

elect delegates to the Democratic National Convention who will vote on such matters as resolutions, party platform, and selecting a nominee for the office of President of the United States.

3. Plaintiffs, LULAC OF TEXAS, MEXICAN AMERICAN BAR ASSOCIATION OF HOUSTON, TEXAS (MABAH), ANGELA GARCIA, BERNARDO J. GARCIA, ELVIRA RIOS, ROGER ROCHA, ROSARIO VERA, and RAYMUNDO VELARDE (hereinafter referred to as “Plaintiffs”) filed suit May 9, 2008, two decades after the present delegate selection system was adopted, seeking a declaratory judgment that the delegate selection system required pre-clearance under § 5 of the Voting Rights Act (42 U.S.C. § 1973c) and that the delegate selection system “undervalues Latino Democratic voters and does not provide Latino voters with an equal opportunity to participate in the nominating process and to elect candidates of their choice, in violation of § 2 of the Voting Rights Act 42 U.S.C. § 1973.” Plaintiff’s Original Complaint at 8. Finally, Plaintiffs seek “preliminary and permanent injunctive relief enjoining Defendants, their successors in office, agents, employees, attorneys, and those persons acting in concert with them and/or at their discretion from not taking action to proceed with nominating conventions using the discriminatory delegate allocation system describe herein.” *Id.* at 9-10. In other words, Plaintiffs are seeking to enjoin the Texas Democratic Convention scheduled to take place in early June.

4. Defendant TDP hereby moves that Plaintiffs’ claims under § 2 of the Voting Rights Act be dismissed because the Court lacks subject matter jurisdiction. Declaratory judgment actions concerning a voting procedure’s compliance with the Voting Rights Act lie solely with the United States District Court for the District of Columbia.

5. Furthermore, and in the alternative, Defendant TDP hereby moves for dismissal of all Plaintiffs' claims for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6). Defendant TDP is not subject to the Voting Rights Act because it is not a State of the United States of America or any political subdivision. Furthermore, the delegate allocation system is not an election procedure. Even if Plaintiffs could prove all of the facts they allege, which are strongly denied, these facts would not, as a matter of law, prove the claims alleged. Even if Defendant TDP were subject to the Act, pre-clearance was not required under these facts, even if true.

6. Furthermore, Plaintiffs' claims do not state a set of facts, if true, that would support a claim alleged. The provision at issue was not adopted with a discriminatory intent and it does not have a discriminatory effect.

7. For the foregoing reasons and for the additional authorities and analysis contained within Defendant TDP's brief in support hereof filed herewith, Defendant TDP hereby moves for dismissal of this action.

II.

CONCLUSIONS

8. For the above reasons, the Defendant, TEXAS DEMOCRATIC PARTY, asks the Court to Dismiss all of Plaintiffs' claims.

Dated the 15th day of May, 2008.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

By: /s/ Chad W. Dunn

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2008, I electronically filed the foregoing document with the Clerk of Court of the United States District Court, Western District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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