

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

G. MATT JOHNSON and
LORA HUBBEL

Plaintiffs

Vs.

SHANTEL KREBS, in her official
capacity as Secretary of State for
the State of South Dakota

Defendant

Civil Action No. 4:18-cv-04108

amended

COMPLAINT

INTRODUCTION

NOW COMES the plaintiffs, G. Matt Johnson and Lora Hubbel, pro se, for our Complaint against Shantel Krebs in her official capacity as Secretary of State for the State of South Dakota, hereby states the following:

JURISDICTION AND VENUE

1. The plaintiff brings this action in this court pursuant to 42 U.S.C. § 1983
2. Federal jurisdiction for this action is proper under 28 U.S.C. §§ 1331, 1343(a), 2201 and 2202. Federal supplemental jurisdiction is proper under 28 U.S.C. § 1367(a).
3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)

PARTIES

4. The Plaintiffs, G Matt Johnson and Lora Hubbel, are citizens of the United States and reside in Minnehaha County of the State of South Dakota.

5. The defendant, Shantel Krebs, is the Secretary of State for the State of South Dakota. Defendant Krebs is sued in her official capacity as Secretary of State for the State of South Dakota. As such, Secretary Krebs has a duty to oversee the State wide electoral process from this office in accordance with Federal and State law. Secretary Krebs maintains a public office in Hughes County in the State of South Dakota.

PRELIMINARY STATEMENTS

6. Time is of the essence. Early voting begins on September 21, 2018.

7. As a result of a Federal lawsuit and a statutory change during the South Dakota 2018 legislative session, Minor Political Parties below a certain size can use a State convention to nominate candidates. However, to remain a Party the Constitution Party must have a state-wide candidate on the ballot in November of 2018. If there is no statewide candidate then it must start over with the rigorous petition process of forming a new Party once again. Having no statewide candidate will wrongly fail the voters of South Dakota the right to vote for a candidate of their persuasion.

8. As a private person and Chair of the Republican Party, Dan Lederman filed a Writ of Prohibition against the SD Secretary of State and the Constitution Party of South Dakota to prevent the Constitution Party from ballot access in the Sixth Judicial Circuit CIV18-000147. Lederman said the Constitution Party did not have a current Chairman and did not follow its own by-laws.(Exhibit A-Timeline sent to Krebs July 20) This is refuted in this filing. The court date was August 16, 2018. The Constitution Party was prevented on many levels from defending their position relative to the Secretary of State giving misleading advice to our Chairman and improper service of a subpoena. (Exhibit B – Lederman improper serve on Joel Bergan).This resulted in the infringement of our U.S. First Amendment and Fourteenth Amendment rights.

9. Gordon Howie, (Constitution Party Chairman of South Dakota) was given instructions by Shantel Krebs, the Secretary of State, that worked against the Parties best interest in their quest for ballot access. Chairman Howie related to the Constitution Party Board that he personally had been speaking with the Secretary of State and further, that

Shantel Krebs told him the newly elected Board should not send her office any more filings. (Including the appointment of new Board Members on June 21st, 2018.) The reason given was that it would confuse the issues to be heard at the upcoming Circuit Court Hearing. The board questioned this advice but the Chairman assured the Board members that it should accept the advice of the Secretary of States' office. Additionally, at the Board meeting on June 21st, the Board also addressed an issue of conflict with our bylaws and the State election statues, (Exhibit C-July 21 Board meeting minutes with proof Krebs received them). Had this information been filed with the Secretary of States' office a major piece of the lawsuit would have been answered before hand. Pursuant to the actual hearing set for August 16th, 2018, the Secretary of State through Chairman Howie told the Constitution Party Board not to come to the hearing on August 16, because participants may get tripped up by the opposing attorney. (This information was given to the Plaintiffs on the evening of August 15th.) These actions by the Secretary of State prevented the Secretary of States' Office and the Circuit Court Judge from receiving pertinent information. Information that would have rendered the Plaintiffs allegations useless and unfounded.

10. Joel Bergan, the person the Secretary of States' office choose to assumed to be the Chairman of the Constitution Party and whom would have attended the August 16th hearing had he been informed that there was a subpoena ordering him to do so. Mr. Bergan possessed the requisite information for the Judge to make an informed decision. Mr. Bergan was not present due to the fact that he was served the subpoena improperly pursuant to SDCL 15-6 generally and SDCL 15-6-45(c) specifically. The attorney for the plaintiff (Justin Bell) sent a number of subpoenas relative to this matter. All subpoenas sent to the Plaintiffs participants were sent by electronic means, but all subpoenas sent to the Constitution Party were sent via regular US Mail. Justin Bell, Attorney for the Republican Party knowingly made it impossible for Mr. Bergan to be notified, thereby rendering the Party defenseless at the hearing. Plaintiff attorney Bell sent the subpoenas on August 15th, 2018. The Circuit court hearing was scheduled for August 16th at 1:00 PM in Pierre SD. The certificate of service was dated August 17, 2018. One day after the hearing. Furthermore, no proof of service was provided. Mr. Bergan who lives 3 ½ hours from Pierre received his subpoena days after the hearing took place. These things, combined with the misdirection from the Secretary of State has infringed on our right of free speech.

GENERAL CHRONOLOGY AND ALLEGATIONS

11. On October 26, 2012 the Constitution Party filed a Statement of Organization with Lori Stacey as both the Party Chair and the Party Treasurer. This was allowed at this time because it was before the Bylaws were adopted on April 20, 2016. After that the Chairman was to appoint a full Board and have regular meetings with minutes. The Chairman was also to form groups (customarily county groups) in order to start a Central Committee. These duties were not performed by Lori Stacey.

12. On July 9, 2016, the Constitution Party held a convention and elected Lora Hubbel as Chair, Joel Bergan as Vice Chair and Lori Stacey as Treasurer/Secretary. This was filed with the Secretary of State's office per its rule to file any new Party Chairman.

13. On February 2, 2017, Lora Hubbel resigns as Chair due to the refusal of Lori Stacey to surrender any Party documents to the Chairwoman Lora Hubbel. Hubbel yields the Chair position to the Vice Chair Joel Bergan. Lori Stacey did not file this with the Secretary of States for roughly 18 months. This omission caused confusion in determining who the Chairman of the Constitution Party was in 2018. Please note: Lora Hubbel's resignation per email was not received in the Secretary of State's office until July 14, 2018, the day of the 2018 Constitution Party Nominating Convention, and after the convention had begun.

14. Continuing on Feb 2, 2017, Joel Bergan expressed that he did not want to be chair but never officially resigned. He has said he changed his mind and told Lori Stacey that he wanted to fill the Chairmanship the next day. He was told it was "too late", and that Lori Stacey had already determined herself as chair. There are no documents supporting the change of chair back to Lori Stacey. She was self-appointed.

15. On February 6, 2017, Lori Stacey begins to act as the Constitution Party Chair even though the Secretary of State's files still showed Lora Hubbel as the chair. At this time Lori Stacey files a Statement of Organization and Campaign Finance form to the State determining herself as both Treasurer and Chair, a violation of the Party's By-laws. Lori Stacey is working as a petition signer in several states and uses a hotel as her South Dakota address, but she is not living in South Dakota.

16. Between February of 2017 and June of 2018, Kurt Evans had become Secretary of the Party but then resigned stating Lori Stacey never provided any minutes of meetings, financial statements, or secretarial notes in order for him to perform his duties. James Biolata was also appointed to replace Kurt Evans. No official documentation of either of

these new Board Members is available at the Secretary of State's office and no other documentation has been produced.

17. June 22, 2018 Lora Hubbel becomes a Constitution Party member again. July 11, 2018 G. Matt Johnson becomes a member also.

18. July 5, 2018 Lori Stacey files Amendments to the Party By-laws to the Secretary of State, allowing a second nominating convention though no minutes of a meeting establishing the changes are produced.

19. July 13, 2018, (the day before the Convention) some members of the Constitution Party, before running as candidates, question the sloppiness of the previous record keeping and seek to correct the board from having Lori Stacey occupy more than one position, which is not allowed inferred in the By-laws. She refuses to relinquish the chair position or discuss relinquishing the treasurer's position. The National Party was contacted for help and because of the poor record keeping they determined Lora Hubbel as Chair.

20. Lora Hubbel talked to Frank Fluckiger (National Constitution Party Chairman) and parliamentarian Marilee Roose who both write a letter telling Lori Stacey to cease and desist as Chairman for infractions and to let the last known chair preside. All parties are aware Lora Hubbel is currently a Constitution Party member, and also knew she had run for office as a Republican.

21. Late afternoon of July 13, 2018, Lora Hubbel was told by the National Party that she was the logical chair and after searching the Secretary of State's office, she agreed that until records could be sorted out, she would prepare to take over for the convention the next day. Lora Hubbel takes over as Pro-Tem Constitution Party Chair and Chair of the convention the next day. Since both the Libertarian and Democrat Parties had been challenged by the Republican party and since it was the last day to call for a convention, Lora Hubbel in consultation with Vice Chair, Joel Bergan and others, called for a second convention to be held on August 14, 2018 in case anything went awry at the convention the next day.

22. On July 14, 2018, Lori Stacey, who had called the first convention, did not show up until after the convention had been adjourned over 2 hours later. Lora Hubbel opened the convention as chair, but Vice Chairman Joel Bergan took over as the Convention Chair since the party Chairmanship was somewhat clouded.

23. Continuing at the Jul 14, 2018 convention, candidates for Governor, Lt Governor, US House, and a district Senate Race were nominated. However James Biolata

became so disruptive at the convention that he was voted out of the meeting but refused to leave and continued to be interruptive and abusive. Finally the Convention Chair, Joel Bergan fired James Biolata as secretary, taking away his position.

24. Gordon Howie had come to the convention to be nominated for Party Chair because there was supposed to be a nomination for the Constitution Party Chair position, which Lori Stacey could have been nominated for also had she been there. However the convention had so deteriorated that Joel Bergan appointed Gordon Howie to take over as Convention Chair so the convention could be adjourned and recessed until the August 14, 2018 convention.

25. Immediately after the convention was adjourned Lora Hubbel stated her files had been stolen. James Biolata was defensive and belligerent when he was asked if he had them. Later he admitted to having the files yet they were never returned to Lora Hubbel. It was also at this time the Secretary of State's office received Lora Hubbel's 2016 resignation email from Lori Stacey. It was now determined that Joel Bergan was chair.

26. On or shortly after July 15, 2018, Terry LaFluer (Constitution Party Member and Candidate) accused Lora Hubbel of misconduct on a FaceBook post, which she states is false. He continues to threaten Lora Hubbel, Joel Bergan and many others for perceived wrongs done to him. Lori Stacey states on Facebook that she resigns as Constitution Party Chair and never wants to return to South Dakota.

27. On July 21, 2018 a Board meeting was held in Chamberlain, SD to establish an official full and functioning Constitution Party Board. Party Chair Joel Bergan appointed Gordon Howie as Vice Chair, and Lora Hubbel as Secretary with Lori Stacey remaining as Treasurer. Brian Brown served as parliamentarian for the meeting. All of the above people plus G Matt Johnson (who could not attend) were notified via email in time to make the Chamberlain meeting.

28. Joel Bergan then resigned and Gordon Howie became chair with Joel Bergan remaining on the board as immediate past chair, a voting position. Items discussed included the upcoming August 14, 2018 convention and a determination that the Party By-laws were out of sync with State law. The 60 day window to hold the convention after the Primary was determined to apply to the first convention only. Also, Robert's Rules of order determine that if a party By-law conflicts with state law, the state law carries, meaning we were not bound by our corrupted Constitution Party By-law.

29. The Board was formed as follows: Gordon Howie, Chair; G Matt Johnson as Vice

Chair; Lora Hubbel as Secretary; Janette McIntyre as Treasurer. Minutes of the meeting were sent to each member 2 days later. Joel's resignation letter was sent to Gordon Howie per his request so Gordon could file it with Secretary of State. It's unknown if it was filed.

30. August 1, 2018, the Republican Party filed a Writ of Prohibition against the Constitution Party and the Secretary of State's office to keep Constitution Party candidates off the ballot by not certifying them. Court was scheduled for August 16 in Pierre, with Judge DeVaney.

31. Gordon Howie told the Board that he was talking to Shantel Krebs, the other Defendant that was being sued by Dan Lederman. Gordon Howie said he and Shantel Krebs decided we were not to send the list of the newly organized Board for the Constitution Party to the Secretary of State's office. When the Board questioned this it was told it would just confuse the issue. However, a statement of organization was sent to the Secretary of State's office (date-stamped by her office) but it was returned.

32. On August 14, 2018 in Pierre, SD, the Constitution Party held its second convention. It was chaired by Gordon Howie and attended by 15 voters and 5 observers plus the Sergeant of Arms and Parliamentarian, Brian Brown. The meeting was recorded and a slate of candidates was nominated as follows: Lora Hubbel, Candidate for Governor; Tara Volesky, Candidate for Lt Governor; G Matt Johnson, Candidate for U.S. House; plus 3 candidates for State District races. This was hand delivered to the Secretary of State's office the same day.

33. On August 15, 2018 Gordon Howie told the Board members not to go to the August 16 hearing in Pierre with Judge DeVaney, stating that the Secretary of State and the Constitution Party are on the same side as Defendants and the Attorney General's office will cover for the Constitution Party. Chairman Howie said he was quite sure we would be on the ballot after talking to the Secretary of State. Furthermore, if we were to attend the hearing we may be called upon and get tripped up by the questions of the opposing attorney.

34. On August 15, 2018, Justin Bell (attorney for the Republican Party) subpoenaed the perceived Constitution Party Chairs, Joel Bergan, Mike Gunn, and Terry LaFluer at their physical addresses. Yet Ann Mines Bailey (of the Attorney General's office), Kirsten Jasper (Secretary of State's office) were subpoenaed by email. Justin Bell's Certificate of Service is dated after the trial. (Note: Terry LaFluer and Mike Gunn feel they represent the true Constitution Party belonging to Lori Stacey, yet she refuses to admit her removal for

derelection of duty and for cause). All of the above were at the hearing except Joel Bergan.

35. The subpoena was mailed to Joel Bergan via regular US mail the day before the hearing. Justin Bell, Attorney for the Republican Party knowingly made it impossible for Joel to defend the allegations leveled against our party. This violates SDCL 15-6-45.

36. Ann Mines Bailey received the subpoena by email so she knew or should have known the Constitution Party Chair was supposed to be in court. Ms. Mines Bailey is an assistant Attorney General and was the lawyer we were told would help defend the cause of the Constitution Party. This is in reference to Gordon Howie stating the Attorney General's office will likely make sure we are on the ballot. Further, Ms. Mines Bailey did not ask for an enlargement of time so Joel Bergan could receive his subpoena. This caused the Constitution Party to have no representation at the hearing.

37. Gordon Howie then resigned from the Constitution Party via email and text requiring us to elevate G Matt Johnson, Vice Chair, to the position of Chair. Mr. Howie has not yet notified Mr. Johnson nor has he used the word "resignation", although he agreed to resignation in a text.

38. Secretary Krebs's failure to provide equal ballot access to plaintiffs Johnson and Hubbel who seek an opinion based on facts and more accurate than the Sixth Judicial Circuit opinion which wrongly fails the voters of South Dakota and unfairly impairs the freedom of speech, the fundamental right to vote, and the associational rights of Constitution Party candidates and voters.

39. The Defendant's failure to approve the good faith effort of plaintiffs Johnson and Hubbel to maintain a viable Constitution Party in South Dakota and secure ballot access along with other political parties unfairly and unnecessarily discriminates against plaintiffs Johnson and Hubbel on Constitutional grounds of equal protection of the laws.

PRAYER FOR RELIEF

40. Wherefore, plaintiffs Johnson and Hubbel prays for relief from the court pursuant to 42 U.S.C. § 1983 in violation of our rights under the First and Fourteenth Amendments of the U.S. Constitution. Johnson and Hubbel requests that the court finds the defendants failure to certify the Constitution Party of South Dakota's candidates unconstitutional.

41. The plaintiffs request preliminary and permanent injunctive relief from the court ordering Secretary Krebs, and her agents and employees, from enforcing, applying or

implementing the complained-of ruling by Judge DeVaney, and ordering Secretary Krebs to certify the nomination of Statewide Constitution Party Candidates Lora Hubbel for Governor; Tara Volesky for Lieutenant Governor, and G Matt Johnson for U.S. House as Candidate, and district races on the 2018 General election ballot.

42. The Plaintiffs request that the Court finds that no compelling State interest exists in favoring one political party over another. When the Republican Party can meddle in the internal or external affairs of all the other political parties like the Republican Party has done, it causes constitutional abuses and in this case defies SDCL 12-6-64 where election law should be broadly applied, not narrowly.

43. The plaintiffs request declaratory relief from the Court under 28 U.S.C §§ 2201 and 2202.

44. The plaintiffs request that the Court award them reasonable attorney's (pending an available attorney) and filing fees as part of the costs to proceed with this action pursuant to 42 U.S.C. §§ 1982 and 1988(b).

45. The plaintiffs request any other relief which the Court finds equitable and just.

Respectfully submitted,

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DATED: August 29th, 2018

amended with Exhibits Sept 13, 2016