Consequences of an Early Primary

Hayes v. Michigan Democratic Party
(Robert J. Jonker, W.D. Mich. 1:07-cv-1237)

A member of the Michigan Democratic Party filed a federal complaint against the party in the Western District of Michigan on December 10, 2007, complaining that the party's participation in an early presidential primary—scheduled for January 15, 2008, in violation of national party rules—caused her preferred candidate to opt out of the primary.[1]

The dispute arose because some states sought to elevate their status in the 2008 presidential nominations by moving up in time their selection of convention delegates, but the national Democratic Party sought to preserve the special status of Iowa and New Hampshire.[2] Major candidates Barack Obama and John Edwards supported the national party's rules by opting out of the Michigan primary, but major candidate Hillary Rodham Clinton supported the state's position by opting in.[3]

The court assigned the case to Judge Robert J. Jonker.[4] Judge Jonker likes to review records of filings himself, and seeing that this was an election case he asked the law clerk assigned to this case to begin legal research immediately.[5]

The plaintiff filed a motion for a preliminary injunction with expedited consideration on December 26, 2007.[6] On the following day, Judge Jonker held a telephone status conference, granted the motion to expedite, and set hearing on the injunction motion for January 7, 2008.[7] Judge Jonker wanted to allow both enough time to get it right and enough time for a possible appeal.[8]

At the hearing, the plaintiff's attorney announced that he was backing away from a demand that the election be halted while retaining a plea that the election results not be used for the selection of delegates.[9]

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1. Complaint, Hayes v. Michigan Democratic Party, No. 1:07-cv-1237 (W.D. Mich. Dec. 10, 2007), D.E. 1; *see* Kathy Barks Hoffman, *Lawsuit Seeks to Halt Democratic Primary*, Grand Rapids Press, Dec. 12, 2007, at B5 (reporting that the plaintiff's candidate of choice apparently was John Edwards); *see also* Transcript at 20–22, *Hayes*, No. 1:07-cv-1237 (W.D. Mich. Jan. 7, 2008, filed Jan. 14, 2008), D.E. 21 (observations by the judge that the record's silence on the plaintiff's preferred candidate means that the record was consistent with the plaintiff's supporting Clinton, who was on the ballot); *id.* at 35 (testimony by the plaintiff that she supported Edwards).

2. *See* Katharine Q. Seelye, *4 Democrats Leave Michigan's Early Primary*, N.Y. Times, Oct. 10, 2007, at A19.

3. *See* Jim Harger, *Edwards Supporter Heads to Court Over Primary Date*, Grand Rapids Press, Jan. 5, 2008, at A2; Seelye, *supra* note 2.

4. Docket Sheet, *Hayes*, No. 1:07-cv-1237 (W.D. Mich. Dec. 10, 2007).

Tim Reagan interviewed Judge Jonker for this report by telephone on October 3, 2012.

5. Interview with Hon. Robert J. Jonker, Oct. 3, 2012.

6. Preliminary Injunction Motion, *Hayes*, No. 1:07-cv-1237 (W.D. Mich. Dec. 10, 2007), D.E. 6.

7. Docket Sheet, *supra* note 4; Minutes, *Hayes*, No. 1:07-cv-1237 (W.D. Mich. Dec. 27, 2007), D.E. 10.

8. Interview with Hon. Robert J. Jonker, Oct. 3, 2012.

9. Transcript, *supra* note 1, at 9–11.

After the hearing, Judge Jonker denied the plaintiff preliminary injunctive relief.[10] In addition to a reluctance to interfere with an election, especially one to be held only days later, Judge Jonker expressed doubt about the plaintiff's standing:

> And so a voter has to come into court and demonstrate some imminent and substantial harm that separates the particular voter coming in from other voters so that every voter in the Democratic Party doesn't effectively have a right to lose . . . an intraparty dispute and then come to court and assert their position all over again.[11]

On February 5, Judge Jonker approved a stipulated dismissal of the action.[12]

This case was not filed on election day, so it was assigned to a judge by normal procedures.[13] For possible emergency cases at the time of elections, the court asks one district judge to be on duty to handle emergency matters if necessary for cases assigned to other judges.[14]

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10. Order, *Hayes*, No. 1:07-cv-1237 (W.D. Mich. Jan. 7, 2008), D.E. 19; Minutes, *id.* (Jan. 7, 2008), D.E. 18; *see* Jim Harger, *Judge Sidesteps Political Fray*, Grand Rapids Press, Jan. 8, 2008, at B1.

11. Transcript, *supra* note 1, at 72.

12. Order, *Hayes*, No. 1:07-cv-1237 (W.D. Mich. Feb. 5, 2008), D.E. 25.

13. Interview with Hon. Robert J. Jonker, Oct. 3, 2012.

14. *Id.*