

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIBERTARIAN PARTY,
2600 Virginia Avenue NW, Suite 200
Washington, DC 20037

BOB BARR,
Smyrna, GA 30080

J. BRADLEY JANSEN,
602 Acker Place, NE
Washington, DC 20002

ROB KAMPPIA,
1000 Park Road, NW
Washington, DC 20010

STACIE RUMENAP,
1020 Papermill Court, NW
Washington, DC 20007

Plaintiffs,

v.

Case No. 1:09-cv-01676-EGS

**DISTRICT OF COLUMBIA BOARD
OF ELECTIONS AND ETHICS,**
441 4th Street
Washington, DC 20001

ADRIAN M. FENTY,
1350 Pennsylvania Avenue, NW # 316
Washington, DC 20004

PETER J. NICKLES
441 4th Street, NW, Suite 1145S
Washington, DC 20001

Defendants.

COMPLAINT

Introduction

1. The plaintiffs are a minor political party (the Libertarian Party), its candidate for President of the United States in 2008 (Bob Barr) and its candidates for presidential elector from the District of Columbia in 2008 who were pledged to Barr (J. Bradley Jansen, Bob Kampia and Stacie Rumenap). Plaintiffs Jansen, Kampia and Rumenap also sue in their capacity as District of Columbia voters who supported the Libertarian Party and Barr in the general election on November 4, 2008. Defendant District of Columbia Board of Elections and Ethics (the "Board") is responsible for the administration of elections in the District of Columbia. Defendants Adrian M. Fenty and Peter J. Nickles are responsible for accepting service of process on behalf of the Board, and are sued in their official capacities only.

2. Plaintiffs Barr, Jansen, Kampia and Rumenap timely qualified as write-in candidates in the District of Columbia, and an unknown number of write-in votes were cast for Barr in the November 2008 election.

3. Defendant Board refused to tally the write-in votes cast for Plaintiff Barr and to report the total of write-in votes he received, despite demand duly made that the Board do so. Instead, the Board tallied and reported, as a single total, the sum of all write-in votes cast for candidates for president.

4. Plaintiffs seek declaratory and injunctive relief from the Board's refusal to tally and report the total number of votes cast for each qualified write-in candidate, including Plaintiff Barr, in the 2008 general election. Further, plaintiffs seek such prospective declaratory and injunctive relief as may be necessary and proper to ensure that the Board tallies and reports the

total number of votes cast for each qualified write-in candidate in future elections in the District of Columbia.

Jurisdiction

5. The jurisdiction of this court is founded on D.C. Code § 11-921(a)(6).

Parties

6. Plaintiff Libertarian Party is a nationwide affiliation of voters formed in or about 1971 for the purpose of influencing public policy by a variety of means, which include running candidates for public office and disseminating its views on policy issues through its candidates' campaigns. The Libertarian Party has its national headquarters in Washington, DC.

7. Plaintiff Bob Barr resides in Smyrna, Georgia and was the Libertarian Party candidate for President of the United States in the November 2008 general election. Plaintiff Barr represented Georgia's seventh congressional district in the United States House of Representatives from 1995 to 2003.

8. Plaintiff J. Bradley Jansen resides at 602 Acker Place, NE, Washington, DC 20002 and was a Libertarian Party candidate for presidential elector from the District of Columbia pledged to plaintiff Barr in the November 2008 general election.

9. Plaintiff Rob Kampia resides at 1000 Park Road, NW, Washington, DC 20010 and was a Libertarian Party candidate for presidential elector from the District of Columbia pledged to plaintiff Barr in the November 2008 general election.

10. Plaintiff Stacie Rumenap resides at 1020 Papermill Court, NW, Washington, DC 20007 and was a Libertarian Party candidate for presidential elector from the District of Columbia pledged to plaintiff Barr in the November 2008 general election.

11. Defendant District of Columbia Board of Elections and Ethics is the agency responsible for the administration of elections in the District of Columbia and maintains a business address at 441 4th Street Washington, DC 20001.

12. Defendant Adrian Fenty is Mayor of the District of Columbia and maintains a business address at 1350 Pennsylvania Avenue, NW, Washington, DC 20004.

13. Defendant Peter Nickles is Attorney General of the District of Columbia and maintains a business address at 441 4th Street, Suite 1145S, Washington, DC 20001.

Facts

14. During the period May 22-26, 2008 the Libertarian Party held a national nominating convention in Denver, Colorado at which plaintiff Barr was nominated as the party's candidate for President of the United States.

15. Thereafter, plaintiffs Jansen, Kampia and Rumenap were duly selected as the Libertarian Party candidates for presidential elector from the District of Columbia pledged to Barr.

16. D.C. Code § 1-1001.08(r) provides for write-in voting in electoral contests, as follows:

(1) In any primary, general, or special election held in the District of Columbia to nominate or elect candidates to public office, a voter may cast a write-in vote for a candidate other than those who have qualified to appear on the ballot.

* * *

(3) To be eligible for election to public office, a write-in candidate shall be a duly registered elector and shall meet all of the other qualifications required for election to the office and shall declare his or her candidacy not later than 4:45 p.m. on the seventh day immediately following the date of the election in which he or she was a candidate on a form or forms prescribed by the Board [of Elections and Ethics].

17. Plaintiff Barr and plaintiffs Jansen, Kampia and Rumenap timely qualified as write-in candidates and met all of the qualifications for write-in candidates prescribed by law.

18. The District of Columbia does not require that the votes cast for each qualified write-in candidate in an electoral contest be separately tallied and reported. D.C. Mun. Regs., tit. 3, § 808 provides in relevant part:

808.15 The total number of write-in votes marked by voters shall be reported for each contest.

808.16 The total of votes cast for each write-in candidate shall be calculated only in contests where there is no candidate printed on the ballot in order to determine a winner, or where the total number of write-ins reported, under § 808.15, is sufficient to elect a write-in candidate.

19. Plaintiff Barr was listed on the November 2008 presidential ballots of 45 states and ran as a qualified write-in candidate in one additional state and the District of Columbia.

20. All of these jurisdictions, except for the District of Columbia, tallied and reported the number of votes cast for plaintiff Barr.

21. On or about November 10, 2008 and again on or about December 9, 2008 a representative of the plaintiffs requested in writing that the Board tally and publicize the write-in votes cast for each qualified write-in candidate in the District of Columbia as part of its official vote total for the 2008 general election.

22. On or about November 19, 2008 and again on or about December 12, 2008 the Board refused such requests.

23. The results for the November 2008 general election published by the Board at <http://www.dcboee.org> show the number of votes cast for each presidential candidate who was listed on the ballot. While the results additionally show that 1,138 write-in votes were cast for

president, neither the candidates who received write-in votes nor the number of write-in votes each received are shown.

24. Plaintiff Libertarian Party intends to nominate candidates for public office who will run as qualified write-in candidates in future elections in the District of Columbia. Plaintiffs Jansen, Kampia and Rumenap intend to run as candidates for presidential elector pledged to plaintiff Libertarian Party's duly-selected presidential candidate in future elections in the District of Columbia.

Claims

25. Paragraphs 1-24 are incorporated by reference as if set forth fully herein.

26. Plaintiffs state a claim under 42 U.S.C. § 1983 and the First, Fifth and Fourteenth Amendments to the Constitution of the United States in that the Board's refusal to tally and report the votes cast for each write-in candidate for president impairs plaintiffs' rights to have equal protection and due process of law, to cast their votes effectively, and to associate politically, including their "constitutional right ... to create and develop [a] a new political part[y]," *Norman v. Reed*, 502 U.S. 279, 288 (1992), and such impairment of plaintiffs' rights cannot be justified by a sufficient interest of the District of Columbia.

27. Plaintiffs state a claim under 42 U.S.C. § 1983 in that D.C. Mun. Regs., tit. 3, § 808.16, as applied, impairs plaintiffs' rights to have equal protection and due process of law, to cast their votes effectively, and to associate politically, including their "constitutional right ... to create and develop [a] new political part[y]," *Norman v. Reed*, 502 U.S. at 288, and such impairment of plaintiffs' rights cannot be justified by a sufficient interest of the District of Columbia.

28. Plaintiffs state a claim for attorney fees and costs under 42 U.S.C. § 1988.

Other Averments

29. In refusing to tally and report the votes cast for each qualified write-in candidate for president, the Board is acting under color of state law, within the meaning of 42 U.S.C. § 1983, to deprive plaintiffs of equal protection and due process of law and of speech, voting and associational rights secured by the First, Fifth and Fourteen Amendments to the Constitution of the United States. The Board is therefore liable to plaintiffs pursuant to 42 U.S.C. § 1983.

30. Plaintiffs have no adequate remedy at law and will suffer irreparable injury unless injunctive relief is granted.

Relief Requested

31. WHEREFORE, plaintiffs request the following relief:

- a. a declaration that the Board's refusal to tally and report the total number of votes cast for each qualified write-in candidate for president is unconstitutional;
- b. a declaration that D.C. Mun. Regs., tit. 3, § 808.16 is unconstitutional as applied;
- c. an order directing Defendant District of Columbia Board of Elections and Ethics to tally and report the total number of write-in votes cast for Plaintiff Barr as a candidate for President of the United States, including votes cast for Plaintiffs Jansen, Kampia and Rumenap as candidates for presidential elector who were pledged to Plaintiff Barr, as part of the District of Columbia's official vote total for the 2008 general election;
- d. a permanent injunction prohibiting the Board from refusing to tally and report the total number of votes cast for each qualified write-in candidate for public office in the District of Columbia;
- e. reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988;
- f. such other and further relief as may be just and proper.

Date: November 9, 2009

/s/ Oliver B. Hall

Oliver B. Hall
CENTER FOR COMPETITIVE
DEMOCRACY
D.C. Bar No. 976463
P.O. Box 21090
Washington, D.C. 20009
(202) 248-9294 ph.
(202) 248-9345 fx.
oliverhall@competitivedemocracy.org

Gary Sinawski
180 Montague Street 25th Floor
Brooklyn, NY 11201
(516) 971-7783 ph.
(347) 721-3166 fx.
gsinawski@aol.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on November 9, 2009, I filed the foregoing Amended Complaint on behalf of all plaintiffs by e-mail to the Clerk of the Court, at dcd_cmecf@dcd.uscourts.gov, which will cause copies to be served, by means of the Court's CM-ECF system, upon the following parties:

JACQUES P. LERNER, D.C. Bar No. 440998
Assistant Attorney General
441 Fourth Street, N.W.
Washington, D.C. 20001
Direct Dial: (202) 724-1342
Fax: (202) 715-7824
jacques.lerner@dc.gov

KENNETH J. MCGHIE, D.C. Bar No. 385313
General Counsel, Board of Elections & Ethics
441 Fourth Street, N.W., 2nd Floor North
Washington, D.C. 20001
Direct Dial: (202) 727-2752
Fax: (202) 741-8774
kjmcghie@dcboee.org

*Counsel for Defendant Board of
Elections and Ethics*

/s/ Oliver B. Hall
