

Providing Election Data Only to Major Parties

Green Party of Michigan v. Land

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

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.¹

Governor Jennifer Granholm signed Senate Bill 624 on September 3, 2007, creating Public Act 52, which amended Michigan's election laws for presidential primaries.² The act increased the criterion for a party's participation in the primary 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 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.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

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

1. [Complaint](#), *Green Party of Michigan v. Land*, No. 2:08-cv-10149 (E.D. Mich. Jan. 11, 2008), D.E. 1; [Green Party of Michigan 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 Michigan](#), 541 F. Supp. 2d at 914 & n.1.

4. [2007 Mich. Pub. Acts No. 52](#); [Green Party of Michigan](#), 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.

7. [Service Certificate](#), *Green Party of Michigan 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.

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

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

13. [Green Party of Michigan 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 Michigan](#), 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 Michigan](#), 541 F. Supp. 2d at 924.

18. [Stipulation and Order](#), *Green Party of Michigan 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.

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](#).