

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREEN PARTY OF MICHIGAN,
LIBERTARIAN PARTY OF MICHIGAN,
REFORM PARTY OF MICHIGAN, METRO
TIMES, INC., AND DAVID FORSMARK
d/b/a WINNING STRATEGIES,

No. 2:08-cv-10149

HON. NANCY G. EDMUNDS

Plaintiff,

V

MICHIGAN SECRETARY OF STATE TERRI
LYNN LAND,

Defendant.

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**DEFENDANT'S ANSWER TO COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Defendant Secretary of State Terri Lynn Land, by counsel, answers Plaintiffs' Complaint
by like-numbered paragraphs as follows:

1. The allegation is denied for the reason that it is factually inaccurate. MCL §
168.615c allows any participating political party to use the elector ballot selection records. MCL
168.615c(8) allows the participating parties to use the information only "to support political

party activities by that participating political party, including, but not limited to, support for or opposition to candidates and ballot proposals." 168.615c(8) also places a similar restriction on a participating political party's release of the information to another person, organization, or vendor. 168.615c also includes other restrictions on the participating political party's use of the information, including 168.615c(9)(b), which prohibits the donation, use, or sale of the information for any purpose not authorized by 615(c), and 615(9)(c), which prohibits the retention of the information after authorized use.

2. The allegation is denied for the reason that it is factually inaccurate. Under 168.615(c), the information is provided to all participating parties. Under 168.615c(11), criminal misdemeanor penalties may be applied to any person who uses the information for a purpose not authorized in 168.615c.

3. The allegation is a legal conclusion; therefore, no answer is necessary. In the event that an answer is required, Defendant neither admits nor denies the allegation for lack of sufficient information to determine the veracity of the allegation.

4. The allegation is a legal conclusion; therefore, no answer is necessary. In the event that an answer is required, Defendant neither admits nor denies the allegation.

5. The allegation is a statement of law; therefore, no answer is necessary. In the event that an answer is required, Defendant neither admits nor denies the allegation for lack of sufficient information to determine the veracity of the allegation.

6. The allegation is a statement of law; therefore, no answer is necessary. In the event that an answer is required, Defendant neither admits nor denies the allegation for lack of sufficient information to determine the veracity of the allegation.

7. The allegation is neither admitted nor denied for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.

8. The allegation is neither admitted nor denied for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.

9. The allegation is neither admitted nor denied for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.

10. The allegation is neither admitted nor denied for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.

11. The allegation is neither admitted nor denied for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.

12. Defendant admits only that she is the chief elections officer of the State of Michigan with supervisory control over local election officials in the performance of their duties, as provided by law.

13. The allegation is denied for the reason that it is factually inaccurate. MCL 168.615(c) applies to any State of Michigan presidential primary. The statute mandates that the Secretary of State proscribe certain procedures, including procedures to protect or safeguard the confidentiality of the participating party ballot selected by an elector (615c(1)), and procedures for city and township clerks to use in recordkeeping (615c(3)).

14. Defendant states that the statute cited speaks for itself.

15. Defendant states that the statute cited speaks for itself.
16. Defendant states that the statute cited speaks for itself.
17. Plaintiffs' factual allegation that MCL 168.615c(4) "appears to mandate confidentiality for the voter's party preference" is a legal conclusion and therefore does not require an answer. The remainder of the allegation is denied for reason that it is factually inaccurate. MCL 168.615c(4) states that the information shall not be disclosed to any person for any reason, except as otherwise provided in 168.615c.
18. Defendant states that the statute cited speaks for itself.
19. The allegation is denied for the reason that it is factually inaccurate. 615c(4)'s exception to the mandate that the information not be disclosed is embodied in all other provisions of 615c.
20. Defendant denies as untrue that March 27, 2008 is the 71st day following the January 15, 2008 primary.
21. The allegation is admitted.
22. The allegation is neither admitted nor denied for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.
23. Defendant denies as untrue that 1.5 million or more voters voted in the Presidential Primary. Defendant states that PA 52 of 2007 speaks for itself.
24. The allegation is denied for the reason that it is a legal conclusion and factually inaccurate. Plaintiffs' allegation that MCL 168.615c grants the two major parties "the virtually unfettered right to use the party preference information for almost any purpose a political party might have" is a legal conclusion, and thus, requires no answer. The remainder of the allegation

is factually inaccurate. MCL 168.615c gives any participating political party—not just the two major parties—access to the information, within the limitations expressed by that provision.

25. The allegation is denied for the reason that the allegation is a legal conclusion and factually inaccurate. Plaintiffs' allegation that the statute permits use of the information "for the full range of political activities" is a legal conclusion, and thus, requires no answer. The remainder of the allegation is factually inaccurate because MCL 168.615c allows any participating political party—not just the two major parties—to use the information, within the limitations expressed by that provision.

26. The allegation is neither admitted nor denied for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.

27. The allegation is denied for the reason that the allegation expresses a legal conclusion, and thus, does not require an answer. In the event that an answer is required, Defendant neither admits nor denies the allegations for reason that Defendant lacks information or knowledge sufficient to form a belief as to its truth and leaves plaintiffs to their proofs.

28. The allegation is denied to the extent it states, "In contrast to the unfettered use of the party preference information by the two major parties, MCL 168.615c(11) makes it a criminal offense for any other person to use the party preference information" because it expresses a legal conclusion, and thus, does not require an answer. Defendant states that the statute cited speaks for itself.

29. Plaintiffs' allegation that MCL 168.615c denies the "Third Parties" access to and use of party preference information, is denied for the reason that it is inaccurate. MCL 168.615c does not specifically deny to the Green Party of Michigan, the Libertarian Party of Michigan, or the Reform Party of Michigan access to and use of party preference information. It allows any

participating political party to access and use the information as set forth by the provision.

Plaintiffs' allegation that the information is information "they could otherwise use in furthering their political activity" is neither admitted nor denied for the reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

30. The allegation is neither admitted nor denied for the reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

31. The allegation is neither admitted nor denied for the reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

32. The allegation is neither admitted nor denied for the reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

33. The allegation is neither admitted nor denied for the reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

34. The allegation is a legal conclusion which does not require an answer. If an answer is required, Defendant denies as untrue.

35. The allegation is neither admitted nor denied for the reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

36. The allegation is neither admitted nor denied for the reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

37. The allegation is denied to the extent it alleges that the statement allows the two major parties to "give or lease" the information. MCL 160.615c(7) places limitations on the use of the information for a commercial purpose. The allegation is neither admitted nor denied to the extent Plaintiffs allege that Plaintiff Forsmark will be impaired if he does not have access to or use of the information, for reason that Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation and leaves Plaintiffs to their proofs.

38. The allegation is a legal conclusion which does not require an answer. If an answer is required, Defendant denies as untrue.

Count I

39. Plaintiffs incorporate by reference paragraphs 1 through 38.

40. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

41. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

42. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

43. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

44. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

45. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

46. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

47. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

Count II

48. Defendants incorporate by reference paragraphs 1 through 47.

49. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

50. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

51. The allegation is a legal conclusion; therefore, it warrants no answer. In the event that an answer is required, Defendant neither admits nor denies the allegations.

Affirmative and other defenses

1. Plaintiffs lack standing.
2. Plaintiffs' claims are not redressable by the remedy they seek.
3. Defendant may be entitled to immunity as granted by law.
4. Plaintiffs' claims fail to state claims upon which relief can be granted.
5. Plaintiffs' claims may be barred by laches and equitable estoppel.
6. Plaintiffs' claims do not warrant the extraordinary relief of injunction.
7. Plaintiffs' claims do not meet the factors that support federal court issuance of declaratory relief.

8. Defendant reserves the right to amend and add affirmative defenses as permitted by this Court.

Defendant respectfully requests that this Court dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief in its entirety and award any other relief that it deems equitable and just.

Respectfully submitted,

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Dated: January 31, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the following:
Defendant's Answer to Complaint for Declaratory and Injunctive Relief.

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