

UNITED STATES DISTRICT COURT

**WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MARTHA HAYES,
Plaintiff

Case no. **1:07-cv-1237**
Robert J. Jonker
HON. __ **US District Judge**

v.

MICHIGAN DEMOCRATIC PARTY,

and

THE STATE OF MICHIGAN AND TERRI LYNN LAND,
solely in her official capacity as Secretary of State of Michigan
JOINTLY AND SEVERALLY,

Defendants

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. The Court has repeatedly reaffirmed that the First and Fourteenth Amendments protect the rights of voters and parties to associate through primary elections."¹

¹ Justice O'Connor, in her concurrence in *Clingman v. Beaver*, 544 U.S. 581, 599-600, 125 S.Ct. 2029, 2042, 161 L.Ed.2d 920 (2005).

I. JURISDICTION

1. Federal jurisdiction exists under 28 U.S.C. 1331 and 1343; it also exists under 42 U.S.C. § 1983.

II. VENUE

2. Venue is appropriate in this District under 28 U.S.C. § 1391(b).

III. PARTIES

3. Plaintiff is a qualified, registered voter in the state of Michigan and a member of the Michigan Democratic Party. She is, and has been through her adult life, active in political activities including, but not limited to, informing herself on issues and candidates, donating money to political causes and candidates, volunteering on the campaigns of candidates for local, state and federal office, attending campaign rallies, attending speeches by politicians and candidates for public office, and voting. Plaintiff resides in Kent County, Michigan.

4. Plaintiff subscribes to the substance, intent and principles of the Charter and Bylaws of the Democratic Party of the United States.

5. Plaintiff is a member of the National Democratic Party.

6. Plaintiff would have participated in the February 9, 2008 Michigan Democratic Presidential Caucus, and would have engaged in campaign activities of the type referenced in paragraph three of this Complaint in connection with the February 9, 2008 Caucus.

7. As stated below, in this Complaint, Plaintiff's preferred candidate for the Democratic Nomination to run for the office of President of the United States is prohibited from running a campaign in the State of Michigan as a result of the enactment of Michigan

2007 PA 52, and the Michigan Democratic Party's decision to opt into the January 15, 2008 Presidential Primary created by that Act.

8. As stated below, in this Complaint, Plaintiff's preferred candidate of the Democratic Nomination to run for the office of President of the United States is not on the ballot for the January 15, 2008 Presidential Primary as a result of the enactment of 2007 PA 52, and the Michigan Democratic Party's decision to opt into the January 15, 2008 Presidential Primary created by the state Act.

9. Defendant Michigan Democratic Party (hereinafter "MDP") represents the interests of Michigan Democrats, Michigan Democratic voters, and members of the Michigan Democratic Party. Defendant MDP is responsible for, among other things, the decision to participate in the Presidential Primary scheduled for January 15, 2008 created by 2007 PA 52 and Defendant MDP will oversee the delegate selection process in this state for the purpose of sending delegates to the Democratic National Convention in 2008.

10. Defendant Terri Lynn Land is the duly elected Secretary of State of Michigan. In her official capacity, she is responsible for the conduct of the January 15, 2008 Presidential Primary.

IV. FACTS

11. On August 19, 2006 the Democratic Party of the United States promulgated its Delegate Selection Rules (hereinafter "DSR") for the 2008 Democratic National Convention.

12. A true, accurate and complete copy of the DSR is attached as Exhibit 1.

13. DSR Rule 1.A. required the MDP to adopt state rules regarding the timing and method of its presidential delegate selection process.

14. DSR Rule 1.D. required the MDP to submit these rules to the Democratic National Committee's Rules and Bylaws Committee for review and approval no later than May 1, 2007.
15. The MDP submitted its Delegate Selection Plan, and it was approved, as provided for in the DSR.
16. In § I.B.2. of Michigan's Delegate Selection Plan, the MDP announced that it would hold a caucus on February 9, 2008 for the purpose of selecting delegates to the National Convention. A true, accurate and complete copy of the approved Michigan Delegate Selection Plan is attached as Exhibit 2.
17. On September 3, 2007 Governor Jennifer Granholm signed 2007 PA 52 into law. A true, accurate and complete copy of this Act is attached as Exhibit 3.
18. Under § 613a(1) of this Act, the MDP was required to hold an open primary for the purpose of selecting delegates to the Democratic National Convention on January 15, 2008.
19. Under § 613a(2) of this Act, the MDP had the ability to opt out of the January 15th Primary by notifying the Michigan Secretary of State in writing of its decision to opt out. This notification was to take place no later than 4:00 p.m. on November 14, 2007.
20. Enacting Section 1 of 2007 PA 52 contains a non-severability provision.
21. On November 14, 2007, the Chairman of the MDP notified the Michigan Secretary of State in writing that the MDP would both participate in the January 15th Presidential Primary and use the results of that Primary for the purpose of selecting Delegates to the National Convention if two conditions were met: first, that 2007 PA 52 be upheld on

appeal; and, second, that the Michigan Republican Party also use the January 15th Primary to select its delegates to its National Convention.

22. A true, accurate and complete copy of Chairman Brewer's November 14, 2007 letter to the Michigan Secretary of State is attached as Exhibit 3.

23. On November 21, 2007, in *Grebner, et al v Secretary of State*, the Michigan Supreme Court upheld the constitutionality of 2007 PA 52.²

24. The issues raised in this litigation were not raised in *Grebner*.

25. The Michigan Republican Party did not elect to opt out of the January 15th Primary.

26. At a meeting of the Executive Committee of the MDP held on November 27, 2007, the MDP affirmed its decision to utilize the January 15th Primary for the purpose of selecting its delegates to the National Convention.

27. DSR Rule 11 states:

“A. No meetings, caucuses, conventions or primaries which constitute the first determining stage in the presidential nomination process (the date of the primary in primary states, and the date of the first tier caucus in caucus states) may be held prior to the first Tuesday in February or after the second Tuesday in June in the calendar year of the national convention. Provided, however, that the Iowa precinct caucuses may be held no earlier than 22 days before the first Tuesday in February; that the Nevada first-tier caucuses may be held no earlier than 17 days before the first Tuesday in February; that the New Hampshire primary may be held no earlier than 14 days before the first Tuesday in February; and that the South Carolina primary may be held no earlier than 7 days before the first Tuesday in February. In no instance may a state which scheduled delegate selection procedures on or between the first Tuesday in February and the second Tuesday in June

² *Grebner, et al. v. Secretary of State*, ___ Mich ___; ___ NW2d ___ (2007); last viewed on line on December 10, 2007 at: http://courtofappeals.mijud.net/documents/sct/public/orders/20071121_s135274_43_135274_2007-11-21_or.pdf.

1984 move out of compliance with the provisions of this rule.

B. All steps in the delegate selection process, including the filing of presidential candidates, must take place within the calendar year of the Democratic National Convention (except as otherwise provided in these rules or specifically allowed by the DNC Rules and Bylaws Committee)."

28. In DSR Rule 20.C.1.a. the Democratic National Committee (hereinafter "DNC") established the following automatic sanction for states that violate Rule 11:

"Violation of timing: In the event the Delegate Selection Plan of a state party provides or permits a meeting, caucus, convention or primary which constitutes the first determining stage in the presidential nominating process to be held prior to or after the dates for the state as provided in Rule 11 of these rules, or in the event a state holds such a meeting, caucus, convention or primary prior to or after such dates, the number of pledged delegates elected in each category allocated to the state pursuant to the Call for the National Convention shall be reduced by fifty (50%) percent, and the number of alternates shall also be reduced by fifty (50%) percent. In addition, none of the members of the Democratic National Committee and no other unpledged delegate allocated pursuant to Rule 8.A. from that state shall be permitted to vote as members of the state's delegation. In determining the actual number of delegates or alternates by which the state's delegation is to be reduced, any fraction below .5 shall be rounded down to the nearest whole number, and any fraction of .5 or greater shall be rounded up to the next nearest whole number."

29. In DSR Rule 20.C.1.b. the DNC established the following automatic sanction for Presidential Primary contenders who campaign in a state holding a non-DNC-sanctioned primary of caucus:

"A presidential candidate who campaigns in a state where the state party is in violation of the timing provisions of these rules, or where a primary or caucus is set by a state's government on a date that violates the timing provisions of these rules, may not receive pledged delegates or delegate votes from that state."

30. In DSR Rule 20.C.1.b. the DNC defined “Campaign” as follows:

“‘Campaigning’ for purposes of this section includes, but is not limited to, purchasing print, internet, or electronic advertising that reaches a significant percentage of the voters in the aforementioned state; hiring campaign workers; opening an office; making public appearances; holding news conferences; coordinating volunteer activities; sending mail, other than fundraising requests that are also sent to potential donors in other states; using paid or volunteer phoners or automated calls to contact voters; sending emails or establishing a website specific to that state; holding events to which Democratic voters are invited; attending events sponsored by state or local Democratic organizations; or paying for campaign materials to be used in such a state. The Rules and Bylaws Committee will determine whether candidate activities are covered by this section.”

31. Rule 13.A. of the DSR states:

“Delegates shall be allocated in a fashion that fairly reflects the expressed presidential preference or uncommitted status of the primary voters or, if there is no binding primary, the convention and/or caucus participants.”

32. In its Fall, 2007 meeting, the Rules and Bylaws Committee of the DNC determined that the MDP’s participation in the January 15, 2008 primary was a violation of National Party rules (the DSR) regarding the timing of the MDP’s delegate selection process.

33. In its Fall, 2007 meeting, the Rules and Bylaws Committee of the DNC voted to strip Michigan of all of its Delegates to the National Convention.

34. In response to the decision by the Rules and Bylaws Committee, the MDP publicly reaffirmed that it would continue to defy the DNC and participate in the January 15, 2008 primary.

35. Both prior to and after the enactment of 2007 PA 52 all of the major candidates for the Democratic nomination were subject to DSR Rule 20.C.1.b.
36. Prior to the enactment of 2007 PA 52 all of the major candidates for the Democratic nomination signed a pledge stating that they would neither campaign nor participate in any state which schedules a presidential election primary or caucus before February 5, 2008, except for the pre-window states of Iowa, Nevada, New Hampshire and South Carolina.
37. As a result of the enactment of 2007 PA 52 and its conflict with the DNC rules on the delegate selection process (the DSR), four of the Democratic candidates, Sen. Joe Biden, former Sen. John Edwards, Sen. Barack Obama and New Mexico Gov. Bill Richardson notified Defendant Land that they could not appear on the January 15, 2008 Presidential Primary ballot.
38. As a result of the enactment of 2007 PA 52, and as a result of the MDP's decision to participate in the January 15, 2008 Presidential Primary, all of the Democratic contenders are prohibited from campaigning in the State of Michigan in connection with the January 15, 2008 Presidential Primary pursuant to DSR Rule 20.C.1.b.
39. In early September, 2007, and prior to the date 2007 PA 52 was signed into law, the polling firm ARG conducted a poll of 600 likely Michigan primary voters. The results of this poll revealed that 44 % of those polled expressed support, cumulatively, for the four withdrawn candidates.³
40. As things currently stand, at least 44% of Michigan's Democrats have been effectively disenfranchised by the current state of the Presidential Primary process in

³ As of November 27, 2007 the ARG poll was available online at: <http://americanresearchgroup.com/pres08/midem8-704.html>. The margin of error in this poll was \pm 4%.

Michigan. Further, none of the Democratic primary voter base (including Plaintiff) can engage in candidate initiated or sponsored campaign activities, as such are prohibited in DSR Rule 20.C.1.b.

41. The decision to hold a primary on January 15, 2007 violates DSR Rule 13 in that any primary held without the participation of the withdrawn candidates would violate the Rule's requirement that delegates shall be allocated in a fashion that fairly reflects the expressed presidential preference or uncommitted status of the primary voters.

42. DSR Rule 20.C.2. provides, as a sanction for a violation of Rule 13, the same sanction for a violation of the DSR Rules on the timing of a Presidential Primary.

43. Attached to this Complaint as Exhibit 4 is a true, accurate and complete copy of The Charter and the Bylaws of the Democratic Party (hereinafter "Charter").

44. Art. 2, §4. of the Charter requires that Delegates to the National Convention be chosen through a process which:

a. Assures all Democratic voters full, timely and equal opportunity to participate in the delegate selection process;

b. Allows participation in good faith by all voters who are Democrats and, to the extent determined by a State Party to be in the interests of the Democratic Party in that State, by voters who are not registered or affiliated with any party.

V. Elections and the First Amendment-General Principles Applicable to this Complaint

45. The United States Supreme Court, over the years, has established that various aspects of political activity, campaigns, an individual's involvement in all aspects of political activity, as well as the election process are all subject to various protections provided by both the First Amendment and the Fourteenth Amendment.

46. These protections have been developed, in the context of First Amendment jurisprudence, because of what the Supreme Court has noted both over a long stretch of time and in various decisions addressing diverse election regulations: that the primary value protected by the First Amendment is a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.

47. The protection and advancement of the concept of the Marketplace of Ideas, and its application to political activities, is firmly rooted in First Amendment jurisprudence. The Supreme Court has written that competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms, and has recognized that this competition exists only as a result of the varying, diverse and competitive interests of the voters who choose to associate together to express their support for a particular candidate and the views espoused by that candidate. As a result, it is settled law that the First Amendment protects the freedom of qualified voters to join together in furtherance of common political beliefs.

48. In the context of First Amendment jurisprudence, the Supreme Court has remarked that this Nation has a tradition of political associations in which citizens band together to promote candidates who espouse their political views, and that the First Amendment protects the freedom to join together to further common political beliefs.

49. The Supreme Court has written that the First Amendment associational interests of citizens to participate in Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting electorate candidates who espouse their political views.

50. In the context of elections, core First Amendment principles include the protection and promotion of fairness in the electoral process and affording voters greater choice consistent with the process of orderly elections.

51. In the context of elections, increasing voter participation is a core First Amendment principle.

52. The First Amendment forbids unduly burdensome restrictions on the participation in political activities by identifiable segments of like-minded voters that have the effect of limiting political participation by an identifiable political group whose members share a particular viewpoint or associational preference.

53. The Supreme Court has recognized that the principles posited in this section of the Complaint impact upon, and provide protection for, an individual, such as Plaintiff, participating in the myriad of activities that cumulatively are understood as being a part of the American political process.

VI. Elections and the Fourteenth Amendment-General Principles Applicable to this Complaint

54. The Supreme Court has held that the freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the “liberty” assured and protected by the Due Process Clause of the Fourteenth Amendment.

55. The Supreme Court has recognized that the principles posited in this section of the Complaint impact upon, and provide protection for, an individual, such as Plaintiff, participating in the myriad of activities that cumulatively are understood as being a part of the American political process.

VII. Elections and the First and Fourteenth Amendments-General Principles and Plaintiff's Constitutionally Protected Interests

56. Supreme Court decisions establish the following Constitutionally protected interests of an individual voter, such as the Plaintiff:

a. The fundamental right of a citizen to cast a meaningful vote for the candidate of their choice;

b. Assurance that the results of a primary election, in a broad sense, accurately reflect the voting of a party member;

c. The fundamental significance of the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes;

d. The availability of political opportunity for individual voters and the right of individual voters to inform themselves about campaign issues through the existence of political activity;

e. The right of individual voters to be involved in an electoral process that does not restrict the flow of information to them;

f. The freedom and ability to associate for the common advancement of political beliefs;

g. The right to identify and vote for a candidate who best represents the individual's ideologies and preferences;

h. The right to engage in political activities that aim to gather members together under a common title and common ideological beliefs;

i. The right to associate with other like minded qualified voters for the purpose gaining a voice in that election process.

56. The Supreme Court has recognized that the principles posited in this section of the Complaint impact upon, and provide protection for, an individual, such as Plaintiff, participating in the myriad of activities that cumulatively are understood as being a part of the American political process.

VIII. Elections and the First and Fourteenth Amendments-The Protection for the Integrity of the Primary Process and the National Importance of the Primary Process

57. The Supreme Court has recognized that Presidential Primaries constitute a crucial juncture in the electoral process in that, among other things the primary process:

- a. is a fertile source of new ideas and new programs;
- b. often determines the position of the party and its members on significant public policy issues;
- c. as the moment of choosing the party's nominee, is the crucial juncture at which the appeal to common principles may be translated into concerted action by the members of the party, and hence to political power;
- d. results in a nominee who is the ambassador charged with winning the general electorate over to its views.

58. For these reasons, and others, the First Amendment reserves a special place and accords a special protection for this process.

59. The Supreme Court has recognized that the principles posited in this section of the Complaint impact upon, and provide protection for, an individual, such as Plaintiff, participating in the myriad of activities that cumulatively are understood as being a part of the American political process.

IX. Elections and the First Amendments-The Importance and Protection of Campaign Activity

60. In the context of elections, core First Amendment principles include the protection and promotion of voter education.

61. In the context of elections, core First Amendment principles include the protection and promotion of a voter's freedom of association, because an election campaign is the platform for the expression of views on the issues of the day, and serves as a rallying point for like-minded citizens engaged in the political process.

62. In the context of elections, core First Amendment principles include the protection and promotion of speech uttered during a campaign. The Supreme Court has written that the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. Free discussion about candidates for public office is no less critical before a primary than before a general election. In both instances, the election campaign is a means of disseminating ideas as well as attaining political office.

63. In the context of elections, core First Amendment principles include the protection and promotion of the recruitment of campaign volunteers.

64. In the context of elections, core First Amendment principles include the protection and promotion of the right and ability to assemble in public political meeting places and engage in speech activities that further political belief.

65. The Supreme Court has recognized that the principles posited in this section of the Complaint impact upon, and provide protection for, an individual, such as Plaintiff, participating in the myriad of activities that cumulatively are understood as being a part of the American political process.

X. STATE ACTION

66. 2007 PA 52 is the Act establishing the January 15, 2008 Presidential Primary election in the state of Michigan. Because of its decision to participate in this primary the MDP is a state actor for purposes of the issues raised in this Complaint.

67. 2007 PA 52 is the Act establishing the January 15, 2008 Presidential Primary election in the state of Michigan. Because of its decision to utilize this primary for the purpose of selecting delegates to the National Convention, the MDP is a state actor for purposes of the issues raised in this Complaint.

COUNT I-42 U.S.C. § 1983

DEFENDANT MDP

68. Plaintiff states a claim under 42 U.S.C. § 1983 in that Defendant MDP's November 14, 2007 decision to opt in to the January 15, 2008 Presidential Primary has deprived Plaintiff of rights protected by both the First and Fourteenth Amendments to the United States Constitution, as stated in §§ V through IX of this Complaint.

69. Plaintiff states a claim under 42 U.S.C. § 1983 in that the MDP's decision to opt in to the January 15, 2008 Presidential Primary unconstitutionally alters the timing and delegate process of the DSR and the MDP's approved Delegate Selection Plan, is counter to the Charter of the National Democratic Party, and as a result deprives Plaintiff of rights protected by both the First and Fourteenth Amendments to the United States Constitution, as stated in §§ V through IX of this Complaint.

70. Plaintiff states a claim under 42 U.S.C. § 1983 in that Defendant MDP's November 14, 2007 decision to opt in to the January 15, 2008 Presidential Primary and to use the results of that election for the purpose of selecting delegates to the 2008 National

Convention deprives Plaintiff of rights protected by both the First and Fourteenth Amendments to the United States Constitution, as stated in §§ V through IX of this Complaint.

WHEREFORE Plaintiff requests that this Court:

a. Declare that the MDP's decision to participate in the January 15, 2008 Presidential Primary has resulted in an unconstitutional deprivation of and infringement upon Plaintiff's First and Fourteenth Amendment rights;

b. Declare that the MDP's decision to participate in the January 15, 2008 Presidential Primary has deprived Plaintiff of the rights, privileges and immunities secured to her under the First and Fourteenth Amendments to the U.S. Constitution;

c. Enter a preliminary injunction enjoining Defendant MDP from participating in the January 15, 2008 Presidential Primary;

d. Enter a preliminary injunction enjoining Defendant MDP from using the results of the January 15, 2008 Presidential Primary for the purpose of selecting delegates to the 2008 Democratic National Convention;

e. Enter a permanent injunction enjoining Defendant MDP from participating in the January 15, 2008 Presidential Primary;

f. Enter a permanent injunction enjoining Defendant MDP from using the results of the January 15, 2008 Presidential Primary for the purpose of selecting delegates to the 2008 Democratic National Convention;

g. Award Plaintiff a reasonable attorney fee and costs under 42 U.S.C. § 1988; and

f. Grant Plaintiff such other and further relief as is necessary or proper.

COUNT I-42 U.S.C. § 1983

DEFENDANTS STATE OF MICHIGAN AND SECRETARY OF STATE

71. Plaintiff states a claim under 42 U.S.C. § 1983 in that 2007 PA 52 has deprived Plaintiff of rights protected by both the First and Fourteenth Amendments to the United States Constitution, as stated in §§ V through IX of this Complaint.

72. Plaintiff states a claim under 42 U.S.C. § 1983 in that 2007 PA 52 unconstitutionally alters the timing and delegate process contained in both the DSR and the MDP's approved Delegate Selection Plan, is counter to Charter of the National Democratic Party, and as a result deprives Plaintiff of rights protected by both the First and Fourteenth Amendments to the United States Constitution, as stated in §§ V through IX of this Complaint.

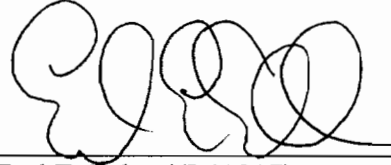
73. Plaintiff states a claim under 42 U.S.C. § 1983 in that 2007 PA 52 requires the MDP to use the results of the January 15, 2008 Presidential Primary a for the purpose of selecting delegates to the 2008 National Convention and thus deprives Plaintiff of rights protected by both the First and Fourteenth Amendments to the United States Constitution, as stated in §§ V through IX of this Complaint.

WHEREFORE Plaintiff requests that this Court:

- a. Declare that § 613a(1) of 2007 PA 52 substantially infringes upon, and unduly burdens, Plaintiff's First and Fourteenth Amendment rights and is thus unconstitutional;
- b. Declare that § 613a(1) of 2007 PA 52 unconstitutionally interferes with the rights of the National Democratic party to determine the methods, timings and procedures of its delegate selection process;
- c. Declare that § 613a(1) of 2007 PA 52 unconstitutionally interferes with the rights of the National Democratic party to determine the methods, timings and procedures of its delegate selection process and thus substantially infringes upon, and unduly burdens, and has otherwise deprived Plaintiff of the rights, privileges and immunities secured to her under the First and Fourteenth Amendments to the U.S. Constitution;
- d. Enter a preliminary injunction enjoining the State of Michigan and the Michigan Secretary of State from conducting the January 15, 2008 Presidential Primary so far as it relates to the Democratic Presidential Primary;
- e. Enter a permanent injunction enjoining the State of Michigan and the Michigan Secretary of State from conducting the January 15, 2008 Presidential Primary so far as it relates to the Democratic Presidential Primary;

- f. Award Plaintiff a reasonable attorney fee and costs under 42 U.S.C. § 1988; and
- g. Grant Plaintiff such other and further relief as is necessary or proper.

Dated: December 10, 2007



Earl E. Erland(P41917)
Attorney for Plaintiff
161 Ottawa NW # 212
Grand Rapids, MI 49503
616-459-6168
eerland@twoheylaw.com