

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

IOWA LIBERTARIAN PARTY and JAKE PORTER,

(b) County of Residence of First Listed Plaintiff Polk County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Julia A. Ofenbakh, Iowa Defenders, PLLC, 2183 86th St., Clive, Iowa 515-868-0088 and Robert M. Bastress, Jr., Attorney at Law, P.O. Box 1295, Morgantown, WV 26507 304-319-0860

DEFENDANTS

PAUL D. TATE, Secretary of State and State Commissioner of Elections.

County of Residence of First Listed Defendant Polk County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, LABOR, and FEDERAL TAX SUITS.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): The First and Fourteenth Ams. to U.S. Constitution and 42 U.S.C. Sec. 1983

Brief description of cause: A suit for declaratory & injunctive relief regarding the validity of Iowa's early filing deadline for minor political parties

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 07/10/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Julia A. Ofenbakh

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA

IOWA LIBERTARIAN PARTY and
JAKE PORTER,

Plaintiffs,

VS.

Civil Action No. _____

PAUL D. PATE, Secretary of State
and State Commissioner of Elections,

Defendant.

COMPLAINT

For their claims for relief, plaintiffs state as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343.

PARTIES

2. The Iowa Libertarian Party is an unincorporated, Des Moines-based “nonparty political organization” under Iowa Code Chapter 44 that has sponsored, sponsors, and intends to continue to sponsor candidates in Iowa elections who support the Party’s libertarian ideals.

3. Plaintiff Jake Porter is a citizen and resident of Council Bluffs, Pottawattamie County, Iowa, and intends to run in the 2020 election as the Libertarian Party candidate for United States

Senator; he has previously run as a Libertarian candidate for Iowa Secretary of State and Governor.

4. Paul D. Pate is the Secretary of State for the State of Iowa and, as such and pursuant to Iowa Code § 47.1, is the Iowa State Commissioner of Elections and is thereby charged with oversight of Iowa's elections and enforcement of the State's election laws; he is sued in his official capacities.

FACTS

5. A "political party" is defined by Iowa law as a party whose candidate for president or governor, as the case may be, received at least two percent of the total vote cast for that office in the last general election. Iowa Code § 43.2.1.b.

6. A political party nominates its candidates at the primary election, which is held on the first Tuesday after the first Monday in each even-numbered year; that is, between June 2 and 8 of an election year. Iowa Code § 43.7.

7. A political organization that did not poll at least two percent of the presidential or gubernatorial votes in the most recent general election is classified by Iowa as a "nonparty political organization." Iowa Code Chapter 44.

8. To run candidates as a nonparty political organization, plaintiff Libertarian Party may nominate one candidate for each office through a convention or caucus that has the participation of at least two hundred fifty voters and at least one eligible elector from each of at least twenty-five counties in the State. Iowa Code Ann. § 44.1.

9. During its 2019 session, the Iowa Legislature amended Iowa Code § 44.4 to require that nonparty political organizations' nominations made pursuant to Iowa Code § 44.1 must be filed with the defendant no "later than 5:00 P.M. on the eighty-first day before the first Tuesday after the first

Monday in June in each even-numbered year;” that is, the filing deadline for nonparty political organizations falls between March 14th and 20th preceding a primary election.

10. The filing deadline for the Iowa Libertarian Party for the 2020 general election will be March 14, 2020, while the general election will not be until November 3, 2020.

11. The filing deadline for nominations from nonparty political organizations in Iowa Code § 44.4 had previously been the seventy-third day before the date of the general election to be held in November; that is, the third or fourth week in August.

12. A filing deadline in mid-March imposes heavy burdens on nonparty political organizations including, but not limited to, the following:

- It handicaps minor parties from reacting to later breaking changes in the political landscape, including later emerging major party candidacies;
- It hampers the recruitment of convention and caucus participants because of the early uncertainties that arise in any campaign season;
- That early in a campaign, volunteers are more difficult to recruit and retain, media coverage and campaign contributions are more difficult to secure, and voters are less interested in the elections;
- The Party will be locked into the candidates they nominate in March regardless of subsequent developments and disclosures concerning the major party candidates and their races, the Party’s own candidates, other minor party and independent candidates, or any other state and national developments that could affect campaigns.

13. Members of the plaintiff Iowa Libertarian Party vote and associate to promote Libertarian ideals and candidates, as do supporters of plaintiff Porter, and their efforts to advance

their causes are substantially burdened by the mid-March filing deadline in Iowa Code § 44.4.

14. No legitimate state interest justifies the burdens placed on the plaintiffs, on the Iowa Libertarian Party members and supporters of plaintiff Porter, and on other minor political parties and their candidates by Iowa's mid-March filing deadline.

15. Under Iowa law, political parties – as opposed to nonparty political organizations – may fill vacancies on their tickets up to “5:00 p.m. on the sixty-ninth day before the date of the general election” or, that is, in late August of an election year. Iowa Code § 43.78.

16. No legitimate state interest justifies the differential and adverse treatment accorded nonparty political organizations in Iowa Code § 44.4 as compared to the treatment provided political parties in Iowa Code § 43.78.

CLAIMS FOR RELIEF

17. Iowa's mid-March deadline set forth in Iowa Code § 44.4 for the nomination of nonparty political organizations' candidates for the November general election violates plaintiffs' rights protected by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983.

18. Iowa's mid-March deadline set forth in Iowa Code § 44.4 for the nomination of nonparty political organizations' candidates for the November general election violates fundamental voting and associational rights of Iowa Libertarian Party members and of the supporters of plaintiff Porter, rights that are protected by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983.

19. Iowa's requirement that plaintiff Iowa Libertarian Party file its final nominations in mid-March of an election year while allowing “political parties” to file their nominations as late as sixty

-nine days before the November general elections violates the plaintiffs' right to equal protection of the law as guaranteed by the Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983.

RELIEF REQUESTED

Plaintiffs therefore request the following relief:

A. A declaratory judgment holding that Iowa Code § 44.4 violates the plaintiffs' rights protected by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983;

B. A declaratory judgment holding that Iowa Code § 44.4 violates the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 by suppressing associational and voting rights of the members of the Iowa Libertarian Party and of the supporters of plaintiff Jake Porter;

C. A declaratory judgment that Iowa's discriminatory treatment of nonparty political organizations by Iowa Code § 44.4 requiring nominations to be filed in mid-March while permitting political parties to file nominations in late August of an election year violates the rights of the plaintiffs and the members of the Iowa Libertarian Party to equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983;

D. An injunction against the defendant forbidding him from enforcing the March deadline set forth in Iowa Code § 44.4 against the plaintiffs;

E. An order awarding plaintiffs their reasonable attorneys' fees and costs;

F. All other relief to which the Court shall deem the plaintiffs to be entitled.

/s/ Robert M. Bastress, Jr.

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Counsel for Plaintiffs

CERTIFICATE

I, Julia A. Ofenbakh, certify that I have provided a notice of constitutional question to the Attorney General of Iowa, Tom Miller, as required by Federal Rule of Civil Procedure 5.1

/s/ Julia A. Ofenbakh