

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

J. EDWARD HOLLINGTON,

Plaintiff,

v.

No. D-202-CV-2021-00252

**MAGGIE TOULOUSE OLIVER, in her
official capacity as New Mexico Secretary of
State,**

Defendant.

COMPLAINT

Plaintiff J. Edward Hollington, by and through counsel of Record, Stalter Law LLC, Kenneth H. Stalter, for his cause of action states as follows:

Introduction

1. When a vacancy occurs in the office of United States representative, New Mexico holds a special election to fill the vacancy. Unlike a regularly scheduled general election, the special election does not include a primary election to select nominees. Instead, political parties select their nominees through a vote of party insiders, meaning that to appear on the ballot, a party candidate typically needs the support of fewer than 200 persons. Independent candidates, however, face a significantly more daunting path to ballot access: these candidates must collect signatures from more than 6,000 registered voters. This system unconstitutionally discriminates against independent candidates and voters.

Parties, Jurisdiction, and Venue

2. At all times material to this complaint, Plaintiff is and continues to be a resident of Bernalillo County, New Mexico. Plaintiff is a qualified voter, is registered to vote, and declines to designate or state a political party affiliation. He is not a member of any political party.
3. Defendant Secretary Maggie Toulouse Oliver is the New Mexico Secretary of State. She is sued in her official capacity.
4. The Secretary of State is responsible for implementing the special election regime described below. Her official duties include declaring the special election for a United States representative, receiving certifications of nominations from state party chairs, receiving nominating petitions from independent candidates, determining whether enough valid signatures appear on a nominating petition, and certifying the names to appear on the ballot in the special election.
5. The Secretary of State has not disavowed enforcement of the signature requirement described below and challenged in this action.
6. Defendant's principal offices are located in the County of Santa Fe, New Mexico.
7. This Complaint and the causes herein occurred in the City of Santa Fe, County of Santa Fe, State of New Mexico.
8. This Court has personal jurisdiction over the named parties.
9. This Court has subject matter jurisdiction over this matter.
10. New Mexico law governs the claims in this case.
11. Venue is proper in this Court.

General Factual Basis

12. On December 17, 2020, President-elect Joseph R. Biden announced the nomination of Congresswoman Deb Haaland to the cabinet post of United States Secretary of the Interior.
13. Congresswoman Haaland is currently the United States Representative for the first congressional district of New Mexico.
14. Congresswoman Haaland will likely be confirmed as Secretary in Spring of 2021. Upon her confirmation, a vacancy will exist in the first congressional district.

New Mexico's Special Congressional Election Regime

15. New Mexico statute, NMSA 1978, Section 1-15-18.1 (2019), governs the filling of a vacancy in the office of United States representative. Under the statute, the New Mexico Secretary of State must issue a proclamation calling for an election to be held between seventy-seven and ninety-one days following the date of the vacancy.

Subsection (D) of the statute governs nominations by qualified political parties: Upon the issuance of the proclamation, each qualified political party may nominate in the manner provided by the rules of that party a candidate to fill the vacancy in the office of United States representative, provided that such nomination is certified to the secretary of state by the state chair of that party no later than 5:00 p.m. on the fifty-sixth day preceding the date of the election.

16. In New Mexico, qualified political parties include both major and minor parties.
17. The rules of the Democratic Party of New Mexico state that when a vacancy exists on a ballot for a federal office, the party will call a meeting of the State Central Committee members from the district, who will select the party's nominee. *Rules of the Democratic Party of New Mexico, Article I, Section 4.1*, <https://nmdemocrats.org/wp-content/uploads/2020/05/DPNM-RULES-04-27-2020.pdf>
18. Upon information and belief, fewer than 200 Democratic central committee members will be eligible to participate in choosing the Democratic nominee.

19. The rules of the Republican Party of New Mexico state that when there is a vacancy in the office of United States representative, the party will call a meeting of the State Central Committee members from the district, who will select the party's nominee. *Uniform State Rules of the Republican Party of New Mexico, Section 2-4-4*, <https://newmexico.gop/wp-content/uploads/2020/04/4.2020-RPNM-USRs.pdf>
20. Upon information and belief, fewer than 200 Republican central committee members will be eligible to participate in choosing the Republican nominee.
21. The constitution and bylaws of the Libertarian Party of New Mexico appear to provide that the nominee will be selected by party members at a state convention. *Libertarian Party of New Mexico Constitution and Bylaws*, <https://lpm.us/wp-content/uploads/2018/06/March-2018-LPNM-CONSTITUTION-AND-BYLAWS.pdf>
22. Persons seeking to appear on the special election as an unaffiliated or independent candidate, however, must follow a different process.
23. Subsection (E) of Section 1-15-18.1 governs the nomination of candidates not affiliated with a qualified political party: "Declarations of unaffiliated candidacy to fill the vacancy in the office of United States representative and nominating petitions pertaining thereto shall be filed with the secretary of state no later than 5:00 p.m. on the fifty-sixth day preceding the date of the election."
24. NMSA 1978, Section 1-8-51 (2019) states, "Nominating petitions for an independent candidate for United States representative shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the district."
25. In the 2020 general election, 321,290 votes were cast in the election contest for the first congressional district.

26. Therefore, under Sections 1-15-18.1 and 1-8-51, a person seeking to qualify for the ballot as an independent candidate must obtain valid signatures from 6,426 registered voters.

27. Due to illegibility, registration issues, address issues, and other issues that cause petition signatures to be invalidated, a candidate seeking to be assured of a place on the ballot must realistically obtain two to three times the number of required signatures.

28. NMSA 1978, Section 1-8-52 (2014) states that an independent candidate's nominating petitions must be filed with the Secretary of State no later than "fifty-sixth day preceding any United States representative special election." Thus, following the declaration of a special election, an independent candidate will have between twenty-one and thirty-five days to gather the required signatures.

29. Based on these rules, a person seeking nomination as a Democrat or Republican must win a vote of no more than 200 party members at a meeting, while a person seeking nomination as an independent must collect thousands of signatures from the voting public. The independent candidate is also forced to gather these signatures within an unusually short time frame.

30. The special election regime described above imposes an unequal burden on and discriminates against independent candidates and voters.

31. The disparity is exacerbated in current circumstances, where the coronavirus pandemic and associated orders restricting public gatherings impede traditional signature-gathering efforts.

Constitutional Law Prohibiting Discrimination Against Independent Candidates and Voters

32. United States Supreme Court precedent shows that states may not unfairly burden independent candidates. Restrictions that improperly discriminate against independent candidates violate constitutional protections for the freedom of association, the right to vote, and the right to equal protection under the law.

33. In *Williams v. Rhodes*, 393 U.S. 23 (1968), the Supreme Court invalidated a state law that imposed substantial burdens on minor and new political parties, but not on the established parties. The Court wrote:

No extended discussion is required to establish that the Ohio laws before us give the two old, established parties a decided advantage over any new parties struggling for existence and thus place substantially unequal burdens on both the right to vote and the right to associate. The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.

Williams, 393 U.S. at 31.

34. In *Anderson v. Celebrezze*, 460 U.S. 780 (1983), the Supreme Court struck down a law which required independent candidates for President to file for candidacy months before the major parties selected their nominees. According to the Court, the exclusion of candidates “burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.” *Id.* at 787-88. The Court reasoned:

A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and -- of particular importance -- against those voters whose political preferences lie outside the existing political parties. . . . By limiting the opportunities of independent-minded voters to associate in the

electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream. . . In short, the primary values protected by the First Amendment – ‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open’ -- are served when election campaigns are not monopolized by the existing political parties.

Id. at 793-94 (internal citations omitted).

35. The special election nomination regime established by Section 1-15-18.1 violates the United States and New Mexico Constitutions.

36. By unfairly discriminating against candidates and voters whose preferences lie outside existing political parties, the regime violates the associational rights guaranteed under the First Amendment of the United States Constitution and Article II, Section 17 of the New Mexico Constitution.

37. By impairing the ability of independent voters to vote effectively, the regime violates the right to vote guaranteed by Article I, Section 2 of the United States Constitution and Article VII of the New Mexico Constitution.

38. By imposing unfair burdens on candidates and voters based on their lack of affiliation with a political party, the regime violates the equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article II, Section 18 of the New Mexico Constitution.

39. By imposing requirements on independent candidates greater than those imposed on party-affiliated candidates, the regime violates Article II, Section 8, of the New Mexico Constitution, which guarantees that all elections shall be free and open, and

Article VII, Section 2 of the New Mexico Constitution, which states that all qualified electors residing in the state are qualified to hold public office.

40. New Mexico’s special election regime fails under the standards articulated in *Anderson*, 460 U.S. 780, and *Burdick v. Takushi*, 504 U.S. 428 (1992), which states that when state election law imposes severe burdens on constitutional rights, the regulation must be “narrowly drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 433-34 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)).

Plaintiff’s Standing as an Independent Voter

41. In *Baker v. Carr*, 369 U.S. 186, 206 (1962), the United States Supreme Court stated that “voters who allege facts showing disadvantage to themselves as individuals have standing to sue.” This principle was further explained in *Anderson*, where the Court recognized independent voters as “an identifiable political group whose members share” a particular viewpoint or associational preference. 460 U.S. 792-93. Specifically, these voters share dissatisfaction with existing political parties and share the preference to refuse affiliation with these parties or with any political party.

42. Although the petitioners in *Anderson* included voters and a candidate, the Court was particularly concerned with how restrictions on candidates impair the rights of voters:

[T]he direct impact of [the state]’s early filing deadline falls upon aspirants for office. Nevertheless, as we have recognized, the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters. Our primary concern is with the tendency of ballot access restrictions to limit the field of candidates from which voters might choose. Therefore, in approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.

...

As we have repeatedly recognized, voters can assert their preferences only through candidates or parties or both. It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues. The right to vote is heavily burdened if that vote may be cast only for major-party candidates at a time when other parties or other candidates are clamoring for a place on the ballot. The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.

Anderson, 460 U.S. at 786-88 (internal quotations, citations, and alteration omitted).

The Court concluded, “our primary concern is not the interest of candidate Anderson, but rather, the interests of the voters who chose to associate together to express their support for Anderson's candidacy and the views he espoused.” *Id.* at 806.

43. Following *Anderson*, Courts have held that voters have standing to challenge ballot access laws that unduly restrict the voters’ ability to support candidates of their choosing. *E.g.*, *Erum v. Cayetano*, 881 F.2d 689, 691 (9th Cir. 1989); *McLain v. Meier*, 851 F.2d 1045, 1048 (8th Cir. 1988).

44. Plaintiff is an independent voter, not registered in any party. He has a sincere desire to vote for an independent candidate in the upcoming special congressional election.

45. There is a substantial likelihood that if Defendant enforces the signature requirements of Section 1-15-18.1, the only candidates on the ballot will be members of qualified political parties. This constitutes imminent harm to Plaintiff’s voting and associational rights. This harm is caused by Defendant’s actions in enforcing the signature requirements of Section 1-15-18.1. Finally, the harm is redressable by a favorable decision prohibiting enforcement of the unduly restriction signature requirement.

46. Additionally, New Mexico courts may grant standing under the doctrine of great public importance, allowing courts to exercise jurisdiction over issues affecting the fundamental liberties of the people. Because the right to vote is foundational to the functioning of democratic government, the Court should grant standing in this case.

COUNT I: Declaratory Judgment – United States Constitution

47. Plaintiff incorporates all previous allegations.

48. The issues in this lawsuit meet the requirements for which declaratory relief is appropriate under NMSA 1978, Sections 44-6-1 through -15, including construction of a statute or constitution under NMSA 1978, Section 44-6-13. Under Section 44-6-13, suit is proper against “the state of New Mexico, or any official thereof.”

49. For the reasons described above Plaintiff is entitled to a declaratory judgment that Section 1-15-18.1 is unconstitutional under the United States Constitution.

50. Plaintiff brings this claim under 42 U.S.C. § 1983 and seeks to recoup her attorneys’ fees and other costs under 42 U.S.C. § 1988.

COUNT II: Declaratory Judgment – New Mexico Constitution

51. Plaintiff incorporates all previous allegations.

52. The issues in this lawsuit meet the requirements for which declaratory relief is appropriate under NMSA 1978, Sections 44-6-1 through -15, including construction of a statute or constitution under NMSA 1978, Section 44-6-13. Under Section 44-6-13, suit is proper against “the state of New Mexico, or any official thereof.”

53. For the reasons described above Plaintiff is entitled to a declaratory judgment that Section 1-15-18.1 is unconstitutional under the New Mexico Constitution.

COUNT III: Injunctive Relief

54. Plaintiff incorporates all previous allegations.

55. As discussed above, party candidates may be listed on the ballot by obtaining the support of fewer than 200 central committee members. Independent candidates must obtain more than 6,000 valid signatures. While the State may have a compelling interest in ensuring that candidates have a minimal, threshold level of support before appearing on the ballot, the State does not have a compelling interest in requiring independent candidates to show support at a level 30 times greater than party candidates.

56. Plaintiff requests that this Court preliminarily and permanently enjoin the Defendant from enforcing the signature requirement of Section 1-15-18.1 against independent candidates, to the extent that the statute requires independent candidates to show greater support than party candidates.

57. Plaintiff requests that this Court preliminarily and permanently enjoin Defendant such that Defendant must afford a place on the ballot to any independent candidate who obtains the signatures of 200 voters. This will put independent candidates on even footing with party candidates.

58. A preliminary injunction is justified on the following grounds: (1) The loss of First Amendment freedoms, even temporarily, is an irreparable injury; (2) This constitutional injury outweighs any possible damage to the Defendants if they are prevented from enforcing Section 1-15-18.1; (3) An injunction is not adverse to the public interest in this case; and (4) Plaintiff has a substantial likelihood of prevailing on the merits.

Relief Requested

WHEREFORE Plaintiff prays for judgment against Defendant as follows:

- A. Declaratory judgment that Section 1-15-18.1 violates the United States Constitution and New Mexico Constitution;
- B. A preliminary injunction preventing Defendants from enforcing the signature requirement of Section 1-15-18.1 during the pendency of this action;
- C. A permanent injunction preventing Defendants from enforcing the signature requirement of Section 1-15-18.1;
- D. An award to Plaintiff of costs and reasonable attorneys' fees; and
- E. Such further relief as the Court deems proper.

Respectfully Submitted,

STALTER LAW LLC

/s/ Kenneth H. Stalter

Kenneth H. Stalter

4801 All Saints Rd NW

Albuquerque, NM 87120

ken@stalterlaw.com

telephone: (505) 315-8730

Attorney for Plaintiff