

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTHA HAYES,

Plaintiff,

Case No. 07-1237

v

Hon. Robert J. Jonker

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.

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DEFENDANTS' MOTION TO DISMISS

Defendants, State of Michigan and Secretary of State Terri Lynn Land, through their attorneys, file this Motion to Dismiss pursuant to the doctrine of standing, FR Civ P 12(b),(1), (2) and (6), factors that weigh against this Court exercising declaratory or injunctive relief and Eleventh Amendment immunity.

1. Plaintiff has filed this Complaint pursuant to 42 USC § 1983 and has asserted various constitutional violations under the First and Fourteenth Amendments against the State of Michigan and the Secretary of State Terri Lynn Land as a result of the Defendant Michigan Democratic Party's voluntary decision to use the January 15, 2008 primary for the selection of delegates.

2. For the reasons set forth in the accompanying brief, Plaintiff's entire complaint should be dismissed with prejudice.

3. This motion is being filed pursuant to the schedule set in this matter on December 27, 2007. On December 28, 2007, Plaintiff's attorney was contacted by telephone in order to seek concurrence in this motion pursuant to WD Mich LCR 7.1. Plaintiff's attorney was not available; thus, the need to file this motion.

RELIEF REQUESTED

WHEREFORE, for the reasons set forth in the accompanying brief, Defendants respectfully request that this Court dismiss Plaintiff's complaint with prejudice.

Respectfully submitted,

Michael A. Cox
Attorney General

s/Denise C. Barton (P41535)
Attorney for Defendants State of Michigan and
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Dated: December 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2007, 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: Defendants' Motion to Dismiss, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Earl E. Erland, 161 Ottawa NW, Ste. 300-A, Grand Rapids, MI 49503.

s/Denise C. Barton (P41535)
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