

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

Kerrie Dickson

Hugh Esco

Petitioners,

Civil Action #:

2000-CV-27164

v.

The State of Georgia

Secretary of State of Georgia

The Superintendent of Elections for Rabun, Towns, Union and White Counties

Defendants

**AMENDED COMPLAINT**

Now, prior to any pre-trial order in the above-styled action, comes Kerrie Dickson on behalf of herself and Georgians for Dickson in 2000 and Hugh Esco, both officers of the Georgia Green Party and electors of the Eighth Georgia House District, who each respectfully ask that this Court:

- 1) grant an Order compelling the Secretary of State to place Kerrie Dickson, a nominee of the Georgia Green Party on the ballot, and
- 2) grant an Order declaring as unconstitutional the 5% rule imposed by O.C.G.A. 21-2-170(b), or, in the alternative,
- 3) enjoin the enforcement of the filing deadline and the statute prohibiting the petition from being "amended or supplemented" (O.C.G.A. 21-2-170(b)), or
- 4) provide such other relief as the Court may deem appropriate.

Plaintiffs Dickson and Esco amend their original pleadings as follows:

1. By adding to the Complaint as paragraph 1, the following:

The Central Question presented by this case is:

Is the high signature requirements in Georgia Law an unconstitutional burden, on the First Amendment Speech and Associational Rights or the Fourteenth Amendment Equal Protection Rights of Georgia voters disposed to vote for Green candidates, in light of the State's refusal to recognize a state constitutional right to petition on private property to which the public has been invited or to respect the right to petition in traditional public for a, including state, county and municipal parks?

## FACTS

2. Plaintiffs further set forth their petition with the changes in numbering as follow, paragraph 1 shall Become paragraph 2 and is reprinted here in its entirety:

"Kerrie Dickson, with the help of volunteers with Georgians for Dickson, has spent far more in time, money, and effort by herself, paid contractors and unpaid volunteers, to meet the burden imposed by the Georgia Election Code for ballot access, than any of her compatriot candidates, who are members of the Democratic or Republican Parties, and who have secured ballot access in the General Election by virtue of being a candidate in uncontested primaries."

3. Plaintiffs further set forth their petition with the changes in numbering as follow, paragraph 2 shall Become paragraph 3 and is reprinted here in its entirety:

"Petitioner respectfully shows that the filing fee for candidates for this office for either the Republican or Democratic Candidate and for the candidates of independent political bodies such as the Georgia Green Party is \$400.00. Petitioners will present evidence that, even if paid at the minimum legal wage in Georgia, Ms Dickson's supporters have expended more than 10 times that amount of effort."

4. Plaintiffs further set forth their petition with the changes in numbering as follow, paragraph 3 shall Become paragraph 4 and is reprinted here in its entirety:

"Kerrie Dickson is entitled to be placed on the ballot for the Georgia General Assembly, House District #8, in Towns, Union, Rabun and White Counties as required by Georgia Election Code Title 21, Chapter 2, Article 4, Part 3 dealing with the nomination of candidates of political bodies, specifically O.C.G.A. 21-2-170 through 21-2-172, for the reason that she filed 1,431 signatures, more than the 1,389 signatures required by the Director of the Elections Division."

**AGENTS OF THE STATE PREVENTED PLAINTIFFS  
FROM FULFILLING STATE'S OWN REQUIREMENTS**

5. Plaintiffs further set forth their petition with the changes in numbering as follow, paragraph 4 shall Become paragraph 5 and is reprinted here in its entirety:

"Nominating petition circulators encountered unconstitutional barriers to their exercise of the right to petition protected by both the Georgia and the U.S. Constitutions. Plaintiffs shall present evidence that nominating petition circulators were denied the right to petition in traditional public fora under threat of arrest by municipal, county and state law enforcement officials."

6. Plaintiffs further set forth their petition with the changes in numbering as follow, paragraph 5 shall Become paragraph 6 and is reprinted here in its entirety:

"Linda Beasley, the Director of the Elections Division, on behalf of the Georgia Secretary of State has stated in a letter dated August 15<sup>th</sup>, 2000 and received August 17<sup>th</sup>, 2000 that 'Kerrie Dickson will not be placed on the ballot because she failed to provide the required 1,389 valid signatures to obtain Ballot access.'"

7. By adding to the Complaint as paragraph 7, the following:

"Georgia has the most restrictive ballot access rules in the country for candidates for local office. Georgia's ballot access barriers for state-wide and Presidential candidates is the fifth most restrictive in the country. The State's ballot access rules for local offices require more signatures than the laws of any other state in the country and on average, ten times as many signatures as are required by other states."

8. By adding to the Complaint as paragraph 8, the following:

"Georgia law is so restrictive that no emerging Party candidate has successfully obtained ballot access for a Congressional race since the 5% rule was established in 1943 to deny access to a Republican Gubernatorial candidate. Only 7 of 270 Congressional races held in Georgia since 1943 have seen an independent candidate on the ballot. While no compilation of ballot access data seems to exist for emerging party or independent candidates running for state and local offices in Georgia, anecdotal evidence and experience argues that this process is rarely used and even more rarely used successfully."



## APPLICABLE STATUTORY AND CASE LAW

9. By adding to the Complaint as paragraph 9, the following:

"It is well established that the appropriate standard of review for pleadings making a constitutional challenge to the application of a state's elections laws, was set forth in 1983, in *Anderson v Celebrezze* 460 US 780, at 789, where Justice Stevens, speaking for the majority, wrote:

'Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions. (Citation omitted.) Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. (citations omitted.)

10. By adding to the Complaint as paragraph 10, the following:

"The U.S. Supreme Court upheld the Georgia ballot access regime in 1971 in *Jenness v Fortson* 403 U.S. 431, where it distinguished the Georgia ballot access statutes from the 'entangling web of (Ohio) election laws' which that Court had overturned in *Williams v Rhodes*, 393 U.S. 23. In *Williams* the Supreme Court had said that ' the totality of the Ohio restrictive laws taken as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the Equal Protection Clause.' By contrasting the Georgia rules with the Ohio rules, the Court found that, 'Georgia's election laws . . . do not operate to freeze the political status quo.' The Court reached this finding without a factual basis. The Socialist Workers Party never attempted a petition drive and entered nothing in the record about the number of signatures being a barrier. Their pleadings argued for Equal Protection with the Ballot Access Parties and prayed for relief from the petition requirements."

11. By adding to the Complaint as paragraph 11, the following:

"The U.S. Supreme Court held in *Pruneyard Shopping Center v Robins*, 447 US 74 (1980), that a state recognition of a right to petition on private property to which the public had been invited violates no federal property right. Even so, the Georgia Supreme Court held in *Citizens for Ethical Government, Inc. v Gwinnett Place Associates, L.P.* 260 Ga. 245 (1990)

that nothing in the Georgia Constitution or the Recall Act of 1989, either separately or together, establishes a right of private citizens to enter onto such property to solicit signatures for a recall petition. In so holding we . . . decline to follow the reasoning of the California Supreme Court found in *Robins v Pruneyard Shopping Center* . . .

(at p.246). The facts of this case involved recall petition activity at a mall where the owners had "uniformly applied" a blanket prohibition on "all solicitation and political activity in the mall".

12. By adding to the Complaint as paragraph 12 the following:

"The Supreme Court in *Storer v Brown* 415 US 724, asked, in 1974 when remanding a California ballot access case for further deliberations

'(C)ould a reasonably diligent independent candidate be expected to satisfy the signature requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot? Past experience will be a helpful, if not always an unerring, guide it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not.'

(at 742), cited as the *appropriate inquiry* by the Court again in *Mandell v Bradley* 432 US 173 at 177."

### **PRAYERS FOR RELIEF**

13. Plaintiffs further set forth their petition with the changes in numbering as follow, paragraph 6 shall Become paragraph 13 and is reprinted here in its entirety:

"O.C.G.A. Section 21-2-171 (b) states, in pertinent part, "In neither case (Petition complies, or does not comply, with the law) shall the petition be returned to the candidate." Should the Court determine that the petition does not comply with the present Georgia Law, as written,

Plaintiffs respectfully ask that the respondent be ordered to provide a certified record of which signatures were determined to not comply with the law, the reasons why each signature which did not comply was denied, and provide a tally sheet, showing how many signatures were presented which comply with the law, and, in addition to copies of the non-complying signatures, a count, by specific failing, of the signatures which did not comply."

14. By adding to the Complaint as paragraph 14 the following:

"Should the Court determine that the petition does not comply with the present Georgia Law, but that the statute in fact places an unconstitutional burden on the ballot access of independent candidates, Plaintiffs respectfully ask that the Court declare the 5% standard imposed by O.C.G.A. 21-2-170(b) void and issue an Order that the Secretary of State place plaintiff Dickson on the ballot."

15. Plaintiffs further set forth their petition with the changes in numbering as follow, paragraph 7 shall Become paragraph 15 and is reprinted here in its entirety:

"Should the Court determine that the petition does not comply with the present Georgia Law, but that Plaintiffs were in fact denied their constitutional right to petition, Plaintiffs respectfully ask that this Court enjoin the enforcement of both the statutory filing deadline O.C.G.A. 21-2-132(d) and the statutory prohibition against amending or supplementing a petition O.C.G.A. 21-2-170(f) and grant to Plaintiffs an opportunity to supplement the already filed petition with signatures sufficient to comply with the 5% rule imposed by O.C.G.A. 21-2-170(b)."

### **ARGUMENT**

16. Plaintiffs further set forth their petition with the changes in numbering as follow, the un-numbered paragraph, labeled "Argument" shall Become paragraph 16 and is reprinted here in its entirety:

"The Georgia Election code requires signatures representing "5 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking" in order that an independent political body candidate be placed on the ballot. (O.C.G.A. 21-2-170(b)). Linda Beasley, in her capacity as Director of the Elections Division, ruled that that number for the 8<sup>th</sup> State House District for the 2000 election cycle would be 1,389 registered voters. The candidate provided 1,431 signatures, which she believes were

authentic, and from registered voters in the legislative district in question. Each sheet of signatures submitted was attested to by the circulator of that specific sheet, and the sheets were, in all observable features, in conformance with the law. The petitions were submitted on time and at the place ordered in the law."

17. Plaintiffs further set forth their petition with the changes in numbering as follow, the second un-numbered paragraph, labeled "Argument" shall Become paragraph 17 a nd is reprinted here in its entirety:

If necessary, petitioners will show, by affidavit and testimony, that the candidate and her petition crews were harassed, threatened with arrest and prevented from exercising their constitutional right to petition in traditional public fora on numerous occasions, under color of law, while attempting to comply with O.C.G.A. 21-2-170 Through 21-2-172.

18. By adding to the Complaint as paragraph 18, the following:

"The circumstances are significantly different than the ones that the Socialist Workers Party faced in 1970, when they first brought *Jenness v Fortson* to bar. Since then, the number of registered voters has increased without a parrallel increase in voter turnout. Voter registration has experiences two spikes since the 1943 adoption of the 5% rule, which correlate to 1) the adoption of the XXIV<sup>th</sup> (Poll Tax) Amendment to the U.S. Constitution and 2) the adoption of the Motor Voter Act. Also, downtown shopping districts which were connected by sidewalks - - traditional public fora where First Amendment activities are protected - - have been privatized as shops have rolled up their doors and lost out to the competition of privately owned shopping malls and plazas. Also the automobile has increased its dominance over the landscape insulating individuals from the public interactions that were the essential ingredients of a public forum."

19. By adding to the Complaint as paragraph 19 the following:

"Georgia's definition of 'political party' serves to freeze the political status quo, since realistically, not more than two or at most three political organizations are likely to ever qualify under those rules. Also, while the increase judicial scrutiny applied to Presidential races has opened up ballot access on statewide races to the Libertarian and the Reform Parties as well as Independent Presidential Candidate Pat Buchannan, emerging party and independent candidates rarely attempt or secure ballot access for local races in Georgia.

20. By adding to the Complaint as paragraph 20, the following:

"The last thirty years have turned the logic of *Jenness* on its head. First, the Jenness opinion was rendered with no factual record on the signature burden. The Socialists Workers Party pled their case in 1970 under the Equal Protection Clause, without ever attempting a petition drive. Now, ' the totality of the (Georgia's) restrictive laws (and other circumstances) taken as a whole imposes a burden on voting and associational rights which (are) in violation of the Equal Protection Clause."

21. By adding to the Complaint as paragraph 21, the following:

"For the Secretary of State to argue that she has no obligation to place an independent candidate on the ballot where that candiadte showed due diligence attempting to comply with the statutes but was prevented from doing so by uniformed law enforcement officers, employed by other agencies of the State, who violated the First Amendment Petition Rights of campaign volunteers operating in traditional public fora, is to create a totality of circumstances, which when taken as a whole will serve to freeze the political status quo and to deny registered voters in Georgia an opportunity to cast a ballot for the candidates of their choice."

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2000.

Kerrie Dickson  
1426 Abe Cove Rd.  
Hiawassee Georgia 30546

Hugh Esco  
1426 Abe Cove Rd.  
Hiawassee Georgia 30546