

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

AUG 27 2009

GREEN PARTY OF ARKANSAS; MARK  
SWANEY, and REBEKAH KENNEDY,

JAMES W. MCCORMACK, CLERK  
DEP. CLERK

Plaintiffs,

v.

CHARLIE DANIELS, in his official capacity as  
Secretary of State of the State of Arkansas,

CIVIL ACTION NO. 09-4:09-CV-695 JWH

Defendant.

This case assigned to District Judge Holmes  
and to Magistrate Judge JONW

COMPLAINT

NATURE OF THE CASE

1. This is an action to preserve the Green Party's place on the ballot in Arkansas. The plaintiffs claim that the Secretary of State has misapplied the State's party-decertification statute, Ark. Code Ann. § 7-1-101(18)(c), to deny the Green Party a place on the ballot despite its candidates having received hundreds of thousands of votes in the 2008 elections. In the alternative, the plaintiffs claim that the Secretary's application of the party-decertification statute violates rights guaranteed to them by the First and Fourteenth Amendments to the United States Constitution. The plaintiffs seek declaratory and injunctive relief allowing the Green Party to retain its status as a "political party" within the meaning of the Arkansas Code.

JURISDICTION AND VENUE

2. This action arises under the First and Fourteenth Amendments to the United States Constitution. This Court therefore has subject matter jurisdiction under 28 U.S.C. § 1331.

3. The Court has supplemental jurisdiction over the plaintiffs' state-law claim under 28 U.S.C. § 1367.

4. This suit is authorized by 42 U.S.C. § 1983.

5. This Court has authority to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202 and Ark. Code Ann. §§ 16-111-103 and -104.

6. The defendant resides within the boundaries of the Eastern District of Arkansas. Venue is therefore proper in the Eastern District of Arkansas under 28 U.S.C. § 1391(b).

### **PARTIES**

7. Plaintiff Green Party of Arkansas is a group of voters of the State of Arkansas that share a similar political philosophy. The Green Party became a recognized political party in 2006 and again in 2008, contesting multiple races in each of those election years.

8. Plaintiff Mark Swaney is a registered voter and resident of Arkansas. He is a member of the Green Party of Arkansas and wishes to vote for Green Party candidates in the future.

9. Plaintiff Rebekah Kennedy is a registered voter and resident of Arkansas. She was the Green Party's nominee for U.S. Senate in 2008 and wishes to run as a Green Party candidate in the future. She is a member of the Green Party of Arkansas and wishes to vote for Green Party candidates in the future.

10. Defendant Charlie Daniels is Arkansas's Secretary of State. He is charged with enforcing the election law and certifying political parties. He is sued in his official capacity only.

### **FACTUAL BACKGROUND**

11. Arkansas instituted its current ballot access scheme in 1971.

12. In Arkansas, political parties nominate candidates to appear on the general election ballot pursuant to Ark. Code Ann. § 7-7-102.

13. In Arkansas, a group that submits a petition containing 10,000 signatures to the Secretary of State is recognized as a political party.

14. Under Ark. Code Ann. § 7-1-101(18)(C), a political party's gubernatorial or presidential candidate must earn 3% of the vote in that election for the party to retain its political party designation in the next election cycle.

15. In 1996, the Reform Party became a recognized political party in Arkansas. Its billionaire standard bearer, Ross Perot, earned 7.9% of the vote, allowing the Reform Party to retain its political party designation for the 1998 election cycle.

16. In 1998, the Reform Party's gubernatorial candidate, Kaith Carle, polled only 1.57% and the Reform Party lost its political party designation.

17. Since Arkansas introduced its current ballot access scheme in 1971, the 1996 Reform Party is the only political party aside from the Democratic and Republican parties to retain its political party designation. It did so just once with a billionaire candidate and has never repeated the feat.

18. In 2006, the Green Party of Arkansas successfully petitioned for recognition as a political party in Arkansas.

19. The Green Party's 2006 petition campaign cost the Green Party approximately \$32,000, all the money the party then had to operate.

20. The Green Party's 2006 candidate for governor, Jim Lendall, earned 12,744 votes, or 1.65% of the 774,680 votes cast in the gubernatorial election. The Green Party of Arkansas therefore lost its designation as a political party.

21. In 2008, the Green Party of Arkansas again successfully petitioned for recognition as a political party in Arkansas.

22. The 2008 petition campaign cost the Green Party approximately \$20,000 and absorbed all of the funds the party then had.

23. The Green Party's 2008 candidate for President, Cynthia McKinney, earned only 3,470 of the 1,086,617 votes cast, or 0.3% of the vote.

24. Cynthia McKinney did not campaign in the state of Arkansas while running for President in 2008.

25. In 2008, the Green Party's candidate for U.S. Senate, Rebekah Kennedy, earned 207,076 votes, or 20% of the 1,011,754 votes cast in that election. 207,076 votes are equivalent to 19% of the 1,086,617 votes cast in the presidential election.

26. In 2008, the Green Party's candidate for U.S. House of Representatives for the second Congressional district, Deb McFarland, earned 64,398 votes – 23.22% of the vote cast in that election. 64,398 votes are equal to nearly 6% of the vote cast in the 2008 presidential election in Arkansas.

27. In 2008, the Green Party's candidate for U.S. House of Representatives for the third Congressional district, Abel Noah Tomlinson, earned 58,850 votes – 21.47% of the vote cast in that election. 58,850 votes represent more than 5% of the votes cast in the 2008 presidential election in Arkansas.

28. In 2008, the Green Party's candidate for U.S. House of Representatives for the fourth Congressional district, Joshua Drake, earned 32,603 votes – 13.83% of the vote cast.

29. The 2008 Green Party's candidate for Arkansas's House District 39, Richard Carroll, won.

30. There were 1,086,617 total votes cast in Arkansas in the 2008 election for presidential electors, three percent of which is 32,599.

31. The Green Party, by and through its candidates for various offices, obtained more than 32,599 votes in the 2008 elections.

32. The Green Party has received no notification from the Secretary of State's office that it has been decertified as a political party under Ark. Code Ann. § 7-1-101(18)(C).

33. The Secretary of State has decertified, or intends to decertify, the Green Party as a political party under Ark. Code Ann. § 7-1-101(18)(C).

34. In stripping the Green Party of its political party status, Arkansas becomes the first state since at least 1906 to remove a party's designation following an election in which one of that party's candidates successfully contested a legislative seat.

35. Despite surpassing the party-recognition vote total threshold – designed to measure whether a party has a “significant modicum of support” – in a U.S. Senate race and the three U.S. House races it contested, the Green Party of Arkansas has been denied its political party designation and will be forced to engage in a costly petition campaign should it contest any races in 2010.

36. Arkansas's party-recognition scheme forces political parties to compete in gubernatorial and presidential elections.

37. The Green Party of Arkansas does not seek to contest every race but rather endeavors to provide choice in otherwise uncontested elections.

38. Arkansas forecloses the development of parties, like the Green Party, that lack the resources to mount presidential campaigns.

39. Arkansas has severely burdened plaintiffs' associational rights.

40. Plaintiffs' reasonably anticipate that, absent injunctive relief, their associational rights will be severely burdened in the future.

**INJUNCTIVE AND DECLARATORY RELIEF IS NECESSARY**

41. An actual and justiciable controversy exists as to which the plaintiffs require a declaration of their rights. Unless the requested injunctive relief issues, defendants will continue to infringe the constitutional rights of plaintiffs and other voters.

42. The plaintiffs have no adequate remedy at law for the defendants' violations of their rights.

43. The plaintiffs are suffering irreparable harm as a result of the defendants' violations of the law and Constitution and the harm will continue unless declared unlawful and enjoined by this Court.

**COUNT ONE**  
**Declaratory Judgment**

44. The defendant's decertification of the Green Party as a political party despite the party's having obtained more than 32,599 votes in the 2008 elections violates Ark. Code Ann. § 7-1-101(18)(C).

**COUNT TWO**  
**First and Fourteenth Amendment**

45. Ark. Code Ann. § 7-1-101(18)(C), as applied by the Secretary of State, violates the plaintiffs' rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution and enforced by 42 U.S.C. § 1983.

**REQUEST FOR RELIEF AS TO ALL COUNTS**

WHEREFORE, Plaintiffs respectfully request that this Court:

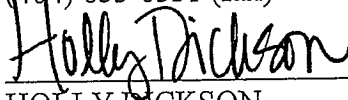
- a. enter a declaratory judgment that the Green Party of Arkansas is a political party under Ark. Code Ann. § 7-1-101;

- b. enter a declaratory judgment that Ark. Code Ann. § 7-1-101(18)(C) violates the First and Fourteenth Amendments to the United States Constitution;
- c. enjoin the defendants from enforcing Ark. Code Ann. § 7-1-101(18)(C);
- d. award the plaintiffs the cost of this action together with their reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988; and
- e. retain jurisdiction of this action and grant the plaintiffs such other relief which may in the determination of this Court be necessary and proper.

Dated: August 27, 2009

Respectfully submitted,

BRYAN SELLS  
LAUGHLIN MCDONALD  
American Civil Liberties Union Foundation, Inc.  
230 Peachtree Street, NW  
Suite 1440  
Atlanta GA, 30303  
(404) 523-2721  
(404) 653-0331 (fax)



HOLLY DICKSON  
Arkansas State Bar No. 98137  
Arkansas Civil Liberties Union Foundation, Inc.  
904 West Second Street, Suite 1  
Little Rock, AR 72201  
(501) 374-2842

ATTORNEYS FOR THE PLAINTIFFS