

FILED

IN THE UNITED STATES DISTRICT COURT, N.D. ALABAMA  
SOUTHERN DIVISION

2008 AUG -1 AM 11:36

ANDY SHUGART and  
JONATHAN GRAY

Plaintiffs,

v.

BETH CHAPMAN, in her official  
Capacity as  
ALABAMA SECRETARY OF STATE

Defendant.

Civil Action No.: \_\_\_\_\_

CV-08-TMP-1382-S

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT**

COMES NOW the Plaintiffs, Andy Shugart and Jonathan Gray and for their Complaint state the following:

**I. INTRODUCTION**

1. This is a civil rights action, under federal law, challenging Ala.Code 1975 § 17-7-1, and Ala. Code 1975 § 17-19-2(a) the statutes which govern ballot access for independent candidates for U.S. House district 6. The aforementioned laws require that a candidate must present to the Secretary of State signatures of at least 3% of qualified electors who cast ballots for the office of Governor in the last general election for the office sought by the candidate. This action is brought by the Plaintiffs to obtain a declaratory judgment that the challenged statute, on its face as amended and as applied, violates well-recognized rights, including the right to due process of law, the right to equal protection of the law, and the rights of Plaintiff Shugart and his supporters including Plaintiff Gray to the rights of association guaranteed by the First and Fourteenth Amendments of the United States Constitution.

**II. JURISDICTION AND VENUE**

2. For the relief that Plaintiffs seek, this Court has jurisdiction pursuant to 28 U.S.C. §1331.

3. This Court is the correct venue for this action, pursuant to 28 U.S.C. §1391(b)(1).
4. This action arises under the United States Constitution, particularly the First and Fourteenth Amendment, under Federal law, particularly 42 U.S.C. §1983. This case also arises under 28 U.S.C. §2201, the "Federal Declaratory Judgments Act". A pendent state claim arises under Article IV, Section 45 of the Constitution of Alabama, 1901.
5. This Court has jurisdiction to hear and grant:
  - a. Plaintiff's prayer for declaratory relief under 28 U.S.C. §2201;
  - b. Plaintiff's prayer for relief on his substantive federal civil rights claims under Title 42 U.S.C. §1983;;
  - c. Plaintiff's prayer for an award of the costs of litigation, pursuant to 42 U.S.C.A. § 1988; and
  - e. Under its supplementary, pendent jurisdiction, to declare Alabama Code 1975 § 17-7-1(a)(3), insofar as it pertains to the qualification of elected positions requiring more than 5000 petition signatures, unconstitutionally in violation of Article IV, Section 45 of the Constitution of Alabama (1901).

### **III. PARTIES**

6. Plaintiff, Andy Shugart, over the age of nineteen years, is a citizen of the United States and a resident of Jefferson County, Alabama, which lies in the Northern District of Alabama. Plaintiff seeks, a determination of his right pertaining to the qualifications required of him as an independent candidate for the United States House of Representatives, District 6, which includes a portion of Jefferson County and all of Shelby County, Alabama.
7. Plaintiff, Jonathan Gray, is a citizen of the United States, over the age of nineteen years, a resident of Shelby County, Alabama and is a qualified registered voter of said County and the State of Alabama.
8. Defendant, Beth Chapman, is the Secretary of State of Alabama, and is the State's chief elections officer with the authority and duty to approve the names to be included on ballots for public elective office throughout the State; said Defendant resides for purposes of venue in Montgomery County, Alabama in the Middle District of Alabama.

### **IV. CONSTITUTIONAL STANDARDS**

9. The Fourteenth Amendment to the United States Constitution, Section 1, states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

10. The First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

11. The Federal Government has declared, through the United States Supreme Court, that

The impact of candidate eligibility requirements on voters implicates basic constitutional rights. ... 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.' [Citations omitted.] 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 v. Celebrezze 460 U.S. 780, 787, 788, 103 S.Ct. 1564, 1569, 75 L.Ed.2d 547 (1980).

12. 42 U.S.C. § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

13. Before a state may deprive persons of the basic equal protection and associational rights implicated in ballot access restrictions, which rights are guaranteed by the First and Fourteenth Amendments, the state must ensure that all of the rights of the affected individuals established under the Constitution have been sufficiently protected by the least drastic means. When a state's action through statute affecting voter's rights and ballot access is challenged, 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. Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1980).

## V. ALLEGATIONS OF FACT

14. Plaintiff Andy Shugart considered running for the elected position of U.S. House of Representatives for Alabama District 6. Plaintiff meets all qualifications for said position, except that he is required to file a petition of the signatures of 3% of qualified voters who voted in the last gubernatorial election, which is equal to 6,155 signatures for this election cycle, and the 2010 election cycle.

15. Jonathan Gray is a registered and qualified elector of U.S. House of Representatives District 6 and supports candidate Andy Shugart, as candidate for said elected position. Plaintiff Gray would cast his vote for Andy Shugart should his name appear on the ballot for U.S. House of Representatives, District 6.

16. Code of Alabama (1975), §17-7-1(a)(3) is the law the Plaintiff seeks to have declared unconstitutional in instances where the number of signatures required to gain access to the ballot as an independent candidate is more than 5000, reads, in pertinent part:

“(a) The following persons shall be entitled to have their names printed on the appropriate ballot for the general election, provided they are otherwise qualified for the office they seek: ...

“(3) Each candidate who has been requested to be an independent candidate for a specified office by written petition signed by electors qualified to vote in the election to fill the office when the petition has been filed with the probate judge, in the case of a county office and with the Secretary of State in all other cases, on or before 5:00 P.M. on the day of the primary election. **The number of qualified electors signing the petition shall equal or exceed three percent of the qualified electors who cast ballots for the office of Governor in the last general election** for the state, county, city, district or other political subdivision in which the candidate seeks to qualify.” [Emphasis added.]

17. **In contrast** Alabama Code 1975 § 17-19-2 states in pertinent part:

(a) When presidential electors are to be chosen, the Secretary of State of Alabama shall certify to the judges of probate of the several counties the names of all candidates for President and Vice President who are nominated by any national convention or other like assembly of any

political party or by **written petition signed by at least 5,000 qualified voters** of this state.

18. The State of Alabama has no sufficient, legitimate interest in requiring Plaintiff, Andy Shugart, to file a petition of at least 6,155 signatures, for the office of U.S. House of Representatives District 6 while only requiring independent and minor party candidates for the office of President or Vice President to file petitions of at least 5000 signatures. The Alabama Statute requiring 6,155 petition signatures for the 2008 and 2010 election cycle is not narrowly tailored to serve any legitimate state interest.

19. Requiring more petition signatures for candidates for the U.S. House of Representatives than for the office of President and Vice President is not the least restrictive means of protecting the states interest in preserving the ballot and conducting orderly elections. As an independent candidate for Congress, Andy Shugart, enjoys the support of other independent minded voters such as Jonathan Gray. Requiring more signatures of Andy Shugart than an independent candidate for President or Vice President places a significant burden on Shugarts efforts to obtain access to the general election ballot and thus thwarts his ability to communicate his political ideas on important issues.

## **VI. CAUSE OF ACTION**

### **COUNT ONE**

20. Plaintiff incorporates paragraphs 1 - 22 in this Count One as if fully set out herein.

21. Defendant Beth Chapman, has, by requiring more than 5000 signatures as described hereinabove, violated the Plaintiff's rights as guaranteed under the First Amendment of the United States Constitution, and his right to equal protection under the law and plaintiffs rights will continue to be violated. Furthermore, said actions constitute state action taken under color of law and subject the Defendant to suit for violations under 42 U.S.C. §1983.

The plaintiffs are entitled to a declaration that Ala. Code 1975 § 17-7-1(a)(3) violates the constitutional rights of the plaintiffs; that requiring more than 5000 petition signatures for elected offices other than President and Vice President is more restrictive than necessary.

22. A valid case or controversy exists sufficient for this court to declare the rights and remedies of the parties in that there are and will continue to be a substantial number of plaintiff candidates who desire to campaign for the elected office of U.S. House of Representatives and a substantial number of plaintiff voters who support and wish to cast their ballots for independent and minor party candidates.

23. The plaintiff has the requisite standing to request this declaration in that other Federal Courts have made declarations under similar facts.

See William v. Rhodes, 393 U.S. 23, 21 L. Ed. 2d 24, 89 S. Ct. 5 (1968) - Socialist Labor Party had standing to challenge Ohio's restrictions on minor party access to election ballot, including petition signature requirement, even though plaintiff had not filed any petition signatures; Storer v. Brown, 415 U.S. 724, 39 L. Ed. 2d 714, 94 S. Ct. 1274 (1973) -- independent presidential and vice-presidential candidates had standing to challenge California's restrictions on independent candidate ballot access, even though they did not file any petition signatures; Greaves v. Mills, 497 F. Supp. 283 (E.D. Ky. 1980) -- independent presidential [\*1203] candidate Percy L. Greaves had standing to challenge Kentucky's filing deadline, even though he only filed 1,086 of the required 5,000 petition signatures; Goldman-Frankie v. Austin, 727 F.2d 603 (6th Cir. 1984) -- independent candidate for state board of education had standing to challenge Michigan's election statutes that provided [\*\*6] no means of ballot access for independent candidates other than being a member of a political party; Stevenson v. State Board of Elections, 794 F.2d 1176 (7th Cir. 1986) -- independent presidential candidate had standing to challenge Illinois' early filing deadline even though he did not submit any petition signatures; and Rainbow Coalition of Oklahoma v. Oklahoma State Election Board, 844 F.2d 740 (10th Cir. 1988) -- minority parties who contested Oklahoma's petition requirements and filing deadline for third parties had standing, even though they had not attempted to comply with statutes.

Libertarian Party of Kentucky v. Ehrler, 776 F. Supp. 1200, 1211 (E.D. Ky. 1991).

24. This controversy is ripe for determination at this time because although the plaintiff candidate will not be listed on the November 2008 ballot for the position of U.S. House of Representatives District 6, he will have the opportunity to qualify in 2010 or the next elections cycle for such office. Thus, Plaintiff voter, although he can not cast his vote in the November 2008 election for U.S. House of Representatives District 6 candidate Andy Shugart, will have the opportunity to cast his vote in 2010 and the following elections cycles.

### **REQUEST FOR RELIEF**

For the reasons set forth above, plaintiffs demand that:

A. This court render a declaratory judgment providing that ballot access qualification requirements of more than 5000 signatures for elected offices in the State of Alabama are

unconstitutionally restrictive, serve no legitimate governmental purpose and unconstitutional.

B. Plaintiff receives its costs of suit and reasonable attorney fees pursuant to Title 42 U.S.C. §1988.

SUBMITTED this the \_\_\_\_ day of July, 2008.

Andy Shugart  
ANDY SHUGART, PLAINTIFF

STATE OF ALABAMA )  
Jefferson COUNTY )

Personally appeared before me, the undersigned and Notary Public in and for the State of Alabama at Large, Andy Shugart, being by me and first duly sworn, does depose and says that the statement contained in the foregoing complaint are true and correct.

SUBSCRIBED AND SWORN TO before me this 22 day of July, 2008.

Danika Roll  
Notary Public  
My Commission Expires My Commission Expires November 22, 2008

\_\_\_\_\_  
JONATHAN GRAY, PLAINTIFF

STATE OF ALABAMA )  
\_\_\_\_\_ COUNTY )

Personally appeared before me, the undersigned and Notary Public in and for the State of Alabama at Large, JONATHAN GRAY, being by me and first duly sworn, does depose and says that the statement contained in the foregoing complaint are true and correct.

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of July, 2008.

\_\_\_\_\_  
Notary Public

unconstitutionally restrictive, serve no legitimate governmental purpose and unconstitutional.

B. Plaintiff receives its costs of suit and reasonable attorney fees pursuant to Title 42 U.S.C. §1988.

**SUBMITTED** this the \_\_\_\_ day of July, 2008.


\_\_\_\_\_  
ANDY SHUGART, PLAINTIFF

STATE OF ALABAMA )  
\_\_\_\_\_ COUNTY )

Personally appeared before me, the undersigned and Notary Public in and for the State of Alabama at Large, \_\_\_\_\_, being by me and first duly sworn, does depose and says that the statement contained in the foregoing complaint are true and correct.

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_ day of July, 2008.

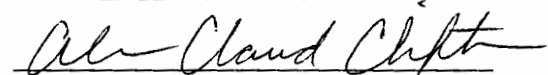
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

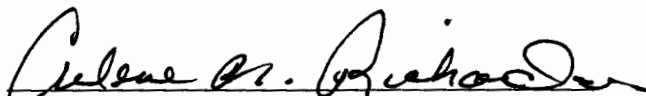
  
\_\_\_\_\_  
JONATHAN GRAY, PLAINTIFF

STATE OF ALABAMA )  
Jefferson COUNTY )

Personally appeared before me, the undersigned and Notary Public in and for the State of Alabama at Large, JONATHAN GRAY, being by me and first duly sworn, does depose and says that the statement contained in the foregoing complaint are true and correct.

**SUBSCRIBED AND SWORN TO** before me this 30 day of July, 2008.

  
\_\_\_\_\_  
Notary Public



ARLENE M. RICHARDSON, ASB9452-I60A

Attorney for the Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_ July, 2008 , I served the foregoing with the Attorney General of the State of Alabama, pursuant to Fed. R. Civ. Procedure 5.1 (a)(2) properly addressed and prepaid to the following:

**Office of the Attorney General  
Alabama State House  
11 South Union Street, Third Floor  
Montgomery, AL 36130**

Respectfully submitted,

s/Arlene M. Richardson

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