

# RECENT CHANGES TO POLITICAL PARTIES IN NORTH CAROLINA

Legislative Analysis Division Staff Presentation  
December 15, 2017  
Joint Legislative Elections Oversight Committee

## S.L. 2017-214 (SB 656)

- Effective January 1, 2018, S.L. 2017-214 (SB 656) makes changes to how political parties are established in North Carolina by:
  - Lowering the threshold for signatures to establish a new party from two percent (2%) of the total number of voters who voted in the most recent general election for Governor to one quarter of one percent (0.25%).
  - Providing a new method for recognition based on general election participation in other states.
- The law also changes the signature requirements for statewide unaffiliated candidates from 2% of the total number of voters who voted in the most recent general election for Governor to 1.5%.

## POLITICAL PARTIES IN NORTH CAROLINA

- To qualify as a political party in NC, effective January 1, 2018, a group of voters must meet one of the following 3 requirements:
  - Receive at least 2% of the vote cast for the party's candidate for Governor or Presidential elector at the last general State election.
  - File a petition signed by one quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor, and at least 200 registered voters each from three different congressional districts by noon of June 1 before the general election.
  - File documentation that the group had a candidate nominated on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election. By noon on June 1 before the general State election. G.S. 163A-950

## POLITICAL PARTIES IN NORTH CAROLINA

- Once established, a political party remains recognized by the State until it fails to receive at least 2% of the vote cast for the party's candidate for Governor or Presidential elector at the last general State election.
- When that occurs, the political party is no longer recognized under State law and voters affiliated with the party become unaffiliated. G.S. 163A-951, -952.
- NC statutes make no distinction in political parties once recognized, except that a new political party uses a party nominating convention to select candidates for the first general election after it is qualified and does not participate in the primary selection process. G.S. 163A-953.

## AUTHORITY TO REGULATE POLITICAL PARTIES AND BALLOT ACCESS?

- Recognition of political parties and control of ballot access, subject to conformity with the federal Constitution, is largely left to the discretion of states.
- Many states define and recognize 2 types of parties:
  - Major or statewide parties. The Republican and Democratic parties are major parties.
  - Minor or third parties. These parties are recognized by the state, but do not meet certain threshold requirements related to past electoral performance or numbers of affiliated voters, and so may have some limitations or additional requirements for ballot access.

## LITIGATION ON CANDIDATE AND PARTY RIGHTS?

- The U.S. Supreme Court has held that rights to free association and equal protection under the federal constitution must be considered in considering claims related to ballot access by parties and candidates, but has recognized the State interest in substantial regulation of elections to ensure that they are orderly, fair, and honest.
- The Court has established a balancing test weighing the injury to the 1<sup>st</sup> and 14<sup>th</sup> amendment rights compared to the legitimacy and strength of the State interest used to justify the burden for the rule. (*Anderson v. Celebreeze*, 460 U.S. 780 (1983))

## POTENTIAL LEGAL ISSUE WITH SB 656

- A prior NC case, Delaney v. Bartlett, 370 F.Supp.2d 373 (2004) may raise a legal issue with one portion of SB 656.
- Delaney challenged the required number of signatures for an unaffiliated candidates for statewide office compared to new political parties at that time,:
  - Unaffiliated statewide candidate: 2% of the total number of registered voters in the State (90,639)
  - New political party: 2% of the total number of voters who voted in the most recent general election for Governor (58,841).
- Delaney held that ballot access requirements for unaffiliated candidates in statewide races should be “reasonable” and “similar in degree” to party candidates’ requirements, and after applying the balancing test, found that requirements for an unaffiliated candidates to collect a greater number of signatures than a new party to be granted ballot access violated the plaintiff’s constitutional rights.

## POTENTIAL LEGAL ISSUE WITH SB 656

- Under S.L. 2017-214:
  - A new political party would need 11,778 signatures to qualify for recognition in 2020 (and the ability to place candidates on the general election ballot).
  - An unaffiliated candidate in a statewide race would need 70,665 signatures to qualify for the general election ballot in 2020.
- This issue has been raised in an amended complaint in the pending case of Leifert v. Strach, currently before the U.S. District Court for the Middle District of North Carolina .