

FILED
CARY J. JOHNSON
CLERK OF SUPERIOR COURT

19 JUN 12 PM 2: 13

1 Paul Gattone
2 Law Office of Paul Gattone
3 301 S. Convent
4 Tucson, Arizona 85701
5 (520)623-1922
6 State Bar Number 012482
7 gattonecivilrightslaw@gmail.com

BY *Melissa Heilman*
TRUSTEY
MELISSA HEILMAN

8 Counsel for Plaintiff

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF PIMA**

11 Green Party of Pima County,)
12)
13 Plaintiff,)
14)
15 v.)
16 Roger Randolph, in his official capacity;)
17 City of Tucson,)
18)
19 Defendants.)

Case No. **C20192885**

) **COMPLAINT FOR DECLARATORY**
) **RELIEF, INJUNCTIVE RELIEF, AND**
) **SPECIAL ACTION**

D. DOUGLAS METCALF

20 **PETITION FOR SPECIAL ACTION & COMPLAINT FOR**
21 **DECLARATORY AND INJUNCTIVE RELIEF**

22 **PRELIMINARY STATEMENT**

23 1. This suit challenges the City of Tucson's denial of the Green Party
24 of Pima County for representation on the citywide ballot during the 2019
25 municipal elections.

JURISDICTION AND VENUE

2. This Complaint raises a special action pursuant to the Arizona Rules
of Procedure for Special Actions, the forbear to which (Writ of Mandamus) was

PAID

1 authorized to be heard by this Court, pursuant to Article VI, § 18 of the Arizona
2 Constitution and A.R.S. § 12-2021.

3 3. Special Action is appropriate because there is no equally plain,
4 speedy, and adequate remedy available to Plaintiff.

5 4. Special Action is appropriate because Plaintiff seeks an order from
6 this Court that Defendants perform a duty that:

- 7 a. is ministerial in nature; and
- 8 b. which the law specially imposes as a duty on Defendants; and
- 9 c. Defendants have thus far refused to perform; and
- 10 d. about which Defendants have no discretion.

11 5. This complaint seeks injunctive relief, which is authorized by A.R.S.
12 § 12-1801.

13 6. This complaint seeks declaratory relief, which is authorized by
14 A.R.S. § 12-1831, *et seq.*

15 7. The provisions of A.R.S. § 12-821.01 do not apply to this action
16 because Plaintiff raises no claim for monetary damages against any Defendants
17 and all prayers for relief are of an exclusively injunctive, declaratory, or
18 extraordinary nature.

19 8. Venue is proper in this Court because the Plaintiff is headquartered
20 and based in Pima County. Plaintiff seeks relief against a municipal entity situated
21 in Pima County, and a substantial part of the events or omissions giving rise to this
22 action occurred in Pima County.

PARTIES

23 9. Plaintiff Green Party of Pima County is a County Party Political
24 Party which is sponsored by the Arizona Green Party, a State Party Political Party.

25 10. Defendant City of Tucson is a municipal corporation under the laws
of Arizona.

1 11. Defendant Roger Randolph ("Randolph") is currently the City Clerk
2 of the City of Tucson.

3 12. Defendant Randolph has served as the City Clerk at all times
4 relevant to this action.

5 13. Defendant Randolph, as the City Clerk, is conferred with the duty
6 and responsibility to oversee the conduct of city elections. Defendant Randolph
7 bears the responsibility of determining eligibility of candidates and of political
8 parties for representation on the city ballots.

9 14. Defendant Randolph is sued in his official capacity.

10 **STATEMENT OF FACTS**

11 15. On March 17, 2017, Defendant Randolph certified that Plaintiff had
12 obtained valid signatures of 1,425 electors residing and registered to vote within
13 the City of Tucson (see Exhibit A), and certified that Plaintiff had met all
14 requirements of A.R.S. §§ 16-802 & 803.

15 16. The valid signatures described above were collected by Plaintiff
16 using the "CITY OF TUCSON - PETITION FOR POLITICAL PARTY
17 RECOGNITION" petition forms (see Exhibit B).

18 17. The above-described petition forms used by Plaintiff to obtain the
19 1,425 valid signatures (Exhibit A) were provided to Plaintiff by Defendant
20 Randolph or his aides.

21 18. The above-described petition forms used by Plaintiff to obtain the
22 1,425 valid signatures each contain the following language that is pre-printed by
23 Defendants: "A new political party is entitled to representation as a political party
24 on the official ballot through the next two regularly scheduled general elections for
25 federal office immediately following recognition of the political party."

19. Each of the 1,425 electors signed a form indicating that his or her
signature was contributing to an effort to recognize Plaintiff as a recognized

1 political party on the official citywide ballot "through the next two regularly
2 scheduled general elections for federal office immediately following recognition
3 of the political party."

4 20. The above-cited language is identical to that found in A.R.S. § 16-
5 801.

6 21. Pursuant to Defendant's March 2017 recognition of Plaintiff as a
7 recognized political party, on the official City of Tucson Primary Election ballot,
8 two candidates, Mike Cease and Michael Oatman, appeared as Green Party
9 candidates for Council Member Ward 6 during the August 29, 2017 primary
10 election.

11 22. Pursuant to Defendant's March 2017 recognition of Plaintiff as a
12 recognized political party, Green Party candidate Mike Cease qualified for and
13 appeared as a candidate for Council Member Ward 6 office on the November,
14 2017 City of Tucson General Election ballot. The November, 2017 results for
15 Council Member Ward 6 were as follows: KOZACHIK, STEVE (DEM) 48,892
16 votes, 60.05 %, RODRIGUEZ, MARIANO (REP) 26,559 votes, 32.62 %,
17 CEASE, MIKE (GRN) 5,721 votes, 7.03 %, WRITE-IN 245 votes, 0.30 %.

18 23. The first regularly-scheduled general election for federal office
19 immediately following March 2017 occurred on November 6, 2018.

20 24. The second regularly-scheduled general election for federal office
21 immediately following March 2017 is currently scheduled to take place on
22 November 3, 2020.

23 25. Upon information and belief, there are no plans at either the state or
24 federal levels to change or otherwise alter the date of the currently-scheduled
25 November 3, 2020 federal elections.

1 26. The above-cited November 6, 2018 election is the only regularly-
2 scheduled general election for federal office to have taken place since March
3 2017.

4 27. In late 2018, Plaintiff – by and through its Campaign and Planning
5 standing subcommittee members – decided to initiate the process to qualify
6 individual candidates for the City of Tucson November 2019 ballot. Plaintiff's
7 Campaign and Planning Committee members agreed at this time to take steps to
8 ensure that such candidates would appear on the November 2019 citywide ballot
9 as Green Party candidates.

10 28. Notwithstanding being hampered by the City of Tucson's
11 subsequent mistaken determination, Plaintiff's Campaign and Planning Committee
12 members have identified at least three individuals willing and able to become
13 candidates and to pursue qualification for the ballot as Green Party members for
14 the offices of Mayor, Council Member Ward 1 and Council Member Ward 4.
15 Furthermore, at least one additional Green Party candidate is actively being
16 recruited for the Council Member Ward 2 office. In these actions, Plaintiff's
17 Campaign and Planning Committee members have relied upon the March 2017
18 certification by Defendants of the aforementioned new party petition language.

19 29. On January 15, 2019, Suzanne Mesich, an employee of the Tucson
20 City Clerk's Office, indicated to Plaintiff's member Chuck Irvin that Plaintiff
21 would need to re-qualify for the ballot if it wishes to be accorded columns on their
22 official ballot during the November 2019 city general elections.

23 30. On February 7, 2019, Assistant City Clerk Suzanne Mesich wrote to
24 Plaintiff that "the Green Party of Pima County will need to have voter registration
25 equal to at least two-thirds of one percent of the total registered voters in the City
of Tucson by March 25, 2019" if it wishes to be afforded columns on their
November 2019 General Election ballot (see Exhibit C).

1 Plaintiff's having qualified in March 2017 under the provisions of A.R.S. § 16-
2 802.

3 36. There is no applicable provision of the Tucson City Charter that is
4 contrary to the applicable Arizona statute.
5

6 37. Defendants lack discretion with regard to Plaintiff's eligibility for the
7 November 2019 General Election ballot. As such, Defendants' duty here is a
8 ministerial function.

9 38. Defendants have stated their intention to violate this ministerial duty.

10
11 **COUNT TWO:
INJUNCTIVE RELIEF**

12 39. The allegations described above constitute violations of Plaintiff's
13 rights, as Defendants have stated their intention and have acted to deny Plaintiff its
14 proper place on the November 2019 citywide ballot.
15

16 40. Plaintiff can demonstrate both a likelihood of success on the merits
17 and a probability (not merely possibility) of irreparable harm if the Court does not
18 grant relief.

19 41. Plaintiff can show that there will be no hardship to Defendants if
20 relief is granted, and that Plaintiff will suffer immeasurably if this Court does not
21 grant relief.
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**COUNT THREE:
DECLARATORY RELIEF**

42. Plaintiff is entitled to a declaration that Defendants' practice of denying Plaintiff its proper place on the November 2019 citywide ballot is a violation of state statute and Tucson City Charter.

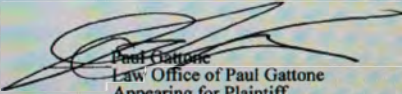
9
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REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and against Defendants, and award the following relief: Special Action (writ of Mandamus), Injunctive Relief and Declaratory Relief.

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RESPECTFULLY SUBMITTED this 12 June 2019.


Paul Gattone
Law Office of Paul Gattone
Appearing for Plaintiff



CERTIFICATE OF CLERK
CERTIFICATE OF SUFFICIENCY

CITY OF
TUCSON
OFFICE OF THE
CITY CLERK

City of Tucson Petition for Political Party Recognition

Political Party to be known as: Green Party of Pima County

I have completed the process described in Arizona Revised Statutes (A.R.S.) §16-803.B, subsections 2 through 5, and have determined a total of 2,044 signatures included on 220 petition pages were found to be eligible for verification.

In accordance with the provisions of A.R.S. § 16-803.C and D, a 20% random sample of the eligible signatures was forwarded to the Pima County Recorder for verification.

Based on the attached Certification from the Pima County Recorder, and having completed the process described in A.R.S. § 16-803.H, I have determined the total number of valid signatures is 1,425. The number of valid signatures as projected from the random sample is at least one hundred percent of the minimum number required (1,233).

Pursuant to the provisions of A.R.S. § 16-802, I hereby certify the following:

- that I have examined the signatures on the petition; and
- that it contains the signatures of a number of qualified electors equal to not less than two per cent of the votes cast for mayor at the last preceding election; and
- that it contains the signatures of qualified electors in not less than one-fourth of the election precincts of the city.

Pursuant to A.R.S. § 16-803.I, the party shall be recognized and, pursuant to A.R.S. § 16-802, shall be represented by an official party ballot at the August 29, 2017 Primary Election.

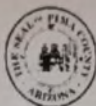
In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona.

Roger W. Randolph

 Roger W. Randolph, City Clerk
 Date: 3/17/2017

Attachment: Certification from the Pima County Recorder

S:\Campaign Finance\2017 Campaign Finance\2017 New Party\Receipts\Certificate of Sufficiency.doc



Mailing Address
P. O. Box 3145
Tucson, AZ 85702-3145

**F. Ann Rodriguez
Pima County Recorder**

Christopher J. Roads
Chief Deputy Recorder
Registrar of Voters
Document Recording: (520) 724-4350
Voter Registration: (520) 724-4330
Fax: (520) 623-1785
www.recorder.pima.gov

County Public Service Center
240 North Stone Avenue, 1st Floor
Tucson, AZ *Recording history one document at a time.*

**CERTIFICATION
PARTY RECOGNITION PETITION
GREEN PARTY OF PIMA COUNTY
CITY OF TUCSON**

I, F. Ann Rodriguez, Recorder for Pima County, Arizona, do hereby certify that I received 220 pages of the Party Recognition Petition for the Green Party in City of Tucson elections containing 409 signatures for verification.

The signatures were compared with the Voter Registration records of this office. Predicated on the State criteria for verification, this office was able to verify 301 signatures versus 108 that were invalidated.

I further certify that the pages contained signatures from voters in more than 34 precincts within the City of Tucson.

I further certify that the ten (10) signers of the Affidavit of Electors were all valid signatures.

Please see the attached report for the breakdown of the reasons for disqualification.

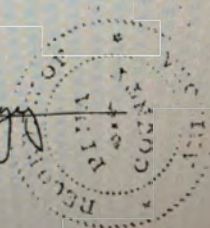
CITY OF TUCSON
RECEIVED

17 MAR 16 AM 10:00

OFFICE OF THE
CITY CLERK

F. Ann Rodriguez
F. Ann Rodriguez, Recorder
Pima County, Arizona

Date: 3-15-17



3/13/2017
4:13:58 PM

Petition Brief Tally Report

Page 1 of 1

GREEN PARTY OF PIMA COUNTY COT - RANDOM COT PARTY RECOGNITION

| Code | Reason | Valid | Total |
|------|--------------------------------------|-------|-------|
| R | SIGNATURE VALID | ✓ | 301 |
| 1 | NOT REGISTERED DATE OF SIGNING | | 15 |
| 2 | ADDRESS MISSING/ILLEGIBLE | | 8 |
| 2A | INVALID ADDRESS | | 1 |
| 3A | SIGNATURE COMPARISON | | 18 |
| 3B | SIGNATURE CANNOT BE IDENTIFIED/ILLEG | | 2 |
| 4A | SIGNING DATE MISSING/BAD DATE | | 8 |
| 4B | REGISTERED AFTER SIGN DATE | | 1 |
| 4C | SIGNED MORE THAN ONCE | | 4 |
| 5 | WRONG JURISDICTION | | 51 |

Total Invalid: 108

Total: 409

CITY OF TUCSON
RECEIVED

17 MAR 16 AM 10:00

OFFICE OF THE
CITY CLERK

CITY OF TUCSON – PETITION FOR POLITICAL PARTY RECOGNITION

To the Honorable Mayor and Council, and the City Clerk of the City of Tucson, State of Arizona:

I, the undersigned, a qualified elector of the City of Tucson, State of Arizona, hereby petition that a new political party become eligible for recognition, and be represented by an official party ballot at the next ensuing regular primary election, to be held on August 29, 2017, and accorded a column on the official ballot at the succeeding general election to be held on November 7, 2017. A new political party is entitled to representation as a political party on the official ballot through the next two regularly scheduled general elections for federal office immediately following recognition of the political party. Said party shall be known as Green Party of Pima County. I further declare that if I choose to use a post office box address on this petition, my residence address has not changed since I last reported it to the county recorder for purposes of updating my voter registration file.

| Signature | Printed Name | Actual residence address, description of place of residence or Arizona post office box address, city or town | Date of signing |
|-----------|--------------|--|-----------------|
| 1. | | | |
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| 9. | | | |
| 10. | | | |

Suzanne Mesich <Suzanne.Mesich@tucsonaz.gov> Feb 7 at 2:30 PM

To

cwi1950@gmail.com

CC

Pima County Green Party Ana Marrufo Deborah Rainone Roger Randolph Shawna Lee Suzanne Mesich mikece
Hide

Message body

Hello Chuck

This is in response to your email of January 27, 2019, in which you raised a concern about conflicting information on the ballot status for the Green Party of Pima County.

We reviewed the issue with our Elections Attorney and determined that A.R.S. § 16-804 governs continued representation of political parties in cities. Therefore, pursuant to A.R.S. § 16-804(B), the Green Party of Pima County will need to have voter registration equal to "at least two-thirds of one percent of the total registered voters in the City of Tucson" as of March 25, 2019 (155 days immediately preceding the Primary Election).

Thank you.

Suzanne Mesich
Assistant City Clerk
Tucson City Clerk's office
781-4213



MEMORANDUM

DATE: April 9, 2019

TO: The Honorable Mayor
and Council Members

FROM: City Clerk (4213)

SUBJECT: August 27, 2019 Primary Election – Qualified Political Parties

Attached is the notice of political parties qualified for the August 27, 2019 Primary Election ballot.

Nomination petitions may be filed April 29 through May 29. If you have any questions, please do not hesitate to contact me.

Respectfully,

Roger W. Randolph
City Clerk

RWR

Attachment: Notice

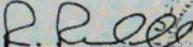
cc: City Manager
City Attorney
Candidates
Democratic Party Chairperson
Republican Party Chairperson
Libertarian Party Chairperson
Green Party Chairperson
League of Women Voters

AUGUST 27, 2019 PRIMARY ELECTION NOTICE

I, the undersigned, the duly qualified and appointed City Clerk for the City of Tucson, Arizona, do hereby give notice that pursuant to the provisions of the Arizona Revised Statutes, § 16-804(E), I have determined that the following political parties have qualified for placement on the ballot for the City of Tucson Primary Election to be held August 27, 2019.

Democratic Party
Republican Party
Libertarian Party

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, this 9th day of April, 2019.



Roger W. Randolph
City Clerk

