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## TUCSON REGION

### Green Party's spot on AZ ballot likely headed for battle in court

By Howard Fischer

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PHOENIX — Secretary of State Ken Bennett has moved to strip the Green Party of its political status in Arizona.

Bennett said the latest voter registration figures show the party did not have enough members to qualify under state law for its own place on the ballot. He said that, under state law, it needed at least 20,773 registered voters; at last count there were only 4,216 Arizonans who, when registering to vote, listed themselves as members of the Green Party.

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Bennett, however, may not get the last word: The party has filed suit in federal court, challenging provisions in state law that allow only Arizona residents to register others to vote. The lawsuit asks U.S. District Judge Susan Bolton to rule that the state statutes violate federal constitutional rights of the party, its members and its potential political supporters.

Allowing out-of-staters to register voters in Arizona would make it easier for the Green Party to get the numbers it needs.

The Attorney General's Office, in a formal response, denied that the laws are unconstitutional.

But the Green Party may have the law on its side.

Last year the 9th U.S. Circuit Court of Appeals voided a similar Arizona statute that said only Arizona residents can circulate petitions to put a party's presidential nominee on the ballot. That decision ultimately was upheld by the U.S. Supreme Court.

And the issues are, in many ways, the same.

Amy Bjelland, the state election director, said there is another way the Green Party could get back on the ballot: It could submit petitions with the signatures of 20,449 registered voters — a figure based on turnout in the 2006 gubernatorial race — by Feb. 25.

But the Green Party has a problem with that law, too, saying in its lawsuit that the February deadline unfairly works against the interests of minor political parties.

Here, too, there is some precedent for the party's arguments: That same 9th Circuit ruling on who can circulate petitions also voided a deadline for independent candidates to submit the paperwork to put their names on the ballot for the presidential election. The judges agreed with attorneys for the party that the deadline, which came months before either major party knew who its nominees would be, is unfair.

This latest challenge, like the earlier one, is likely to be appealed by whoever loses, with the U.S. Supreme Court once again asked to review.

The prior ruling in favor of the Green Party stems from the ill-fated effort by Ralph Nader, its presidential nominee, to get his name on the 2004 ballot.

Attorneys for Gov. Jan Brewer, who was then secretary of state, argued that the requirement for petition circulators to be state residents is necessary to prevent fraud. If nothing else, they said, requiring circulators to be Arizona residents means they could be served with legal papers if questions arose about the validity of any signatures on the petitions they collected.

#### Correction Dec. 28, 2009:

The story "Green Party's spot on AZ ballot likely headed for battle in court," on A6 Saturday, had incorrect information about a lawsuit. The lawsuit filed by the Arizona Green Party seeks to permit out-of-state residents to circulate petitions to qualify the party for ballot status. The issue of registering voters is a separate legal question. Also, U.S. District Judge Susan Bolton has scheduled a hearing for Jan. 11 on a motion for a preliminary injunction.

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But Judge Mary Schroeder, writing last year's 9th Circuit ruling, said the state never presented any evidence showing there were problems with fraud by out-of-state circulators in the past, or even that those who are not Arizona residents are more likely than those who live here to engage in fraud.

Attorney Robert Barnes, who is representing the Green Party, is making similar arguments in this case.

"The requirement that petition circulators be qualified to vote in Arizona for circulating official ballot recognition petitions on behalf of minor political parties serves no legitimate state interest," he argued in his legal brief.

On the other side of the equation, Barnes said the state laws throw significant impediments into the path of supporters of the Green Party.

"These statutes make it necessary for the Arizona Green Party to spend additional limited time and resources locating individuals who are willing and qualified to gather signatures, and sapping precious time and resources from the campaign efforts and ultimately the ideas the Arizona Green Party puts forward," he wrote.

The question of the deadlines for trying to get ballot status back turns on a different issue: Whether it is designed to throw roadblocks in the path of minor parties.

Barnes pointed out that minor parties used to be able to gather petitions for recognition until the second week of March. He said the decision in October to move that up by two weeks is both unfair from a timing standpoint and unnecessary.

The issues parallel the arguments that Brewer presented in defending the early filing deadline for independent presidential candidates.

Brewer argued through her lawyers that Arizona has a compelling need for the deadline: printing the ballots. Specifically, she noted that each presidential candidate actually requires the listing of 10 electors, all of which takes up space.

She said there is no need for this deadline for the recognized parties, because the state knows the recognized parties will have candidates and electors, even if their names are not yet known. Brewer argued that the possibility of adding one or more independents could extend the number of pages needed for the ballot, leaving counties with insufficient time to order more paper.

But Schroeder said that argument made no sense, pointing out that the state doesn't know in June how many ballot initiatives there will be, either. The deadline to file those is a month later.

No date has been set for a court hearing.



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