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SEP 27 1972

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

MICHAEL RODAK, JR., CLERK

NO. 58 ORIGINAL

THE AMERICAN PARTY, ET AL,
Plaintiffs,

V.

STATE OF NEW YORK, ET AL,
Defendants.

AFFIDAVIT IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING ORDER

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.

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, WILLIAM K. SHEARER, being duly sworn,
deposes and says:

That he is a citizen of the United States
and the State of California.

That he is over the age of twenty-one
(21) years.

That he is a registered and qualified
elector and voter in the State of California.
That he resides at 8160 Palm Street, City of
Lemon Grove, County of San Diego, State of
California.

That he actively participated in the
organization of the AMERICAN PARTY, also
known as THE AMERICAN INDEPENDENT PARTY,
(hereinafter called "Party") in 1967 and
1968.

That he led the qualification efforts
for the Party in 1967 in all states of the
Union. That he has held offices in the
Party in the State of California and in
the national organizations of the Party,
and he is now a member of the National
Executive Committee and Ballot Position
Coordinator for the AMERICAN PARTY and also
Director of Ballot Qualification Procedures

for the nominees of the Party for President and Vice-President.

That Affiant knows of his own knowledge that:

1. The Party qualified to participate in the Presidential election and have the names of its candidates for President and Vice-President on the ballot in each of the several states in the 1968 Presidential election.

2. That the Party's candidates received in excess of nine million (9,000,000) votes constituting slightly less than fourteen per cent (14%) of the total votes cast in the 1968 election, carrying five (5) states in which the Party's nominees were awarded the electoral votes of those states.

3. The Party has continued to be a viable organization and since its inception in 1967 has organized itself with permanent viable organizations in the several states and has members in every state of the United States.

4. The Party held its first National Convention in August 3-5, 1972, at which Convention the delegates from the several states nominated a Congressman JOHN G. SCHMITZ of California as its candidate for President of the United States, and nominated THOMAS J. ANDERSON of Tennessee as its candidate for Vice-President; both of the nominees appeared and accepted the Party's nomination.

5. That the names of these candidates or electors pledged to cast their votes for these candidates will appear on the ballots of twenty-eight (28) states and are presently

employing the State Elections Code requirements to qualify in an additional five (5) states; and, it is anticipated that no problem will be encountered in at least four (4) of the five (5) states. Therefore, on November 7, 1972, the voters of thirty-two (32) states will be given the opportunity to cast their vote for this Party's nominee for President and Vice-President.

6. In seventeen (17) states and the District of Columbia, the Party has been arbitrarily and capriciously denied access to the ballot. Approximately one-half (1/2) of these States where the President was qualified in the 1968 Presidential election have since amended their election laws to make qualification for new parties more onerous and as a result it has been impossible for the Party to overcome the obstacles in these states even though in each of the states there are a substantial number of registered voters who are members of the Party.

7. That Affiant is informed and believes and on the basis thereof alleges that the printing of ballots for the November 7, 1972, General Election has not commenced in many of the states named as Defendants, and as to those in which some printing has been done it has been minimal to this date; that an order issued at this time directing each of the seventeen (17) states and the District of Columbia to make a ballot position available for this Party's candidates for President and Vice-President could be effectively administered without undue interference or interruption of the orderly preparation for the November 7, 1972, General Election.

8. Affiant is informed and believes and on the basis thereof alleges that most of the seventeen (17) states will have either commenced or substantially completed the printing of ballots by October 2, 1972. Affiant's basis for such information is conversations with election officials had in each of the several states this year.

9. Affiant is further informed and believes and on the basis thereof alleges that any order issued in connection with the 1972 General Election made after October 10, 1972, would be impossible to carry out in most of the states and would prevent the holding of the general election on the date scheduled. That the Party has attempted to pursue administrative and judicial remedies in several of the states but has found that it is impossible to initiate litigation at the state level in such a large number of states and pursue same to completion within the time necessary to be represented in the November, 1972, election. Affiant has been advised by counsel in a number of the Defendant States that the judicial process could not afford any meaningful relief in this instance. Based on advice of counsel, including but other than counsel of record in this action, Affiant is convinced that this Court has the only forum which can afford the remedy for the several wrongs that have been done and are being perpetrated on the voters of the Defendant States.

10. Affiant believes that the Party meets far more than the minimum requirements for a major party, and therefore its nominees should be recognized and accorded the treatment and equal facilities accorded other major parties.

11. For these reasons, Affiant, on behalf of the voters of the several states, and on behalf of the Party and its nominees, respectfully urges that an immediate order be made that will result in directing that each of several states take such steps as may be necessary to enable the voters of those states to vote for the nominees of the Party for President and Vice-President of the United States.

/s/ William K. Shearer

WILLIAM K. SHEARER

SUBSCRIBED AND SWORN TO BEFORE ME on
September 18, 1972.

/s/ Mary H. Duke

Mary H. Duke
Notary Public in and
for said County and
State.

My commission expires December 7, 1975.

