

Providing Election Data Only to Major Parties

Green Party of Michigan v. Land

(*Nancy G. Edmunds, E.D. Mich. 2:08-cv-10149*)

Four days before a January 15 presidential primary election, minor parties filed a federal complaint challenging a statute specifying that party-preference data would be given only to the major parties. Approximately one month later, after the secretary of state answered the complaint, the plaintiffs moved for a temporary restraining order. The district court held a status conference twelve days later and heard the motion two days after that. On the following day, the district court temporarily enjoined the state from providing anyone with the party-preference data. On March 26, the district court declared the provision of party-preference data only to major parties to be a violation of equal protection.

Subject: Getting on the ballot. *Topics:* Equal protection; primary election; laches.

On January 11, 2008, three minor parties, a Detroit newspaper, and a political consultant filed in Detroit's federal courthouse a constitutional challenge to a 2007 Michigan statute that would have given only the two major political parties access to party-preference data for voters in the January 15 presidential primary election.¹

Governor Jennifer Granholm signed senate bill 624 on September 3, 2007, creating public act 52, which amended Michigan's election laws for presidential primary elections.² The act increased the criterion for a party's participation in the primary election from 5% to 20% of the nationwide vote in the previous presidential election.³ The act also provided that party-preference data from the primary election would be provided only to participating parties; voter-registration data in Michigan did not include party preferences.⁴ The act also moved up the date of the primary election.⁵

On November 21, Michigan's supreme court determined that the act did not violate Michigan's constitutional proscription on the appropriation of public money for private purposes without a two-thirds vote by each house of the legislature: "Political parties unquestionably serve a public purpose."⁶

1. Complaint, *Green Party of Mich. v. Land*, No. 2:08-cv-10149 (E.D. Mich. Jan. 11, 2008), D.E. 1; *Green Party of Mich. v. Land*, 541 F. Supp. 2d 912, 913–15 (E.D. Mich. 2008); see David Ashenfelter, *Legal Wrangling: ACLU Files Suit to Get Voter Information from Primary*, Detroit Free Press, Jan. 12, 2008, at A8.

2. 2007 Mich. Pub. Acts No. 52.

3. *Id.*; *Green Party of Mich.*, 541 F. Supp. 2d at 914 & n.1.

4. 2007 Mich. Pub. Acts No. 52; *Green Party of Mich.*, 541 F. Supp. 2d at 914.

5. See Christie Bleck, *Public Access Nailed Shut Over Primary*, Saginaw News, Mar. 16, 2008, at 3I.

6. *Grebner v. State*, 480 Mich. 939, 744 N.W.2d 123, 126 (Mich. 2007); see Barrie Barber, *Jan. 15 Primary Gets OK*, Saginaw News, Nov. 22, 2007, at 1A.

The federal complaint was served on Michigan's secretary of state on January 17, 2008,⁷ and she answered the complaint on January 31.⁸ Judge Nancy G. Edmunds held a telephone conference on February 6, at which she set a date of March 26 for hearing dispositive motions.⁹ On February 13, the plaintiffs moved for a temporary restraining order.¹⁰ Judge Edmunds held a status conference on February 25 and heard the motion on February 27.¹¹ On February 28, Judge Edmunds enjoined Michigan from providing anyone with the party-preference data until further order of the court, noting that the plaintiffs' summary-judgment motion would be heard on the statutory due date for such distribution.¹²

On March 26, Judge Edmunds declared the statutory provision in question a violation of the minor parties' equal protection.¹³ Among the arguments by the secretary that she rejected was the claim of laches: "Because Defendant offers no evidence of prejudice, Plaintiffs' claims are not barred by the doctrine of laches."¹⁴

The act included a nonseverability clause.¹⁵ Judge Edmunds did not rule on applicability of that clause, which was related to the validity of the early primary election.¹⁶

Both parties assert that the Court's ruling does not require the Court to address the issue of severability. The Court agrees that the issue of severability is beyond the scope of the claims raised by Plaintiffs in this motion. Accordingly, the Court makes no ruling regarding the constitutional validity of the remainder of PA 52.¹⁷

Judge Edmunds approved two stipulations of extensions of time for the plaintiffs to seek attorney fees and costs,¹⁸ but no fee motion was ever filed.¹⁹

On October 4, 2011, Governor Rick Snyder signed senate bill 584,²⁰ which restored the criterion for participation in a presidential primary elec-

7. Service Certificate, *Green Party of Mich. v. Land*, No. 2:08-cv-10149 (E.D. Mich. Jan. 17, 2008), D.E. 2.

8. Answer, *id.* (Jan. 31, 2008), D.E. 3.

9. Docket Sheet, *id.* (Jan. 11, 2008).

10. Temporary-Restraining-Order Motion, *id.* (Feb. 13, 2008), D.E. 5.

11. Docket Sheet, *supra* note 9.

12. Temporary Restraining Order, *Green Party of Mich.*, No. 2:08-cv-10149 (E.D. Mich. Feb. 28, 2008), D.E. 10.

13. *Green Party of Mich. v. Land*, 541 F. Supp. 2d 912, 916–24 (E.D. Mich. 2008); see David Ashenfelter, *State Loses in Primary-Lists Fight Statewide*, Detroit Free Press, Mar. 27, 2008, at B1; *Judge: Access to Primary Vote List Must Be Equal*, Detroit News, Mar. 27, 2008, at A1 [hereinafter *Access Must Be Equal*].

14. *Green Party of Mich.*, 541 F. Supp. 2d at 916 n.3.

15. 2007 Mich. Pub. Acts No. 52.

16. See Ashenfelter, *supra* note 13 (reporting on possible Democratic Party sanctions against the Michigan delegation for holding the primary so early); *Access Must Be Equal*, *supra* note 13.

17. *Green Party of Mich.*, 541 F. Supp. 2d at 924.

18. Stipulation and Order, *Green Party of Mich. v. Land*, No. 2:08-cv-10149 (E.D. Mich. June 2, 2008), D.E. 17; Stipulation and Order, *id.* (Apr. 21, 2008), D.E. 16.

19. Docket Sheet, *supra* note 9.

tion to 5% of the previous national vote,²¹ provided for public disclosure of party-preference data,²² and specified a severability clause.²³

20. 2011 Mich. Pub. Acts No. 163.

21. Mich. Comp. Laws § 168.613a(2).

22. *Id.* § 168.615c(4).

23. 2011 Mich. Pub. Acts No. 163.