

STATE COMMISSIONER OF ELECTIONS 43.24 OBJECTION PANEL

**In the Matter of
Objection to the Nomination
of Libertarian Congressional
Candidates**

Objection No.

DISSENT

ROB SAND, State Auditor, **IN DISSENT**:

The majority decision to kick Libertarians off the ballot flies in the face of panel precedent which has long held that Panel should err on the side of maximizing voter choices.¹

The objections fail on each of three threshold issues. First, the objectors provided no evidence that they have the right to vote for the candidates as required under Iowa Code 43.24. No indication of their address or registration status was provided to the panel. The panel cannot simply assume objectors are valid objectors.

Second, this panel is empowered to hear objections to the “legal sufficiency” of the “certificate of nomination” presented by the Libertarian candidates.² That is the title of the action chosen by Objector’s counsel. But Iowa Code §43.88 defines the elements of that certificate, and objectors make no objections to any elements of the certificate. As a result, it must fail.

Furthermore, any violations that might occur in the party’s internal processes would have to be brought by a person with standing. Presumably, that would be a registered Libertarian voter who was injured by the violation. These objectors do not have legal standing to make this objection. They are only granted standing to make objections to the nomination papers and certificate mentioned in the same code paragraph that grants them standing on those limited grounds.

The objection should also fail on factual grounds. The Libertarians have provided more than a preponderance of evidence that they had a caucus and state convention process³. The objectors asserted that process did not happen. The objectors are wrong. It may not have looked like the Democratic or Republican caucus,

¹ In the Matter of Objection to the Nominating Petition of Paul W. Johnson, (2004); *In the Matter of the Nominating Petition of Ralph Nader and Peter Camejo*, (2004).

² Iowa Code 43.24

³ Iowa Code 43.107 states: each political party shall hold a state convention either preceding or following the primary election. The state central committee of each political party shall designate the time and place of the state convention, which shall transact such business as is required or permitted by the party's state constitution or bylaws or by the rules of the convention.

but the US Supreme Court has made it very clear that State Law cannot dictate the manner in which a political party chooses its convention delegates.⁴

Objectors contend the Libertarians convention process did not conform to Iowa Code. This panel does not have the authority to determine what the Objectors ask us to find, as the panel found in 2012 rejecting the challenge to a Libertarian convention at the Iowa State Fair.⁵

Finally, the United States Supreme Court has repeatedly held that states cannot dictate minutiae to parties regarding their processes.⁶ The panel has no authority to determine that a political party convention is not a convention.⁷ Objectors seek to use the Libertarians parties delegate selection process to exclude it from the ballot. The Supreme Court has been clear that this violates the 1st Amendment Freedom of Association rights.⁸

During the hearing, a Libertarian candidate expressed his frustration that every time the Libertarians make progress, there is another regulatory hoop to jump through. They had major party status in 2017, but lost it. They got it back after 2022 election by getting more than 2% of the vote as required by State Law.⁹ Now because they got two percent in the 2022 election, the panel expects them to function exactly like major parties. This consistent inhibition of the growth of an alternative party is not allowable under the 1st Amendment.¹⁰

Libertarians did not choose to become a major party, Iowa voters made them that by giving them 2% of the vote.¹¹ For the State to require a nascent political organization to follow exactly the same rules as the larger parties or be kicked off the ballot clearly violates longstanding US Supreme Court law that says parties

⁴ *Democratic Party of U. S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 121 (1988); *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 215, (1989); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, (US 1986)

⁵ In the Matter of Objection to the Nominating Petition of Gary Johnson (2012)

⁶ *Democratic Party of U. S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 121 (1988); *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 215, (1989); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, (US 1986)

⁷ *Schmett v. State Objections Panel*, 973 N.W.2d 300, 303 (Iowa 2022). “The parties do not contend that the State Objections Panel has been granted interpretive authority over the relevant statutes, nor do we see any language in Iowa Code chapter 43 that would support such a contention. Therefore, our review is for correction of errors at law.”

⁸ *Democratic Party of U. S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 121 (1988)

⁹ 11.2 defines the term Political party. Political party **shall mean** a party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at **least two percent of the total vote cast** for all candidates for that office at that election. It shall be the responsibility of the state commissioner to determine whether any organization claiming to be a political party qualifies as such under this paragraph.

¹⁰ *Democratic Party of United States v. Wisconsin*, 450 U.S. 107 (1981)

¹¹ Iowa Code 43.2 defining political party

themselves set their own rules.¹² Substantial compliance is sufficient, and the Libertarians proved they met it.

This panel has always erred on the side of ballot access. Denying the Libertarians a place on the ballot based on this creates an incredible harm to the voters of Iowa, denying them a choice of validly selected candidates because the majority decision wants to use technicalities to enforce a two-choice system that Iowa voters in 2022 rejected by the legally required standard. One of the cases cited by the objectors states:

There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms.”¹³

The panel ignores the 1st Amendment in favor of preserving the political status quo. I respectfully dissent.

IN DISSENT

Rob Sand
Iowa Auditor of State

August 28, 2024

¹² E.g. *Democratic Party of U. S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 121 (1988); *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 215, (1989); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, (US 1986)

¹³ *Anderson v. Celebrezze*, 460 U.S. 780, 802, 10 (1983), citing *Williams v. Rhodes*, 393 U.S. 23, 31-32 (1968)