

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

KENNETH BLOCK; MODERATE PARTY OF :
RHODE ISLAND; and MODERATE PARTY OF :
RI PAC, :

Plaintiffs :

v. :

C.A. No. 09- :

A. RALPH MOLLIS, Secretary of State of the :
State of Rhode Island, in his official capacity; :
ROBERT KANDO, Executive Director of the :
Rhode Island Board of Elections, in his official :
capacity; and PATRICK LYNCH, Attorney :
General of the State of Rhode Island, in his official :
capacity, :

Defendants :

VERIFIED COMPLAINT SEEKING INJUNCTIVE AND DECLARATORY RELIEF

Introduction

This is a civil action seeking injunctive and declaratory relief, filed in part pursuant to the Declaratory Judgments Act, 28 U.S.C. § 2201. The action seeks resolution of the constitutional rights of Plaintiffs Kenneth Block ("Block"), the Moderate Party of Rhode Island (the "Moderate Party"), and the Moderate Party of RI PAC (the "PAC") (sometimes collectively, "Plaintiffs"), as circumscribed by Section 17-1-2 of the Rhode Island General Laws. Resolution of this issue is critical not only because Plaintiffs' essential rights of voting, free speech, association, and due process are at stake, but also because of the assurance of a fair system of representative government. The Plaintiffs therefore bring this action against A. Ralph Mollis, Secretary of State of the State of Rhode Island; Robert Kando, Executive Director of the Rhode Island Board

of Elections; and Patrick Lynch, Attorney General of the State of Rhode Island, all in their official capacities (sometimes collectively, "Defendants").

Parties

1. Block is a resident of, and a qualified registered voter of, the State of Rhode Island.
2. The Moderate Party is an unincorporated voluntary association of Rhode Island citizens who seek to associate and express their political views, as well as to nominate candidates for elective office as an officially recognized political party in Rhode Island.
3. Block is a member of the Moderate Party, where he has a leadership role.
4. The PAC is a political action committee with the Moderate Party, and is duly registered with the Rhode Island Board of Elections ("BOE").
5. Block is the Chairman and Treasurer of the PAC.
6. A. Ralph Mollis is the Secretary of State of the State of Rhode Island. He is named in his official capacity only.
7. Robert Kando is the Executive Director of the BOE. He is named in his official capacity only.
8. Patrick Lynch is the Attorney General of the State of Rhode Island. He is named in his official capacity only. Because Plaintiffs seek to challenge the constitutionality of a statute of the State of Rhode Island, the Attorney General has been made a party defendant pursuant to Rhode Island General Laws § 9-30-11.
9. Defendants, personally and through the conduct of their agents, servants, and employees, acted under color of state law at all times relevant to this action.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction over this action pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331.

11. Declaratory relief is authorized by 28 U.S.C. § 2201 and 28 U.S.C. § 2202.

12. Venue in the District of Rhode Island is based on 28 U.S.C. § 1391(b).

Facts

13. The Moderate Party has a demonstrated history of engaging in political activity, including during the 2008 general election in Rhode Island. In 2008, it endorsed a slate of more than ten (10) candidates for General Assembly, and published a platform describing its position on numerous issues of public concern. It communicates with its constituents and with the public through an established web site at www.moderate-ri.org, which was visited over 5,000 times during the 2008 election cycle. It has formed and maintains a political action committee for purposes of fund-raising, issues press releases, and makes decisions on political issues through a steering committee of affiliated Rhode Island individuals.

14. The Moderate Party desires to become an officially recognized political party under the laws of the State of Rhode Island, with a view towards engaging in further political activity relating to the 2010 general election. Specifically, the Moderate Party desires to nominate candidates for statewide and/or legislative office, and to have those candidates appear on the statewide ballot.

15. Organizations cannot become recognized political parties in Rhode Island other than by satisfying the requirements of Rhode Island General Laws § 17-1-2(9).

16. Under that statutory scheme, a political organization can only become a recognized political party in Rhode Island by (a) nominating a candidate for governor or president in the prior general election who receives at least five percent (5%) of the entire vote cast for that office, or, more likely in the case of newly formed organizations, by (b) resorting to the petition process for qualification described herein.

17. The Moderate Party did not nominate a candidate for governor or president in the general election in 2008.

18. The petition process prescribed by Rhode Island General Laws § 17-1-2(9) requires a “political organization, on petition forms provided to the chairperson of the organization by the state board of elections, [to obtain] the signatures and addresses of that number of registered and qualified voters equal to five percent (5%) of the entire vote cast in the state for governor or president in the immediately preceding general election. All the signatures must be obtained no earlier than January 1 of the year in which the political organization desires to place a candidate or candidates on any ballot as a ‘party’ candidate.” (Emphasis added.) The signatures must be submitted to local boards of canvassers by June 1 if the party will run a primary election or August 1 otherwise.

19. Based on the number of votes cast for president in Rhode Island in 2008, the Moderate Party will have to collect and submit approximately 23,500 valid signatures, collected in a limited time window commencing no sooner than January 1, 2010, in order to secure recognition for the general election in 2010. As a practical matter, well over 30,000 signatures will need to be collected to compensate for any signatures that local boards of canvassers may discard due to alleged irregularities or technical errors.

20. Hence, even though the Moderate Party is already in existence and is prepared now to commence the process of obtaining official recognition for the 2010 general election, it cannot, under the statute, even begin the arduous and time-consuming process of collecting as many as 30,000 signatures until January 1, 2010. Any signatures collected in 2009 would be considered invalid under the statutory scheme.

21. Having to collect the required number of signatures in the limited time window permitted by law, and not being able to commence that process until January 1, 2010, creates an arbitrary, unjustifiable and ultimately impermissible burden that makes the task far more difficult to accomplish.

22. Even if an organization succeeds in becoming a recognized political party by petition, such recognition terminates pursuant to Rhode Island General Laws § 17-1-2(9) unless the political party nominated a candidate for governor or president who received at least five percent (5%) of the vote for such office in the election cycle for which it was recognized.

23. Thus, in Rhode Island, previously recognized political parties enjoy significant political and financial advantages over previously unrecognized political organizations. Plaintiffs are hindered in their efforts to recruit candidates, engage in fundraising, and build a brand. Previously unrecognized political parties are also heavily restricted, not only in what they can collect from donors but also what they can contribute to candidates.

24. The requirements of Rhode Island General Laws § 17-1-2(9) operate to suppress the number of recognized political parties, candidates on the ballot, and voter choices.

25. Rhode Island General Laws § 17-1-2(9) prevents any prospective political party from becoming a recognized political party in a year that does not include a general election.

Count I

26. Plaintiffs restate the allegations contained in Paragraphs 1-25 as if fully set forth herein.

27. The Moderate Party and its individual constituents are prepared now to seek recognition for the 2010 general election cycle but are unable to do so because of the artificial impediment in the statutory scheme against collecting any signatures prior to January 1, 2010. Hence, there exists a ripe and justifiable controversy concerning Plaintiffs' ability to qualify for recognition as a political party at this time in light of the statutory scheme and in light of Plaintiffs' conflicting constitutional rights to freedom of association, free speech, due process, and access to the ballot. As a consequence, this action involves an actual and ripe controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

28. Plaintiffs have standing to sue because they are adversely affected by the unconstitutional constraints of Rhode Island General Laws § 17-1-2(9). Specifically, Plaintiffs are arbitrarily and unnecessarily impeded in their current efforts and desire to form a recognized political party, and face unfair and impermissible barriers in the statutory scheme, all in violation of their relevant constitutional rights.

29. Plaintiffs are ready, willing, and able to commence collecting the necessary signatures for recognition now, but are currently forced to wait until the statutory time period commences on January 1, 2010. They are thereby prejudiced in that they are unjustly forced to compete in the political arena at a distinct political and financial disadvantage when compared to previously recognized political parties.

30. Rhode Island General Laws § 17-1-2(9) violates the rights guaranteed to Plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983.

31. Plaintiffs are irreparably harmed by the unjustified burden created by the unconstitutional time constraints present in the statutory scheme governing recognition for political parties, and will continue to be so harmed absent injunctive relief lifting those constraints. Plaintiffs enjoy a reasonable likelihood of success on the merits of this claim.

Count II

32. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1-31 as if fully set forth herein.

33. The requirement that Plaintiffs collect signatures equaling five percent (5%) of the people voting (for president or governor) in the 2008 election in order to secure recognition for the 2010 general election is arbitrary and capricious and imposes an unjustifiable burden upon Plaintiff's relevant constitutional rights. Among other things, it impedes Plaintiffs' ability to secure the type of recognition that is an essential precursor to successful fundraising efforts and other campaign activity. They cannot raise or expend funds on par with their recognized competitors. As such, Plaintiffs are placed at a distinct disadvantage in comparison to other, previously recognized political parties and organizations.

34. Rhode Island General Laws § 17-1-2(9) violates the rights guaranteed to the Plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983, in imposing an unjustifiable burden and an unconstitutional threshold on the number of required signatures that must be collected for recognition.

35. Plaintiffs are irreparably harmed by the unjustifiable burden imposed by the arbitrary and unconstitutional percentage threshold requirements present in the statutory scheme governing recognition for political parties, and will continue to be so harmed absent injunctive relief lifting those constraints. Plaintiffs enjoy a reasonable likelihood of success on the merits of this claim.

WHEREFORE, Plaintiffs request that this Court award Plaintiffs the following relief:

(a.) Declare Rhode Island General Laws § 17-1-2(9) unconstitutional and in derogation of the First and Fourteenth Amendments to the U.S. Constitution, insofar as said statute prohibits Plaintiffs from collecting signatures to qualify as a political party before January 1 of the election year for which they are seeking recognition.

(b.) Declare Rhode Island General Laws § 17-1-2(9) unconstitutional and in derogation of the First and Fourteenth Amendments to the U.S. Constitution, insofar as said statute requires Plaintiffs to collect signatures of five percent (5%) of the entire vote cast in the state for governor or president in the preceding general election.

(c.) Temporarily, preliminarily and permanently restrain and enjoin the Defendants from enforcing the provision of Rhode Island General Laws § 17-1-2(9) relating to the January 1 commencement date for collection of signatures, or from otherwise precluding the recognition of a prospective political party on grounds that the prospective political party obtains the signatures and addresses of registered qualified voters before January 1 of the year of a general election.

(d.) Temporarily, preliminarily and permanently restrain and enjoin the Defendants from enforcing the provision of Rhode Island General Laws § 17-1-2(9) pertaining to the five percent (5%) threshold for collection of qualified signatures, or

from otherwise precluding the recognition of a prospective political party on grounds that the prospective political party obtains signatures of registered qualified voters amounting to less than five percent (5%) of the entire vote cast in the state for governor or president in the immediately preceding general election.

(e.) Award Plaintiffs attorneys' fees in this action pursuant to 42 U.S.C. § 1988(b);

(f.) Award Plaintiffs their costs of suit; and

(g.) Grant such other and further relief as this Court deems just and proper in the circumstances.

Respectfully submitted,

KENNETH BLOCK
MODERATE PARTY OF RHODE ISLAND
MODERATE PARTY OF RI PAC

By their Attorneys,

Mark W. Freel, Esq. (# 4003)
Cooperating Attorney, Rhode Island Affiliate,
American Civil Liberties Union
EDWARDS ANGELL PALMER & DODGE, LLP
2800 Financial Plaza
Providence, RI 02903
(401) 274-9200
(401) 276-6611 (fax)

Dated: February _____, 2009

VERIFICATION

I, Kenneth Block, personally and as a member of the Moderate Party of Rhode Island and as Chairman of the Moderate Party of RI PAC, and as a person with personal knowledge of the facts which form the basis of the above-captioned action, being duly sworn, hereby state under oath that I have read the foregoing Verified Complaint and can verify that the facts set forth therein are true and accurate to the best of my knowledge, except those statements made upon information and belief, and as to such statements I believe them to be true.

Kenneth Block
Moderate Party of Rhode Island
Moderate Party of RI PAC

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Subscribed and sworn to before me this ____ day of _____, 2009.

Notary Public
Print Name: _____
My commission expires: _____