can only campaign as write-in candidates.
23. Compulsory write-in candidacy is not a constitutionally sufficient substitute for having a candidate’s name on the ballot.
24. North Carolina’s write-in candidate statute, NCGS §163-1006, is unconstitutional.
25. The cumulative requirements of the limitations on eligibility of candidates to be Unaffiliated candidate, the number of signature required to be a candidate for statewide office, the petition signature filing deadline for Unaffiliated candidates and the default requirements that require certain unaffiliated candidates to run as write-in candidate impose severe burdens on Unaffiliated candidate for statewide office.
26. **WHEREFORE**, Plaintiffs ask that the court enter its judgment:
 - a. Finding that the number of petition signatures required of candidates for statewide office are unconstitutionally burdensome.
 - b. Declaring that NCGS §163A-1005(a) is unconstitutional when applied to candidates for federal office to the extent that it limits Unaffiliated candidacies to “qualified voters.”
 - c. Declaring that the filing deadline for unaffiliated candidates is unconstitutional.

- d. Declaring the North Carolina statutory schema unconstitutional to the extent that it has no provision for candidates who have been nominated by an unrecognized party to obtain ballot inclusion.
- e. Declaring that NCGS §163A-1005(a) is unconstitutional to the extent that it requires any candidates to campaign as write-in candidates.
- f. Awarding Plaintiffs attorney's fees and costs.

COUNT I-B:
The Requirements of NCGS §163A-1005(a) and (e) are
Inconsistent and Unconstitutionally Vague.

- 27. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 8 and further allege as follows:
- 28. The final paragraph of NCGS §163A-1005(a) provides that:
“Upon compliance with the provisions of subdivisions (1), (2), (3), (4), or (5) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with Article 14A of this Chapter.”
- 29. NCGS §163A-1005(e) provides that:
“Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163A-979 or comply with the alternative available to candidates for the office in G.S. 163A-980.”
- 30. Section NCGS §163A-1005(e) adds a requirement to the petition requirements established by NCGS §163A-1005(a)(1)-(5).
- 31. There is an inherent conflict between the requirement NCGS §163A-1005(e) and the final paragraph of NCGS §163A-1005(a) and this conflict prevents candidates from knowing what their filing requirements are.
- 32. The conflicting provisions on NCGS §163A-1005 leave Unaffiliated candidates uncertain regarding the requirements they must satisfy.
- 33. **WHEREFORE**, Plaintiffs ask that the court enter its judgment:
 - a. NCGS §163A-1005 is unconstitutionally vague.
 - b. Awarding Plaintiffs attorney's fees and costs

COUNT II:
North Carolina Statutes Impermissibly
Limit Voter Registration:

34. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 8 and further allege as follows:
35. Voters who have a party preference for a party that has not become recognized by satisfying the requirements of NCGS §163A-950(a) cannot have their party preference included on their voter registration record.
36. Recognized parties and candidates are entitled to obtain lists of registered voters that includes their party affiliation
37. Being able to identify voters who have a preference for parties seeking recognition is important to a party's and candidate's ability to identify prospective volunteers, petition signers and donors who will enable them to satisfy the requirements of NCGS §163A-950(a)(2).
38. Being unable to identify voters who have a preference for un-recognized parties imposes a severe burden on the parties and their candidates.
39. North Carolina's system of limiting the parties with which a voter can register an affiliation represents an invidious form of discrimination against voters who have an affiliation with an un-recognized party.
40. North Carolina's voter registration schema:
 - a. Provides recognized parties with a benefit that is not available to un-recognized parties.
 - b. Violates principles of Equal Protection.
41. All voters are similarly situated with respect to their right to affiliate with the political party of their choice.
42. Voter registration lists are public records.
43. The designation of a party affiliation is a public declaration of a voter's party preference.

44. Allowing voters who have an affiliation with a recognized party to have their affiliation identified in their voter registration but denying that same right to voters who are affiliated with an unrecognized party:
 - Violates principles of equal protection among voters.
 - Violates principles of freedom of speech.
45. Allowing voters to register their affiliation with un-recognized parties and maintaining such information in the official list of registered voters would not impose any burden on Defendant.
46. The State has available to it numerous means of identifying “legitimate” parties with which voters can register an affiliation and thereby establishing reasonable and rational limit on the number of parties with which a voter can identify an affiliation on his voter registration.
47. For the first election after becoming recognized parties, new parties nominate their candidates by convention.
48. New parties have a constitutional right to limit participation in the nomination of candidates to *bona fide* members of their party.
49. Without having any means of determining the party affiliation of voters, new parties nominating their candidates by convention would have no means of limiting the participants in their conventions.
50. New parties become recognized by filing the signature petitions required by 163A-950(a)(2) on the first day of June.
51. The names of the candidates of new parties must be provided to the NCBOE by first day of July.
52. The time between the date a new party becomes recognized and the date a new party must nominate its candidates is insufficient to enable voters to change their voter registration to be able to participate in a nominating convention and represents an insurmountable burden for new parties (including the Plaintiff parties) wanting to limit participation in candidate nomination to registered voters of the party.

53. The associational rights of individual voters, including Plaintiff Peter Leifert, are injured by being unable to identify their affiliation with an unrecognized party.
54. The associational rights of un-recognized parties are impaired when individual voters are unable to identify their affiliation with an unrecognized party.
55. **WHEREFORE**, Plaintiffs ask that the court enter its judgment:
- a. Finding that North Carolina's system of denying some voters -- but not all voters -- the right to have their party affiliation identified on their voter registration is unconstitutional,
 - b. Awarding Plaintiffs attorney's fees and costs.

COUNT III:
North Carolina's Provision for Providing
Voter Registration Lists Is Unconstitutional

56. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 8 and further allege as follows:
57. NCGS §163A-871 provides in relevant part:

(c) Access to Registration Records. - Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. ...

The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars (\$25.00).

(d) Free Lists. - A county board shall provide, upon written request, one free list of all the registered voters in the county to the State chair of each political party and to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year. Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general,

and special districts of each registered voter. ... As used in this section, "political party" means a political party as defined in G.S. 163A-950.

58. County election boards are required by NCGS §163A-871(d) to provide one free list of registered voters to political parties that are recognized under the provisions of NCGS §193A-950.
59. Unrecognized political parties and their candidates can only obtain a voter registration list by paying the county board the actual cost of preparing it.
60. NCGS §163A-871(d) is intended to, and does, discriminate against un-recognized parties and their candidates.
61. The cost of obtaining voter registration lists for all 100 counties in North Carolina would impose an excessive burden on un-recognized parties and unaffiliated candidates for statewide office.
62. The State has no legitimate interest in making voter lists free of charge to only recognized political parties.
63. The requirement that un-recognized parties and their candidates pay a fee to obtain voter registration lists is intended to burden such parties and their candidates.
64. There is a cost associated with the preparation of voter registration lists.
65. Providing voter registration lists for free to recognized parties and their candidates represents an impermissible State subsidy to the political activities of such parties and candidates.
66. No legitimate public purpose is served by providing free voter registration lists to recognized parties and their candidates while imposing a fee on unrecognized parties and their candidates for such lists.
67. North Carolina's system of providing free voter registration lists only to recognized parties and their candidates represents an invidious form of discrimination that was intended to provide a subsidized benefit to recognized parties and their candidates.
68. **WHEREFORE**, Plaintiffs ask that the court enter its judgment:

- a. The North Carolina provisions regarding the distribution of voter registration lists represents an unconstitutional violating of principles of Equal Protection.
- b. The combined effect of not allowing voters having an affiliation with an unrecognized to record their affiliation on their voter registration and providing charging a fee voter registration lists imposes an undue burden on un-recognized parties.
- c. Awarding Plaintiffs attorney's fees and costs.

COUNT IV:
Petition Requirement for Write-in
Candidates is Unconstitutional:

69. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 8 and further allege as follows:

70. NCGS §163A-1006 provides in relevant part:

a. Procedure for Qualifying as a Write-In Candidate. - Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(c) Petitions for Write-in Candidacy. - An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. ... They shall be signed by 500 qualified voters of the State. ...

(2) If the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163A-1171(b), file written petitions with the State Board of Elections supporting that applicant's candidacy for a specified office. These petitions ... must be signed by 250 qualified voters.

71. NCGS §163A-1112. provides, in relevant part:

a. Except as provided in this section, each official ballot shall contain all the following elements:

...

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163A-1006. No space for write-ins is required unless a write-in candidate has qualified under G.S. 163A-1006 or unless the ballot item is exempt from G.S. 163A-1006.

72. Voters have a fundamental right to vote for the candidate of their choice.
73. Pursuant to NCGS §163A-1006, candidates wanting to be “write-in” candidates must file petitions containing the numbers of signatures prescribed by statute – the actual number being identified in the statute.
74. Pursuant to NCGS §163A-1112, no space for a write-in candidate is included on the ballot unless a candidate has complied with the petition provisions of NCGS §163A-1006.
75. Votes cast for a “write-in candidate” who has not satisfied the petition signature requirement of NCGS §163A-1006 are not counted.
76. Every voter has a constitutional right to have his vote counted.
77. **WHEREFORE**, Plaintiffs ask that the court enter its judgment:
 - a. Finding that NCGS §163A-1006 imposes an unconstitutional requirement on write-in candidates and unconstitutionally interferes with the right of voters who cast a write-in vote for candidates who have not satisfied the requirement of NCGS §163A-1006 to have their votes counted.
 - b. Awarding Plaintiffs attorney’s fees and costs.

COUNT V:
NCGS §163A-953 is Unconstitutional [In Part]

78. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 8 and further allege as follows:
79. NCGS §163A-953 ¶1 provides, in relevant part:

“In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-950, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163A-979 or upon complying with the alternative available to candidates for the office in G.S. 163A-980.”
80. NCGS §163A-979 provides in relevant part:

At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files . . . a filing fee for the office he seeks in the amount specified in the following tabulation:

<u>Office Sought.</u>	<u>Amount of Filing Fee</u>
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought

81. The purpose of the filing fees established by NCGS §163A-979 is to defray the cost of conducting primary elections.

82. The North Carolina statutes do not provide and exemption from the requirement of NCGS §163A-979 for indigent candidates.

83. NCGS §163A-980 provides, in relevant part:

(a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163A-950(a)(2) which will be making nominations by primary election, the petition must be signed by five percent (5%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 8,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. . . . When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) County, Municipal and District Primaries. --If the candidate is seeking one of the offices set forth in G.S. 163A-974 but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163A-974 or 975, he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by five percent (5%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. . .

84. By its terms, NCGS §163A-980 only applies to candidates for nomination by primary elections, and all the filing dates specified therein are determined by reference to the date of primary elections.
85. Candidates for nomination other than by primary election are constructively required to pay a filing fee.
86. NCGS §163A-953 ¶1 imposes a burden on parties, **not candidates**.
87. The nomination of candidates by party convention:
 - a. Does not implicate any activity or electoral apparatus of the State.
 - b. Does not impose any burden in the State.
88. The provision of NCGS §163A-953 ¶1 cited above constructively require new parties to pay a filing fee for each candidate it nominates for inclusion on the ballot.
89. The above cited provisions of NCGS §163A-953 ¶1 are the same provisions that apply to recognized party candidates for nomination by primary election.
90. Newly recognized parties do not, in their first year, nominate candidates by primary elections.
91. The State has no justification for imposing the same burdens of ballot inclusion of the candidates of newly recognized parties that are imposed on candidates seeking their party's nomination in primary elections.
92. Recognized political parties, whose candidates must satisfy the requirements of either NCGS §163A-979 or §163A-980 to be listed on the ballot for primary elections, are not subject to any of the burdens imposed on newly recognized parties by NCGS §163A-953.
93. Newly recognized parties rarely have candidates for more than a few offices.
94. No rational state interest makes the requirements of NCGS §163A-953 ¶1 necessary.
95. NCGS §163A-953 ¶1 imposes an unconstitutional burden on newly recognized parties.
96. **WHEREFORE**, Plaintiffs ask the Court to enter its judgment:
 - a. Finding that NCGS §163A-953 ¶1 imposes an unconstitutional burden on newly recognized parties.
 - b. Enjoining Defendant from enforcing the requirements of NCGS §163A-953 ¶1.
 - c. Awarding Plaintiffs attorney's fees and costs.

COUNT VI:
NCGS §163A-97 Is Overly Broad

96. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 8 and further allege as follows:
97. NCGS §163A-951 provides, in relevant part:
- “When any political party fails to meet the test set forth in G.S. 163A-950(a)(1), it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this chapter.” (Emphasis added)
98. NCGS §163A-951 purports to deprive a party that fails to satisfy the requirements of NCGS §163A-950(a)(1) of its status as a political party with respect to all provisions of the North Carolina election code including Article 22A.
99. NCGS §163A-1411. provides, in relevant part:
- (76) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163A-950. (Emphasis added)
100. There is an inherent incompatibility between the provisions of NCGS §163A-951 and NCGS §163A-1411.
101. When read in context, it is clear that NCGS §163A-951 is only intended to deprive a party that fails the requirements of NCGS 163A-950(a)(1) of its status as a recognized political party, but that is not what the statute provides.
102. Continuation of party status under NCGS §163A-1411 is vital to its exercise of statutory rights.
103. **WHEREFORE**, Plaintiffs ask that the court enter its judgment:
- a. Finding that NCGS §163A-951 is a nullity.
 - b. Enjoining the Defendant from enforcing NCGS §163A-951
 - c. Awarding Plaintiffs attorney’s fees and costs.

____s/s/ S. Mark Henkle____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing was served on all counsel of record and interested parties including James Bernier, Jr. Esq., counsel for defendants, Assistant Attorney General, N.C. Department of Justice, P.O. Box 629, Raleigh, North Carolina, 27602-0692 via the Court's CM/ECF e-mail notification system on the 14nd day of May, 2018.

____s/s Alan P. Woodruff_____
Alan P. Woodruff, Esq