IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

NO. 58 ORIGINAL

THE AMERICAN PARTY, ET AL,
Plaintiffs,

V.

STATE OF NEW YORK, ET AL,
Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT,

STATEMENT IN SUPPORT OF MOTION TO FILE BILL OF COMPLAINT,

BRIEF IN SUPPORT OF MOTION TO FILE BILL OF COMPLAINT

AND

COMPLAINT

CLIFFORD L. DUKE, JR.
Duke, Altfest and Licker
625 Broadway
San Diego, California

GLORIA T. SVANAS
Svanas and Svanas
418 West Fourth Street
Odessa, Texas 79761

ATTORNEYS FOR PLAINTIFFS,
THE AMERICAN PARTY, ET AL

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972
NO. _____ ORIGINAL

THE AMERICAN PARTY, ET AL,
Plaintiffs,

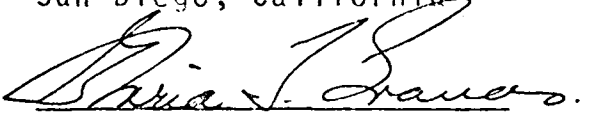
V.

STATE OF NEW YORK, ET AL,
Defendants.

MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT

THE AMERICAN PARTY, a national political party, respectfully asks leave of the Court to file the Bill of Complaint which is submitted herewith.

CLIFFORD L. DUKE, JR.
Duke, Altfest and Licker
625 Broadway
San Diego, California



Gloria T. Svanas
Of Counsel

ATTORNEYS FOR PLAINTIFFS,
THE AMERICAN PARTY, ET AL

INDEX

INDEX OF AUTHORITIES

STATEMENT IN SUPPORT OF
MOTION FOR LEAVE TO FILE COMPLAINT

A controversy exists among the several States of Arkansas, Florida, Georgia, Hawaii, Illinois, Indiana, Maine, Massachusetts, Missouri, Nebraska, Nevada, New York, Rhode Island, South Dakota, Texas, West Virginia, Wyoming and District of Columbia, within the meaning of Article III, Section 2 of the United States Constitution in that each of these States is exerting power and control over the Federal electoral process by the control of ballot position and the exclusion of the AMERICAN PARTY label and its local affiliates and the names of the electors pledged to its nominees for President and VicePresident from the General Election Ballot.

The Constitution says that the State shall pass NO LAW.....but the election laws are volumes of many, many laws violative of the First and Fourteenth Amendments.

The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. The right of suffrage can be denied by a debasement or dilution of the weight of a citizens vote just as effectively as by wholly prohibiting the free exercise of the franchise. The exclusion of the nominees of the AMERICAN PARTY from the ballot by these States effectively dilute the weight of the ballot of the citizens of another State casting their vote for the nominee of the AMERICAN PARTY.

If a State Board of Elections can tell the American people that they must vote for someone they do not know, may not agree with, or believe to be a fool, then thought is regimentated, authority substituted for liberty and the great purpose of the First Amendment to keep uncontrolled the freedom of choice is defeated.

The State interest, if there ever were one, in regulating the size of the ballot is consistently violated by the submission to the voters of voluminous and confusing referendum questions which in most instances are negatively stated in print too small to be read or comprehended by the voter. The size of the ballot does not protect the sanctity of the ballot box. The exclusion of political parties from the ballot for lack of space is rationalized by some Courts without admitting the real purpose of control by the State and the denial of suffrage.

There is a very real property right in the opportunity to seek the vote as a Candidate. There is a real property right in the opportunity to cast one's secret ballot for a candidate of one's choice and a candidate who expresses the philosophy and ideas of the voter.

In parnes patriae, Courts recognize the obligation of the Federal Government to provide a forum for determination of disputes that would have been resolved by force or diplomacy before the formation of the Union. It is obvious from the decisions while it is not the province of the Government to interfere in the mere matter of private controversy between individuals, or to use

its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large and are of respect of matters which by the Constitution are entrusted to the care of the Nation, and concerning which the Nation owes the duty to all of the citizens of securing to them their common rights, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the Courts, or to prevent it from taking measure therein to fully discharge those constitutional duties.

This Honorable Court has never lacked in imagination in its aggressive protection of the right of suffrage. The exclusion of the AMERICAN PARTY from ballot position is the direct denial of the right of the citizens of that State to cast a vote for the candidate of their choice. Furthermore, voting for a candidate under a party label is the only possible full and meaningful exercise of the right to vote. Not only are the citizens of these States named as defendants being denied their right to vote for the candidate of their choice, but furthermore, the quality of the vote of the citizens of the remaining twenty-five (25) States which have granted ballot position to the AMERICAN PARTY are not able to cast a full and meaningful vote because their vote has been diluted in direct proportion to the 192 electoral votes represening the deprived voters. A dilution or debasement of the vote are violative of the command of the Fourteenth Amendment that no State shall deny to any person the equal protection of the law.

It is a horrendous insurmountable task to attempt the challenge of each provision

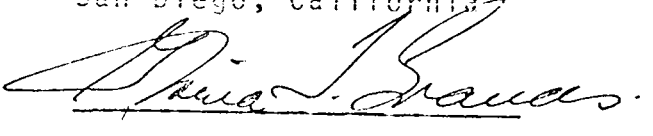
of each election code in each State of these United States and the District of Columbia. The State Courts, the Federal Courts, and by appellate procedure to the Supreme Court, section by section of election codes have been struck down by failing to stand constitutional muster. Nevertheless, the countless millions deprived of their constitutionally protected right to vote prior to the Court decisions are too numerous to imagine; but still, the battle rages. This Honorable Court recently recognized probable jurisdiction in another case from the State of Ohio after this Court had already rendered a decision (upon appeal) concerning the election laws of the State of Ohio which were then relegislated and again the Courts are flooded with complaints. Two threeJudge Federal Courts were required in the great State of Texas, together with an appeal to the United States Supreme Court and two sessions of the Legislature were required before the effective implementation of the abolishment of the excessive filing fees. The lower Courts are constantly flooded with constitutional challenges - pro se - and in some instances with legal counsel, who in each instance question the vagueness, duplicity, complexity and obvious and invidious discrimination which in each and every instance denies millions of voters the choice, and the candidate is denied the opportunity to seek election. Additional lower Court rulings of insubstantionality of qualifying questions effectively defect another group of Court challenges.

There being no other forum available to the parties, and there being a clear threat of imminent and irreparable damage by the loss of the rights of these voters who choose to participate in and elect the nominees of the AMERICAN PARTY are a degree of

injury makes relief an absolute necessity. It is imperative that this Court exercise its original jurisdiction by granting leave to file the instant Complaint and grant a full hearing to determine the rights of the AMERICAN PARTY as a national political party and its rights to ballot position in each of the States and the District of Columbia. These voters are wholly without protection of their constitutional rights unless this Court issue its Writ enjoining the election officials of the several States from excluding the nominees of the AMERICAN PARTY from the General Election Ballot in November, 1972, pending the reconvening of the full Court and a determination on the merits as prayed for in the Complaint.

It is respectfully submitted that the Motion for Leave to File the Complaint should be granted.

CLIFFORD L. DUKE, JR.
Duke, Altfest and Licker
625 Broadway
San Diego, California



Gloria T. Svanas
Of Counsel

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

NO. _____ ORIGINAL

THE AMERICAN PARTY, ET AL,
Plaintiffs,
V.

STATE OF NEW YORK, ET AL,
Defendants.

BRIEF ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

STATEMENT OF THE CASE

Plaintiff, the AMERICAN PARTY, a national political party and its local affiliates with electors pledged to its nominees for President and Vice-President of the United States seeks to envoke the original jurisdiction of the Supreme Court of the United States under the authority of Section 2, Article III, of the Constitution of the United States in that a controversy exists among the several Defendant States within the meaning of Section 2, Article III of the Constitution of the United States in that each of these States is aggressively and purposely excluding the

AMERICAN PARTY and its local affiliates from ballot position under its party label for electors pledged to its nominees for President and VicePresident of the United States from the General Election Ballot in November, 1972.

The electors pledged to support the nominees of the AMERICAN PARTY for President and Vice-President of the United States have been excluded by State election laws from the General Election ballot in Arkansas.

A state Court in Arkansas has reversed the certification by the Secretary of State and has purged the AMERICAN PARTY from the ballot in Arkansas.

The object of the Complaint is to gain ballot position in each State and the District of Columbia for the AMERICAN PARTY for the General Election Ballot in November, 1972, and on all of the ballots of each successive general election and, more particularly, to obtain a full and final authoritative adjudication of the rights and powers of the respective States with respect to the imposition of restrictions on access to the ballot box. It being further contended by the Plaintiff that all of the facts and circumstances surrounding the electoral process should be discovered and adduced in a preceding to which all interested States and persons can be made parties. Plaintiff further prays for injunctive relief to guarantee ballot position to electors pledged to support the nominees of the AMERICAN PARTY in the General Election for November, 1972, while this cause is being determined by the Supreme Court of the United States and for permanent injunction against interference with ballot position

for the AMERICAN PARTY upon final hearing of the merits.

There being no other competent forum available to parties, and there being a clear threat of imminent and irreparable damage and loss to the property rights and constitutional rights of Plaintiff, the AMERICAN PARTY, and the members of the AMERICAN PARTY and those persons choosing to support the candidates and nominees of the AMERICAN PARTY due to the exclusion of the AMERICAN PARTY nominees and party labels from the General Election Ballot, it is imperative that this Court exercise its original jurisdiction by granting leave to file the instant Complaint and proceeding to determine the rights of these States with respect to control of the ballot box and the exclusion of the AMERICAN PARTY as well as granting the further relief prayed for in the Complaint.

SPECIFICATION OF POINTS

I.

THE COMPLAINANT REFLECTS A JUDICIAL CASE AND CONTROVERSY OVER WHICH THIS COURT HAS ORIGINAL JURISDICTION.

II.

ALL INDISPENSABLE AND NECESSARY PARTIES ARE BEFORE THE COURT.

III.

THE STATES ARE THE REAL PARTIES AT INTEREST.

IV.

THE COMPLAINT PRESENTS A QUESTION OF LAW TO BE DETERMINED SOLELY BY THIS COURT.

V.

THE INJUNCTIVE RELIEF PRAYED FOR BY PLAINTIFF IS NECESSARY.

VI.

IT IS IMPERATIVE THAT THE SUPREME COURT ASSERT ITS JURISDICTION.

Manifestly, the instant Complaint reflects the involvement of parties of the requisite character to invoke the original jurisdiction of the Court. The question is whether the Complaint presents a "case" or a "controversy" within the meaning of Section 2, Article III of the Constitution.

I.

THE COMPLAINT REFLECTS A JUSTICIABLE CASE AND CONTROVERSY OVER WHICH THE COURT HAS ORIGINAL JURISDICTION.

A State law regulating elections is a justiciable controversy under the Constitution and cannot be relegated to the political arena. WILLIAMS V. RHODES, 393 U.S. 23, 28, 21 L. Ed. 2d 24, 30, 89 S. Ct. 5.

The obvious necessity for judicial interpretation and clarification of the conflicting and constantly changing entangling web of voluminous election codes in each of the States has resulted in endless multiplicity of litigation on both the Federal and State level. It is apparent the original jurisdiction of the United States Supreme Court is the only forum available to the AMERICAN PARTY.

".....with whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." COHENS V. VIRGINIA 6 WHEAT, 264, 404, 5 L. Ed. 257, 291 (1821).

The obligations which the government is under to promote the interest of all and to prevent the wrongdoing of one resulting in injury to the general welfare is often of itself sufficient to give its standing in Court. In re DEBBS, 158 U.S. 564, 565. UNITED STATES V. AMERICAN BELL TELEPHONE, 128 U.S. 315, 366-370. UNITED STATES V. SAN JACINTO PEN COMPANY, 125 U.S. 273, 282-285. MASSACHUSETTS V. MELLON, 262 U.S. 447, 485.

Protection of the right of suffrage is a fundamental right of substance not to be hindered by procedural defects in seeking the only remedy available. The flexibility of the jurisdiction of this Court remains today as a distinctive feature of its procedure.

II.

ALL INDISPENSABLE AND NECESSARY PARTIES ARE BEFORE THE COURT.

All of the parties whose presence is indispensable, necessary or proper for the determination of a case or controversy between these States are properly made parties-Defendant.

The relief sought here is neither against nor in behalf of the absent voters. If the Court should grant all of the relief requested by Plaintiff, the absent voters would have been afforded equal protection.

The only question involved in the present controversy is do the States have the power to deny access to the ballot box by the voters and exclude political parties from ballot position by arbitrary, discriminatory laws peculiar to that State, even to the exclusion of the nominees for President and VicePresident of the United States.

III.

THE STATES ARE THE REAL PARTIES AT INTEREST.

Of course, in order to invoke the original jurisdiction of the Supreme Court on the ground that the State is a party, the State must be the real party at interest and not merely representing the interest of her citizens. ARKANSAS V. TEXAS, 74 S. Ct. 109, 346 U.S. 368, 369, 98 L. Ed. 80.

There can be no doubt here that the named States are the real parties at interest. They are representing themselves not only in forum, but in substance, because where fundamental freedoms are involved, the State, not the challenging party, has the burden of demonstrating that equal protection and due process standards have been met. By the presentation of the constitutional challenge, each of the States is required to meet the burden of demonstrating necessity and that equal protection and due process standards have been met. HARPER V. VIRGINIA BOARD OF ELECTIONS, 383 U.S. 663, 16 L. Ed. 2d 169, 86 S. Ct. 1079.

IV.

THE COMPLAINT PRESENTS QUESTION OF LAW TO BE DETERMINED SOLELY BY THIS COURT.

Without a doubt, the right to vote is one of the most precious, if not the most prcious, of all our constitutional rights. Other rights, even the most basic, are illusory if the right to vote is undermined. WESBERRY V. SANDERS, 376 U.S. 1, 17, 11 L. Ed 2d 481, 492, 84 S. Ct. 526. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right. The right to associate for the advance ment of beliefs and ideas and the right to support candidates of one's choice have well established claim to inclusion in justiciable as distinguished from political questions. It is uncontroverted that the United States Supreme Court is the guardian of the health,

welfare and prosperity of all the citizens. The evident philosophy of the framers of the Constitution was to grant original jurisdiction to this Court over issues involving basic adjustments within the Federal structure. The entire Federal structure is threatened and even impaired by burdensome, arbitrary, capricious and suffocating statutory requirements prohibiting access to the ballot box.

The State Courts cannot speak with authority on the issue of the election of the President and VicePresident and Congress of the United States. Our present controversy, moreover, involves the threatened invasion of rights guaranteed by the equal protection and due process clauses of the Federal Constitution, over which the Courts of no State have the final say.

The right to vote was long ago defined as a fundamental political right, YICK WO V. HOPKINS, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886). And the right to exercise the franchise includes the right to cast one's vote effectively, CARTER V. DIES, 321 F. Supp. 1358, 1361 (N.D. Tex. 1970), whether that effectiveness be measured quantitatively, REYNOLDS V. SIMS, 337 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1954) (Apportionment) or qualitatively, WILLIAMS V. RHODES, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968) (right to choose one's candidate). It is axiomatic under recent Supreme Court decisions that the fundamental interests involved in voting rights are to be protected from encumbrances other than those necessary to serve a compelling governmental interest. KRAMER V. UNION FREE SCHOOL DISTRICT, 395 U.S. 621, 628, 89 S. Ct. 1886, 23 L. Ed. 2d

583 (1969); WILLIAMS V. RHODES, 393 U.S. 23, 31, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968); HARPER V. VIRGINIA STATE BOARD, 383 U.S. 663, 670, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966).

A statute which is alleged to have worked unconstitutional deprivations of Petitioner's rights is not immune to attack simply because of the mechanism employed by the Legislature such as the State election statutes circumventing a Federally protected right. GOMILLION V. LIGHTFOOT, 364 U.S. 339, 346, 5 L. Ed. 2d 110, 81 S. Ct. 125. NIXON V. HERNDON, 273 U.S. 536, 540, 71 L. Ed. 759, 761, 47 S. Ct. 446.

Any abridgment of the right to vote, run for office, or participate on an equal basis in the electoral process can only be justified upon a showing of necessity. WESBERRY V. SANDERS, 376 U.S. 1, 17, 18, 11 L. Ed 2d 481, 84 S. Ct. 526; HARPER V. VIRGINIA BOARD OF ELECTIONS, 383 U.S. 663, 670, 16 L. Ed. 2d 169, 86 S. Ct. 1079; WILLIAMS V. RHODES, 393 U.S. 23, 32, 40, 21 O. Ed. 2d 24, 32, 36; 89 S. Ct. 5; KONIGSBERG V. STATE BAR, 366 US 36, 61, 6 L. Ed 2d 105, 123, 81 S. Ct. 997.

A political party cannot be excluded from the ballot by a Court simply because its membership is characterized as small without abridging rights guaranteed by the equal protection clause of the Fourteenth Amendment to the United States Constitution. SWEEZY V. NEW HAMPSHIRE, 354 U.S. 234, 250, 251, 1 L. Ed. 2d 1311, 77 S. Ct. 1203; PREISLER V. ST. LOUIS (S. Ct. Mo.) 322 SW 2d 748, 753; BRITTON V. BOARD OF ELECTION COMRS.,

129 Cal. 341, 61 P. 1115, 1117, 1118; CARRINGTON V. RASH, 380 U.S. 89, 96, 13 L. Ed. 2d 675, 85 S. Ct. 775; HARPER V. VIRGINIA BOARD OF ELECTIONS, 383 U.S. 663, 670, 16 L. Ed. 2d 169, 86 S. Ct. 1079; HARMAN V. FORSSENIUS, 380 U.S. 528, 540, 14 L. Ed. 2d 50, 85 S. Ct. 1177.

V.

THE INJUNCTIVE RELIEF PRAYED FOR BY PLAINTIFF IS NECESSARY.

The issuance of this Court's Writ of Injunction enjoining the election officials of the various States from excluding the AMERICAN PARTY from the General Election Ballot in November, 1972, is not an intrusion of the States' autonomy, but rather is a vindication of the supremacy of the general government in providing for the constitutional protection of the rights of the voters. It is not by the office of the person to whom the Writ is directed but the nature of the thing to be done that the propriety or inpropriety of issuing an injunction is to be determined. VIRGINIA V. WEST VIRGINIA, 246 U.S. 564; 62 L. Ed. 883.

This Court could simply order that the nominees of the AMERICAN PARTY be placed on the ballot in each State for the General Election in November, 1972, pending the determination on the merits of the constitutionality of the separate election laws in each State. GOMILLION V. LIGHTFOOT, supra; GRIFFIN V. SCHOOL BOARD OF PRINCE EDWARD COUNTY, 377 U.S. 218, 232, 12 L. Ed. 2d 256, 84 S. Ct. 1226; ROGERS V. PAUL, 382 U.S. 198, 199,

200, 15 L. Ed 2d 265, 86 S. Ct. 358; GRATHEN V. VIRGINIA, 3 U.S. 320; CALIFORNIA V. SOUTHERN PACIFIC RAILROAD, 157 U.S. 229, 249; VIRGINIA V. WEST VIRGINIA, 246 U.S. 564, 62 L. Ed. 883; LOUISIANA V. MISSISSIPPI, 202 U.S. 1, 58; EX PARTE YOUNG, 209 U.S. 123, 52 L. Ed. 714; UNITED STATES V. SHIPP, 203 U.S. 563; 28 U.S.C.A. 1651.

For this Court to order the printing of the AMERICAN PARTY label and the nominees of the party upon the General Election Ballot of each State and the District of Columbia would not impede or disrupt the holding of the elections. Nevertheless, the failure to issue such an order will directly result in the denial of the right to vote to qualified voters in the eighteen (18) States listed herein.

Necessary minimum standards for constitutional protection of equal suffrage are exemplified by the designation by each State of the day of the general election to be held on the Tuesday following the first Monday in November in each even numbered year. Beyond this standard, the several States are impairing the right to vote by limiting access to the ballot box. Any presumption of constitutionality of the State statutes restricting access to the ballot is outbalanced by the protection afforded by the First and Fourteenth Amendments of the Constitution.

There can be no harm in entering the party label of the AMERICAN PARTY on the General Election Ballot in each State. The AMERICAN PARTY of necessity will be compelled to support its allegations upon a trial in this cause and the competition for votes

will answer the question of voters' choice.

VI.

IT IS IMPERATIVE THAT THE SUPREME COURT ASSERT ITS JURISDICTION.

It has been determined by this Court that the State Courts cannot settle these controversies and that the Supreme Court has the power to do so. REYNOLDS V. SIMS, supra, WILLIAMS V. RHODES, supra, KRAMMER V. UNION FREE SCHOOL DISTRICT, supra, HARPER V. VIRGINIA STATE BOARD, supra, NIXON V. HERNDON, supra, BULLOCK V. CARTER, 31 L. Ed. 2d 92.

We cannot imagine the Supreme Court doing anything else other than exercising its power since it has, as a matter of record, already recognized the urgent need for abating the increasing multitude of constitutional questions between the States over their power as contrasted with the federally protected constitutional rights.

The magnitude of the problem here involved is illustrated by the fact that the voters in eighteen (18) States of the United States will be denied the right to exercise and cast a vote for a candidate of their choice in the Presidential elections. Based on the enactments of the State Legislatures constantly changing and multiplying the limitations on the free exercise of the suffrage, it is established that the problem is therefore "capable of repetition, yet evading review". SOUTHERN PACIFIC TERMINAL COMPANY V. INTERSTATE

COMMERCE COMMISSION, 219 U.S. 498, 515, 55 L. Ed. 310, 316, 31 S. Ct. 279, MOORE V. OGILVIE, 394 U.S. 814, 816, 23 L. Ed. 2nd 1, 4, 89 S. Ct. 1493. The power of the State to exclude national political parties and their nominees for President and Vice-President from ballot position is incongruous to this Court's decisions in the one-man-one-vote rule, abolishment of unreasonable residency requirements, abolishment of abolishment of excessive filing fees, and the abolishment of the apportionment formulas without constitutionally permissible justification for deviation from precise equality; and Congress' enactment of the Federal Civil Rights Act and the Presidential Election Campaign Act.

The First and Fourteenth Amendments say that Congress and the States shall make "no law" which abridges freedom of speech or of the freedom of association for political purposes. In order to sanction a system of State's control of ballot position for the nominees for President and Vice-President would be to say that "no law" does not mean what it says, that "no law" is qualified to mean "some" laws insofar as the States are not challenged. In this Nation, every voter, no matter for whom he shall choose to vote, should be freed from the censorship of the ballot by the State. Also, the establishment of definite and authoritative standards by which the States can be governed in asserting their powers in regard to the ballot is absolutely essential to the defense of the Federally protected constitutional rights of equal protection and due process under our Federal electoral system. The present Motion and Complaint afford this Court the

opportunity, and, moreover, the obligation, to meet this need.

CONCLUSION

The Complaint which the AMERICAN PARTY asks leave to file presents a basic question of fundamental freedom of the right of suffrage. The power of political parties is exerted through the Legislature in controlling and manipulating the ballot for the protection of the major parties by the exclusion of minority groups of conflicting opinions and ideals. This impairment by the States of the constitutional rights of the citizens of the United States is one which only the Supreme Court of the United States can adjudicate. Therefore, in conformity with the high purpose of the powers conferred on this Court by Section 2, Clause 2, Article III of the Constitution of the United States and the traditional roll of this Court as sole arbiter of disputes which, but for the Federal system, would be subject of diplomatic adjustments between the States, this Court should exercise its authority to hear and determine this question of paramount interest to the States and in vindication of the Federal electoral system.

Respectfully submitted,

CLIFFORD L. DUKE, JR.
Duke, Altfest and Licker
625 Broadway
San Diego, California

Gloria T. Svanas
Of Counsel

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

NO. _____ ORIGINAL

THE AMERICAN PARTY, ET AL,
Plaintiffs,

V.

STATE OF NEW YORK, ET AL,
Defendants.

COMPLAINT

The AMERICAN PARTY, a national political party, for itself, and for its local affiliates, and for the benefit of the citizens of each State who choose to vote for the nominees of the AMERICAN PARTY, John G. Schmitz for President and Thomas J. Anderson for Vice-President of the United States, to defend their Federally protected constitutional rights as candidates and to vote, Plaintiffs, allege as follows:

For a First Cause of Action:

I.

The original jurisdiction of this Court is invoked under the authority of Article III, Section 2 of the Constitution of the United States, and 28 U.S.C. 1651, AND Rule 23, F.R.C.P.

II.

The AMERICAN PARTY brings this action to vindicate the supremacy of Federal election law. It seeks to enjoin the officials of the States of Florida, Georgia, Hawaii, Illinois, Indiana, Maine, Massachusetts, Missouri, Nebraska, Nevada, New York, Rhode Island, South Dakota, Wyoming, Texas, West Virginia, Arkansas, and the District of Columbia from enforcing provisions of the election codes and State statutes that are violative of the First and Fourteenth Amendments to the United States Constitution denying access to the ballot by voters desiring to cast a vote for President of the United States and Vice-President of the United States and other National candidates under the party label of the AMERICAN PARTY, and its local affiliates.

III.

The Plaintiffs, the AMERICAN PARTY, and its local affiliates, seek ballot position under party label for its nominees for President and Vice-President of the United States in each of the several States named herein on the General Election Ballot in November, 1972. The AMERICAN PARTY has made

diligent and comprehensive administrative attempts and has filed judicial actions to secure ballot position under its party label or the label of one of its local affiliates in each State the AMERICAN PARTY has been certified to ballot position in twenty-five (25) States as of the date of filing of this Complaint. The Defendants act by and through the Governor and the Secretary of State of the several States in excluding the electors pledged to support the nominees of the AMERICAN PARTY from ballot position under its party label. The election codes of each of the several States are constantly changing and arbitrary, capricious and invidiously discriminatory against the AMERICAN PARTY and its local affiliates in each of the following instances:

A. ILLINOIS - The Election Laws of Illinois are composed of two volumes codified as Chapter 46. An established political party is one which polled at least 5% of the vote for its candidate for Governor in the most recent election or 5% of the vote for any of its candidates (by statute effective July 1, 1970). The alternative is qualification by petition requiring twenty five thousand (25,000) signatures of which no more than thirteen thousand (13,000) may be from any one county. The filing deadline date is August 7, 1972, which was three days after the nomination of the candidate for President by the AMERICAN PARTY. Action is pending in State Court contesting the validity of the filing deadline.

B. RHODE ISLAND - Title 17 of the Election Code requires five per cent (5%) of the vote for Governor for qualification

for ballot position. The alternative qualification is by petition containing five hundred (500) signatures of qualified voters to be filed with and approved by local election boards with an August 10th deadline. In 1970, the Rhode Island Supreme Court determined that the signature on the petition must be exactly as registered. The rejection of signatures on the AMERICAN WALLACE PARTY petitions resulted in an appeal to the State Board of Elections and extensive hearings on August 18th and 19th, which Board now has the appeal under consideration. The appeal hearing resulted in the exposure of gross deficiencies in the local Board procedures.

C. FLORIDA - Chapter 101 of the Election Code specifies that a political party must have registered voters equal to five (5%) per cent of the total number of registered voters in the State. The alternative for ballot position is a petition to be filed no later than August 15th, and the nominees of the AMERICAN PARTY were not named until the National Convention on August 4th and 5th. The Election Code also specifies a fee of ten (10¢) cents for checking each name submitted on a petition. The AMERICAN PARTY has filed a Federal Court action in Florida contesting the filing deadline for which there has been impaneled a three-Judge Court.

D. INDIANA - The Election Code of Indiana was codified in 1971. Ballot position is based on the candidate for Secretary of State of the party having received onehalf (½) of one (1%) per cent at the most recent election or the party may nominate by

convention or petition. However, the petitions are required to list the names of the candidates. The nominees of the AMERICAN PARTY for President and Vice-President were nominated by the National Convention in August, and the presidential petition was short in the number of signatures and has been filed subject to the acceptance by the Election Board. The AMERICAN PARTY has filed suit in the Federal District Court for an extension of time to secure signatures for the presidential petition. Suit has also been instituted in the State Court to compel the Governor as official of the State Election Board to certify the nominees of the AMERICAN PARTY for Governor and Lt. Governor for the General Election Ballot.

E. NEW YORK - The Election Code is contained within Book 17 consisting of two volumes and provides that ballot position is based on a party securing at least fifty (50,000) thousand votes for Governor. The nominee of the AMERICAN PARTY for President (under the name of the Courage Party) qualified for ballot position in 1968. The party was barred from the 1970 ballot for lack of required signatures. A minimum of twenty (20,000) thousand signatures is required for the petition for ballot position of which at least one (100) hundred shall reside in one-half (½) of the congressional districts of the State. There is allowed a total of 42 days for the circulation and filing of the petitions. Effective June, 1971, the Election Code was amended to increase the required number of signatures from 12,000 to 20,000 although the State's population was declining as was reflected by a loss of congressional seats in reapportionment.

F. COMMONWEALTH OF MASSACHUSETTS - The Election Code is found in Chapter 50 of the statutes providing that a political party is one whose candidate for Governor polled three (3%) per cent of the vote for Governor in the most recent election. The alternative for qualification for ballot position is by petition with signatures equaling three (3%) per cent of the last vote for Governor (56,038) with no more than one-third (1/3) from one county. The filing date for the petitions was July 5th, being a date prior to any scheduled National Convention of any political party. The AMERICAN PARTY was qualified for ballot position in 1968.

G. WEST VIRGINIA - The Election Code is contained in Article 5 and requires ten (10%) per cent of the vote for the office of Governor for ballot position. The alternate method is the filing of Certificates with signatures equalling not less than one (1%) per cent of the entire vote cast at the last preceding General Election with the condition precedent of the party having filed a declaration and filing fee of $2,000.00. There are specific technical and complicated procedures for the preparation and circulation of the petition and the petitions are required to be filed on May 8th, being nearly three months prior to the holding of the National Convention for nomination of candidates.

H. GEORGIA - The Election Code of Georgia is well known to this Court. It requires the party's candidate for Governor must secure ten (10%) per cent of the total vote cast for the office and the party's candidate for President must receive at

least twenty (20%) per cent of the total vote cast in the nation for that office. Consequently, although the Georgia electoral votes were cast for the nominee of the AMERICAN PARTY in 1968, this candidate did not receive twenty (20%) per cent of the National vote and the party has been purged from the ballot. Additionally, the State Election Code requires that the party certify electors at a specific time. The subsequent expulsion of the State's party officials by the National Convention in August, 1972, was too late to qualify the nominee for President by the filing of petitions containing signatures of not less than five (5%) per cent of the total number of electors elgible to vote in the last election and the further qualification that such petitions be filed in June.

I. MISSOURI - The Election Code in Missouri was repealed in 1969, and is now codified under Section 120 of the statutes. The Missouri Code is unique in providing for qualification in a county or district by receiving more than two (2%) per cent of the vote for local offices and the provision that the party must also poll two (2%) per cent of the vote for Statewide offices. The nominee of the AMERICAN PARTY qualified for ballot position in 1968, and was automatically qualified Statewide in 1970. However, the AMERICAN PARTY did not have a candidate polling two (2%) per cent of the Statewide votes in 1970, and consequently the party remains qualified in a substantial number of the local districts only. Alternate ballot position is provided for by petition requiring signatures either in a number equal to one (1%) per cent of the

total vote cast for Governor in the most recent gubernatorial election in each congressional district of the State or a number equal to two (2%) per cent of the total votes cast for Governor in one-half (½) of the congressional districts and provides that the petition must be filed no later than July 31st. A suit in Federal Court to secure ballot position for the nominee for President and Vice-President is to be filed. Suit was recently filed in Federal Court in Missouri contesting the constitutionality of the resident requirements for candidate for Governor, but the Federal Court case was dismissed after the Supreme Court of Missouri's ruling that the Candidate for Governor on the Republican ticket did in fact meet the constitutional requirement.

J. HAWAII - The Election Code in Hawaii is under Title 2 and is codified under Chapters 11 through 18. As of 1970, a party must receive ten (10%) per cent of all the votes cast for any of the offices voted upon by all of the voters of the State to qualify for ballot position. The alternative qualification by petition requires signatures not less than one (1%) per cent of the total registered voters of each of the States or counties at the time of filing, which is in June, being 120 days prior to the next primary. The Code further requires party rules and officers to be filed simultaneously, which is two months prior to the holding of the National Convention for nomination for President and Vice-President.

K. NEBRASKA - The Election Code is contained in Article 4 of the statutes requiring five (5%) per cent of the State

vote to have ballot position. The petition must contain signatures not less than one (1%) per cent of the total vote cast for Governor in the most recent election in at least five (5) of the thirtyeight (38) counties of the State and must be filed in February. In 1968, the AMERICAN PARTY qualified for ballot position by convention procedure which has since been eliminated from the Election Law. The Election Law is unique in Nebraska in that it provides that the names of persons in the political party may be submitted for ballot position by petition or subject to the sole discretion of the Secretary of State those persons recognized by the news media as candidates will be given ballot position. The Election Law also requires Statewide organization and excludes the AMERICAN PARTY from qualification of its nominee for President as an Independent Candidate.

L. MAINE - The Election Code is contained in Title 21 and requires that a party to remain ballot qualified as a minor party must secure at least one (1%) per cent of the vote for Governor. The alternate method of qualification is by petitions containing signatures equal to not less than one (1%) per cent of the number of votes cast for Governor at the last gubernatorial election to be signed after January 1st and filed before June 19th (by an Amendment of the Law in 1971 changing the filing date from August 15th to June 19th). The filing day being more than two months prior to the National Convention of the AMERICAN PARTY, the nominees of the party were not available for petitions. In 1972, the Communist party challenged the Maine petition law in Federal

Court. The requirement of a $50,000 cash bond to secure the issuance of a restraining order against the printing of the ballot resulted in a dismissal.

M. NEVADA - The Election Code is contained in Title 24 and requires five (5%) per cent of the total vote for Representatives in Congress to qualify for ballot position or provide for the alternate qualification by petition with signatures of registered voters equal to five (5%) per cent of the total number of voters who voted for Representatives in Congress in the last preceding General Election to be filed on July 7th, being one month prior to National nominating convention. The AMERICAN PARTY qualified for ballot position in 1968, and its nominee received more than five (5%) per cent of the vote, but the party candidate received only four (4%) percent of the vote in 1970, and the party was purged from ballot position. The Nevada Election Code is unique in that candidates are frozen to the political party affiliation as of the prior September 1st.

N. SOUTH DAKOTA - The Election Code is contained in Title 12 of the statutes and ballot qualification requires ten (10%) per cent of the vote for Governor. The qualification by petition is unique in that by securing the signatures of ten (10%) per cent of the total number cast for Governor and filed by April entitles the party to also participate in the primary. The nominee of the AMERICAN PARTY was qualified for ballot position in 1968, as an Independent Candidate which requires a petition with signatures of a number between two (2%) per cent and

five (5%) per cent of the total vote cast for Governor in the preceding gubernatorial election to be filed sixty-five (65) days before the General Election or September 1st.

O. WYOMING - The Election Laws are under Title 22 of the statute and require a political party to have polled at least ten (10%) per cent of the total vote cast for representative in Congress at the most recent election. The alternate provision for qualification is by petition containing signatures of a number not less than five (5%) per cent of the total vote for representative in Congress in the most recent election, which would total 5,815.

P. TEXAS - The Election Code is codified in one entire volume of the State statutes and requires that a political party receive two (2%) per cent or more of the votes for Governor to nominate by convention or primary and requires all political parties receiving more than 200,000 votes for Governor to hold a primary election. As an alternate for qualification, a political party which has complied with the six (6) organizational steps beginning in the previous September with a declaration of intention to nominate by convention which requires the prior organization of a party on a Statewide basis by the formation of an Executive Committee, and the filing with the Secretary of State the names of the candidates filing under the party label in February and the filing of the party Rules in March, and the holding of precinct convention on the day of the primary, and the holding of County

conventions the following week and the State convention as provided by statute in each instance on a date certain, then if the list of the participants in the precinct conventions does not equal one (1%) per cent of the total vote for Governor in the last preceding general election, which in this instance is 22,358, the party is required to circulate supplemental petitions to be signed under oath certifying that such signers have not voted in or participated in any other party primary or convention to be filed with the Secretary of State on or before twenty (20) days after the date of the State convention or June 30th.

The AMERICAN PARTY was qualified for ballot position by precinct conventions in 1968, but this requirement was enlarged upon and changed by the requirement of a minimum number of participants and petition signatures. The party complied with the six steps of Statewide party organization and the requisite notices required by statute and filed the list of precinct participants and some additional signatures prior to the filing deadline. Suit was filed in Federal Court and the AMERICAN PARTY received temporary injunctive relief until September 1st to file the requisite aggregate number of signatures. By August 31st the AMERICAN PARTY had filed in excess of 25,000 signatures, but the Judgment of the three-Judge Federal Court pursuant to the trial on the merits on September 7th denied the relief prayed for by the AMERICAN PARTY, dissolved the injunction and sustained the constitutionality of the statute. The case is being appealed to the United States Supreme Court.

Q. DISTRICT OF COLUMBIA - The Election Laws of the District of Columbia are contained in Chapter 11 and provide for ballot qualification by petition with signatures equal to five (5%) per cent of the registered qualified electors of the District as of July 1st, which would be 13,146 to be filed on or before August 15th with the Board of Elections. The petition law in the District of Columbia is unique in that only 3,000 signatures to be filed on or before September 23rd are required to qualify candidates for District Delegate which is also a Federal officer seeking election by the same electorate. A three-Judge panel in 1970 held that the election requirements for signatures required of an independent candidate as compared to a party candidate did not constitute discrimination against the independent candidate. Nevertheless, the election law requirements for the number of signatures for the Presidential elector as compared to the District Delegate appear on their face to be discriminatory against the qualification of Presidential electors.

R. ARKANSAS - The fallibility of the control of the ballot by an official of a State is evidenced by the instant developments in the State of Arkansas. The Secretary of State had permitted an extension of thirty (30) days to fulfill the seven (7%) per cent signature qualification by petition. Nevertheless, after the Secretary had accepted the petitions pursuant to the extension Order, and certified the Party for ballot position, a State Court action abrogated the Secretary of State's action and purged the AMERICAN PARTY from the General Election Ballot.

IV.

The AMERICAN PARTY would further show that the nominees of the AMERICAN PARTY for President of the United States and Vice-President of the United States are not ineligible and are eligible as candidates under the provisions of the Constitution of the United States. To prevent the electors pledged to the nominees from having their names placed on the official General Election Ballot in November, 1972, in each and every State in the United States and in the District of Columbia deprive the nominees of the party and the voters of their basic Federally protected constitutional rights of suffrage.

V.

The AMERICAN PARTY alleges that the arbitrary, capricious, unreasonable and prohibitive restrictions for ballot position in each of the respective States as hereinabove alleged are constitutionally impermissible by disenfranchising members of the AMERICAN PARTY and denying them the equal right to vote for the candidate of their choice violative of the 1965 Voting Rights Act, 42 U.S.C. 1971 (a)2) (A)(B).

VI.

The AMERICAN PARTY alleges the exclusion from the General Election Ballot of 1972, is invidious discrimination violative of the Presidential Election Campaign Fund Act, Sec. 9001 of the Internal Revenue Code of 1954. Financial participation in the fund is limited by the numbers of vote cast in

1972, and, obviously, the AMERICAN PARTY will be denied the number of votes representing the eighteen (18) States where it has been excluded from the ballot. This limitation on the number of votes cast will cause irreparable financial losses to the AMERICAN PARTY in 1976.

VII.

The AMERICAN PARTY alleges that unless this Court immediately issues its extraordinary Writ enjoining the exclusion of the nominees of the AMERICAN PARTY under their party label from the General Election Ballot in November, 1972, in each of the States hereinbefore named that an interminable number of citizens of the United States will suffer irreparable harm and damage without due process in that they shall be denied access to the ballot box to support the candidates of their choice and to cast a full and meaningful vote in the election of the President of the United States and the Vice-President of the United States.

VIII.

The AMERICAN PARTY and its members have no other adequate remedy at law and no remedy whatsoever in any other Court. There is an absolute necessity that this Court exercise jurisdiction.

WHEREFORE, the AMERICAN PARTY prays:

1. That this Court take jurisdiction of the parties and subject matter.

2. That this Court hear and determine the controversy among these several States in the exclusion of the AMERICAN PARTY from ballot position in the General Election in November, 1972.

3. That a Temporary Injunction be issued restraining the officials of each of the States of Florida, Georgia, Hawaii, Illinois, Indiana, Maine, Massachusetts, Missouri, Nebraska, Nevada, New York, Rhode Island, South Dakota, Texas, Wyoming, West Virginia, Arkansas and the District of Columbia from excluding the States of electors pledged to the nominees for President and Vice-President of the United States by the AMERICAN PARTY from the General Election Ballot in November, 1972.

4. That upon final ajudication of this Complaint by this Court, the aforesaid Temporary Injunction referred to in 3 above be made perpetual and permanent.

5. For such other and further relief to which Plaintiffs may be entitled.

CLIFFORD L. DUKE, JR.
Duke, Altfest and Licker
625 Broadway
San Diego, California

Gloria T. Svanas
Of Counsel

CERTIFICATE OF SERVICE

I, GLORIA T. SVANAS, one of the attorneys for the AMERICAN PARTY, Plaintiff in the above entitled proceeding, do hereby certify that, on the 20 day of September, 1972, I served copies of the Motion for Leave to File Complaint, Statement in Support of Motion to File Bill of Complaint, Brief in Support of Motion to File Bill of Complaint and Complaint, by mailing triplicate copies thereof in duly addressed envelopes, with air mail postage prepaid, to each of the following:

Honorable Dale Bumpers, Governor
Mr. Ray Thornton, Attorney General
Little Rock, Arkansas

Honorable Reubin Askew, Governor
Mr. Robert L. Shevin, Attorney General
Tallahassee, Florida

Honorable Jimmy Carter, Governor
Mr. Arthur K. Bolton, Attorney General
Atlanta, Georgia

Honorable John A. Burns, Governor
Mr. George Pai, Attorney General
Honolulu, Hawaii

Honorable Richard Ogilvie, Governor
Mr. William J. Scott, Attorney General
Springfield, Illinois

Honorable Edgar D. Whitcomb, Governor
Mr. Theodore Sendak, Attorney General
Indianapolis, Indiana

Honorable Kenneth Curtis, Governor
Mr. James S. Erwin, Attorney General
Augusta, Maine

Honorable Francis Sargent, Governor
Mr. Robert H. Quinn, Attorney General
Boston, Massachusetts

Honorable Warren E. Hearnes, Governor
Mr. John Danforth, Attorney General
Jefferson City, Missouri

Honorable J. James Exon, Governor
Mr. Clarence Meyer, Attorney General
Lincoln, Nebraska

Honorable Mike O'Callaghan, Governor
Mr. Robert List, Attorney General
Carson City, Nevada

Honorable Nelson A. Rockefeller,
Governor
Mr. Louis J. Lefkowitz, Attorney General
Albany, New York

Honorable Frank Licht, Governor
Mr. Richard J. Israel, Attorney General
Providence, Rhode Island

Honorable Richard F. Kneip, Governor
Mr. Gordon Mydland, Attorney General
Pierre, South Dakota

Honorable Preston Smith, Governor
Mr. Crawford C. Martin, Attorney General
Austin, Texas

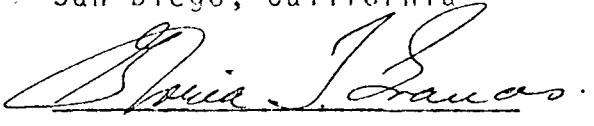
Honorable Arch A. Moore, Jr., Governor
Mr. Chauncey Browning, Jr., Attorney
General
Charleston, West Virginia

Honorable Stanley K. Hathaway, Governor
Mr. Clarence Brimmer, Attorney General
Cheyenne, Wyoming

Honorable Walter E. Washington,
Commissioner
Mr. C. Francis Murphy, Corp. Counsel
District of Columbia

All parties required to be served have been served.

CLIFFORD L. DUKE, JR.
Duke, Altfest and Licker
625 Broadway
San Diego, California



GLORIA T. SVANAS
Svanas and Svanas
418 West Fourth Street
Odessa, Texas 79761

ATTORNEYS FOR PLAINTIFFS,
THE AMERICAN PARTY, ET AL