

ELECTIONS:  
CHALLENGERS:  
WATCHERS:  
POLITICAL PARTIES:

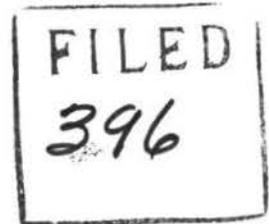
A new political party organized under the provisions of Section 120.140, RSMo et seq. is a political party within the provisions of the statutes relative to the selection of challengers and

watchers. There are no statutory provisions for challengers in areas other than Clay County, Jackson County, St. Louis County, Kansas City, and the City of St. Louis in general elections.

OPINION NO. 396  
Amended August 11, 1976

October 25, 1968

Honorable Clinton Almond  
Prosecuting Attorney  
Court House  
Hillsboro, Missouri 63050



Dear Mr. Almond:

This is in response to a request from your office for an opinion concerning the question of whether or not a new political party constituted by the filing of a petition pursuant to the provisions of Section 120.160, RSMo 1959, may designate watchers or witnesses to the counting of ballots in the forthcoming general election.

First of all, we call your attention to Section 120.140, RSMo 1959, which states in part:

"1. The term 'political party' as used in sections 120.140 to 120.230 shall mean any 'established political party' as hereinafter defined and shall also mean any political group which shall hereafter undertake to form an established political party provided for in sections 120.140 to 120.230; \* \* \*"

The term "established political party" however, is specifically defined in paragraphs 2 and 3 of Section 120.140 and in order to be declared such the party must meet the requirements as stated specifically below:

"2. An 'established political party' is hereby declared to be a political party which, as to the state, at the last general election for state and county officers, polled for its candidate for governor more than two per cent of the entire vote cast for governor in the state;

Honorable Clinton Almond -

and, as to any district or political subdivision of the state, a political party which polled more than two per cent of the entire vote cast in such district or political subdivision at such election.

"3. A political party, which in any congressional district, senatorial district, county, township, school district, municipality or other district or political subdivision of the state, polled more than two per cent of the entire vote cast within such congressional district, senatorial district, county, township, school district, municipality or other district or political subdivision of the state, where such district or political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision, is hereby declared to be an 'established political party' within the meaning of sections 120.140 to 120.230 as to such district or political subdivision."

We also direct your attention to Section 120.170, RSMo 1959, which states in full as follows:

"If any such new political party shall become an established political party in the manner provided in sections 120.140 to 120.230, the candidate or candidates of such new political party nominated by the petition referred to in section 120.160 for such initial election, shall have power to select party committeemen and committeewomen as shall be necessary for the creation of a provisional party organization and provisional managing committee or committees for the party within the state, or in any district or political subdivision in which the new political party has become established. The party committeemen and committeewomen so selected shall constitute a provisional party organization for said new political party and shall have and exercise the powers exercised by law upon any party committeemen and committeewomen to manage and control the affairs of such new political party until the next ensuing primary election at which the new political party

Honorable Clinton Almond -

shall be entitled to nominate and elect any party committeemen and committeewomen in the state, or in the district or political subdivision under the same laws now or hereafter enacted relating to the organization and rights of political parties."

It is clear from a reading of this section that before any party has the authority to select party committeemen and committeewomen necessary for the creation of a provisional party organization for the party within the state with power to control the affairs of such new political party, such party must be an established political party within the meaning of Section 120.170.

Although Section 120.160 provides that the filing of such a petition shall constitute the political group a new political party, nevertheless this section specifically states that the political group is a new political party for the purpose only of placing the party candidates on the ballot at the next ensuing election. Section 120.160, paragraph 2, to which we refer states in part as follows:

"The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at the next ensuing election the list of party candidates for offices to be voted for throughout the state, or for offices to be voted for in the district or political subdivision less than the state, as the case may be, under the name of, and as candidates of such new political party. \* \* \*"

With respect to the general provisions for witnesses at elections we note that Section 111.610, RSMo 1959, states in part:

"\* \* \*No person or persons shall be admitted into the room or office where such ballots are being counted, except the judges and clerks of election; provided, that any political party may select a representative man who may be admitted as a witness of such counting. \* \* \*"

Sections 113.200, RSMo 1959, and 113.205, RSMo Supp. 1967, which apply to challengers and watchers in St. Louis County provide respectively:

Honorable Clinton Almond -

"113.200. Challenging during registration and election authorized.--At every registration and election each of the political parties shall have the right to designate and keep a challenger during the hours of registration, revision and voting, and a watcher during the counting of the ballots in each place of registration, revision or voting, who shall be assigned such position, immediately adjoining the judges of election inside the polling or registration booth as will enable him to see each person as he offers to register or vote, and who shall be protected in the discharge of his duty by the judges of election. Said challengers and watchers shall be named by the central committee of their respective parties, who shall issue in writing a certificate of appointment which shall be signed by the chairman of said committee, or, on his refusal to do so, by a majority of said committee."

"113.205. Challengers, qualifications, duties.--Every person designated a challenger or watcher as provided in section 113.200 must be a registered voter residing within the county in which he serves, and in addition each challenger at a place of voting must be a resident to that ward or township in which he serves. Each challenger or watcher shall report any violation of the election laws of this state to the official or body in charge of registration or to the election judges as the case may be. Nothing contained in this section shall restrict the rights of a challenger or watcher to report violations of the election laws to the proper law enforcement authorities in accordance with his rights as a private citizen."

Section 113.870, RSMo Supp. 1967, relating to challengers in Jackson County, outside of Kansas City, provides:

"At every election, each of the political parties may designate and keep a challenger in each voting place, who shall be assigned such position, immediately adjoining the judges of election, inside the polling place, as will enable him to see each person offering to vote, and who shall be protected in the discharge of his duty by the judges

Honorable Clinton Almond -

of election. Each political party may substitute challengers once during the voting hours, if the substitute has proper credentials from the party and subscribes to the same oath as judges of election. Challengers may keep a record of all parties voting or offering to vote. Each political party may designate and keep a challenger at the office of the board or other place of registration while registration is being carried on."

Section 117.590, RSMo 1959, which pertains to challengers and watchers in Kansas City provides:

"At every registration and election, each one of the political parties shall have the right to designate and keep a challenger at each place of registration and voting who shall be assigned such position immediately adjoining the officers in charge of registration or the election inside the polling or registration booth as will enable him to see each person as he offers to register or vote and who shall be protected in the discharge of his duty by the judges of election and the police. An authority, signed by the recognized chairman or presiding officer of the chief managing committee of a party in any such city, shall be sufficient evidence of the right of the challenger for such party to be present inside the registration or polling place. But in any case, any challenger does not or cannot produce the authority of such chairman, it shall be the duty of such judges of election to recognize a challenger that shall be vouched for and presented to them by the persons present belonging to such political party, or who shall be vouched for by the judge representing such party. The chairman of the managing committee of each political party for such city may remove any challenger appointed by him and substitute another in his place. The challenger so appointed and admitted to the room where such ballot box is kept shall have the right and privilege of remaining during the canvass of the votes and until the returns are duly signed and made. Each political party shall also have the right to a challenger placed conveniently outside of the polling booth, but not in the way of the voters. In addition to such challengers, each of

Honorable Clinton Almond -

the political parties casting votes at such polls, at the close of the polls shall have the right to the admission of two persons of their political faith into the room where such ballots are to be canvassed, to watch such canvass, which watchers may be selected as above prescribed in case of challengers; and in the absence of such selection, it shall be the duty of the judges of such election to admit into such room two persons of each political party so voting at such elections, and who shall be vouched for by judge or judges representing such political party, to be present during the canvass of such votes and the making of such returns; that such persons shall be of good character and sober, and shall in no wise interfere with such canvass. The police shall in no manner interfere with the entrance of such watchers into such room, but they shall keep order; and in case of any disorderly conduct on the part of any bystanders or watchers, it shall be the duty of the police, upon request of the judges to exclude such persons from such room, and upon such watcher or watchers being excluded from such room, the judge or judges representing the same political party as the rejected watcher may select other watchers in their stead."

Section 118.510, RSMo 1959, pertains to challengers and watchers in the City of St. Louis and provides:

"1. At every registration and election each one of the political parties named on the ballot shall have the right to designate and keep a challenger at each place of registration, revision of registration and voting who shall be assigned a position immediately adjoining the judges of election inside the polling or registration booth which will enable him to see each person as he offers to register or vote and who shall be protected in the discharge of his duty by the judges of election and the police. Authority, signed by the recognized chairman or presiding officer of the chief managing committee of such party in any such city, is sufficient evidence of the right of the challenger for the party to be present inside the registration or polling place.

If any challenger does not or cannot produce the authority of such chairman, the judges of election shall recognize a challenger who is vouched for and presented to them by the persons present belonging to such political party or who is vouched for by the judge representing such party. The chairman of the managing committee of each political party for such city may remove any challenger appointed by him and substitute another in his place.

"2. The challenger so appointed and admitted to the room where the ballot box is kept has the right and privilege of remaining during the canvass of the votes and until the returns are duly signed and made. Each political party named on the ballot shall also have the right to a challenger placed conveniently outside of the polling booth, but not in the way of the voters.

"3. In addition to the challengers, each of the political parties named on the ballot, at the close of the polls shall have the right to the admission of two persons of their political faith into the room where the ballots are to be canvassed to watch the canvass, which watchers may be selected as above prescribed in case of challengers; and in the absence of such selection, the judges of such election shall admit into such room two persons of such political party, and who are vouched for by the judges representing the political party, to be present during the canvass of votes and the making of returns; that such persons shall be of good character and sober, and shall in no wise interfere with such canvass.

"4. The police shall in no manner interfere with the entrance of watchers into such room, but they shall keep order; and in case of any disorderly conduct on the part of any bystanders or watchers, the police, upon request of the judges, shall exclude such persons from such room, and upon any watchers being excluded from the room, the judges representing the same political party as the rejected watcher may select other watchers in their stead."

Honorable Clinton Almond -

In addition, Sections 119.480, 119.500 and 119.510, RSMo 1959, applicable to Clay County election challengers and watchers, provide, respectively, as follows:

"119.480. Challenging during registration and election authorized (Clay county).--At every registration and election each of the political parties shall have the right to designate and keep a challenger during the hours of registration, revision and voting, and a watcher during the counting of the ballots in each place of registration, revision or voting, who shall be assigned such position, immediately adjoining the judges of election or registration clerks, inside the polling or registration booth as will enable him to see each person as he offers to register or vote, and who shall be protected in the discharge of his duty by the judges of election. Said challengers and watchers shall be named by the central committee of their respective parties, who shall issue in writing a certificate of appointment which shall be signed by the chairman of said committee, or, on his refusal to do so, by a majority of said committee."

"119.500. Judges to canvass vote after closing of polls (Clay county).--As soon as the poll of an election shall have been finally closed, the judges of election in their several precincts shall immediately, and at the same place of poll, proceed to canvass the vote so cast. Such canvass shall not be adjourned or postponed until it shall have been fully completed, nor until the several statements hereinafter required to be made by the judges and clerks shall have been made out and signed by them. The judges of election shall have the right to station one or more police officers, or officers of the peace, near the entrance to the room where such canvass is begun or about to take place, for the sole purpose of excluding disorderly persons and to keep the peace. The watchers of such canvass shall be allowed to be present and so near that they can see whether or not the judges and clerks of said election are faithfully performing their duties. No judges of election or police or other officer

Honorable Clinton Almond -

shall molest or remove such person during the canvass of such ballots and the certification of the result, unless he shall be personally guilty of illegal actions or disorderly conduct."

"119.510. Persons admitted to count of ballots --number of votes to be announced (Clay county). --No person or persons shall be admitted into the room or office where the ballots are being counted except the judges and clerks of election and such watchers as are authorized by law. It shall be the duty of one of the judges to announce to the electors present the total number of votes polled."

At first glance, therefore, it would appear that unless otherwise specifically provided by statute, a political group would not constitute a political party until it became an established political party.

We believe, however, that such an interpretation would unconstitutionally prohibit a new political party from enjoying those rights and privileges afforded by the Constitution of Missouri as well as by the Constitution of the United States. Section 118.510, with respect to the City of St. Louis was amended in 1957 to allow representatives of each one of the political parties "named on the ballot" to be admitted as watchers for the canvassing of the ballots. Section 117.590, applicable to Kansas City provides that "each of the political parties casting votes at such polls" shall have the right to watchers. Section 113.870, RSMo Supp. 1967, provides that challengers in Jackson County (outside of Kansas City) may be designated by each of the political parties. Section 119.480, (which is similar in context to Section 113.200 relating to St. Louis County), with respect to elections in Clay County, provides that at every election each of the political parties shall have the right to designate a watcher during the counting of the ballots and that such watchers shall be named by the central committee of their respective parties.

Obviously, the sections dealing with the designation of watchers and challengers at elections read in conjunction with the provisions of Section 120.170, create definite difficulties of interpretation regarding the application of some of the sections and the constitutionality of various provisions of other sections. We presume that statutes are constitutional.

Honorable Clinton Almond -

In our Opinion No. 24, dated October 22, 1954, addressed to the Honorable Michael J. Doherty, which is enclosed, we held that the St. Louis City Nonpartisan Committee was not entitled to have challengers and watchers present at polling places in the absence of a showing that it was a political party within the meaning of Sections 120.140 and 120.160. The holding of that opinion is that a political group which constituted either an established political party or a political party, under the provisions of these sections would be entitled to have challengers and watchers at the polls in the general election.

That opinion did not extend far enough to resolve the question presented in your request. However, in Preisler v. Calcaterra et al, Mo. (En Banc), 243 S. W. 2d 62 (1951), the Supreme Court of Missouri held unconstitutional a statute applicable to St. Louis City which provided that only the two dominant political parties had the right to designate and keep challengers and watchers at elections. The Court found the statute to be arbitrary and without any reasonable basis.

Since the Calcaterra decision, the Supreme Court of the United States in Glen A. Williams et al v. James A. Rhodes et al and Socialist Labor Party et al v. James A. Rhodes et al, Nos. 543 and 544, October term, 1968, 37 Law Week 4001, held that laws are unconstitutional which give the "two old, established parties a decided advantage over any new parties struggling for existence and thus place substantially unequal burdens on both the right to vote and the right to associate" because "only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms". The Court further stated that the existence of multitudinous fragmentary groups might justify some regulatory control but presently that danger seemed only "theoretically imaginable".

We recognize that the sections above cited which relate to the formation of new political parties were enacted in 1953, subsequent to Calcaterra and prior to Williams. We find that the principles expressed in Calcaterra and Williams can be applied in the premises without emasculating the right of the state to exercise regulatory control unless such control imposes a burden on voting and associational rights in violation of the Equal Protection Clause.

It is not necessary to conclude that any of the statutes cited are unconstitutional in whole or in part since we find that a new political party organized under Section 120.140 et seq is in fact a political party within the provisions of the statutes relative to challengers and witnesses.

Honorable Clinton Almond

CONCLUSION

It is the opinion of this office that a new political party organized under the provisions of Section 120.140, RSMo et seq, is a political party within the provisions of the statutes relative to the selection of challengers and watchers.

There are no statutory provisions for challengers of political parties in areas other than Clay County, Jackson County, St. Louis County, Kansas City, and the City of St. Louis in general elections.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

Enclosure: Op. No. 24,  
Doherty, 10/22/54