

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA**

Elvin McCorvey, *

Plaintiff, *

vs. * CASE NO. 3:08cv138/MCR/MD

Kurt Browning, in his official capacity *

as Secretary of State of the State *

of Florida, and Bill McCollum, *

in his official capacity as *

Attorney General of the *

State of Florida, *

Defendants. *

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
PENSACOLA, FLA.

08 APR -7 PM 4:21

Jrd
FILED

COMPLAINT

1. Plaintiff Elvin McCorvey is an adult resident of the State of Florida, who lives and is registered to vote within this judicial District. Venue is proper in this Court.

2. This is an action under federal law, and in particular under 42 U.S.C. § 1983 to redress violations of the U.S. Constitution. This Court has jurisdiction under federal law including 28 U.S.C. § 1331.

3. Defendant Kurt Browning is the Secretary of State of the State of Florida, and as such is the State's chief elections official. He is sued in his official capacity only.

Defendant Bill McCollum is the Attorney General of the State of Florida, and as such is the State's chief law enforcement official. He is sued in his official capacity only.

\$350⁰⁰
FLN3-1795
Summons issued

4. Florida law provides, in Title IX, Section 103.101, as follows: “(1) Each political party other than a minor political party shall, on the last Tuesday in January in each year the number of which is a multiple of 4, elect one person to be the candidate for nomination of such party for President of the United States or select delegates to the national nominating convention, as provided by party rule.”

5. The Florida Democratic Party is a “political party,” and not a “minor political party,” within the meaning of that statute. In Presidential elections, the Florida Democratic Party does not select “one person to be the candidate for nomination of such party for President of the United States.” Instead, the Florida Democratic Party selects delegates to the national nominating convention. As such, the statute purports to require the Florida Democratic Party to “select delegates to the national nominating convention” on the last Tuesday in January.

6. Pursuant to that statute, a Presidential primary election was held on January 29, 2008, at which the Florida Democratic Party was purportedly required to “select delegates to the national nominating convention.”

7. Plaintiff is a registered Democratic voter. He voted in the Democratic Presidential primary on January 29, 2008.

8. The Rules of the national Democratic Party, however, forbid the seating of delegates from states – with certain specified exceptions, of which Florida is not one – that hold their primary before a certain date. Those Rules existed prior to the enactment of the statute at issue in this case. The Legislature of the State of Florida, and the

Governor of the State of Florida, knew of those Rules prior to the enactment and signing of the statute quoted above; and they knew that a Florida primary held on January 29, 2008, would be contrary to those party Rules.

9. Under those national Democratic Party rules, the delegates purportedly chosen in the January 29 primary will not, in fact, be seated. The votes cast by Plaintiff and millions of others will not be effective, by virtue of the State's knowing decision to require the Florida Democratic Party to choose its delegates in a manner that did not meet the national Democratic Party's criteria for the seating of delegates.

10. Count One: First Amendment, as incorporated by Fourteenth Amendment. By purporting to require the Florida Democratic Party to choose delegates in a way that the national Democratic Party would not recognize, the State of Florida has violated the First Amendment rights of Plaintiff, of other voters, and of the Florida Democratic Party. The Florida Democratic Party, and its members and supporters such as Plaintiff, have the constitutional right to select Presidential nominating convention delegates in a manner that will be recognized as legitimate by the national Democratic Party at its convention. The statute, by requiring the selection of delegates in a particular way that is illegitimate under party Rules, violates the U.S. Constitution.


11. Count Two: Fourteenth Amendment Due Process. By the actions set forth above, the State has denied Plaintiff the right to vote and to participate in the selection of the Democratic nominee for President. This violates the rights of the Plaintiff under the Due Process clause of the Fourteenth Amendment.

12. Plaintiff seeks all available relief including nominal damages; a declaration that the statute violates the Constitution of the United States; an injunction against enforcement of the statute; an injunction requiring the State, as an equitable remedy, to hold a new Presidential delegate selection process at state expense in a manner that will allow meaningful and effective voter participation; an award of attorneys' fees, costs and expenses; and such other relief as is appropriate.

Respectfully Submitted,

THE GARDNER FIRM, P. C.
Mary E. Olsen
J. Cecil Gardner
P. O. Box 3103
Mobile, Alabama 36652
251-433-8100
Fax 251-433-8181
molsen@thegardnerfirm.com

Gregory B. Stein
STEIN, BREWSTER & PILCHER
205 North Conception Street
Mobile, Alabama 36602
251-433-2002
Fax 251-432-7756
gstein@steinandbrewster.com

By: 

Mary E. Olsen
Florida Bar No. 67075

Please serve the Defendants by certified mail as follows:

Kurt Browning
Secretary of State
Florida Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

Bill McCollum,
Attorney General
State of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050