

## Sore Loser on Ballot

*Libertarian Party of Michigan v. Johnson*  
(Paul D. Borman, E.D. Mich. 2:12-cv-12782)

On June 25, 2012, the Libertarian candidate for President filed a federal complaint challenging application of Michigan's sore loser statute to disqualify him from the general election ballot because he withdrew from the Republican primary three minutes late. After Michigan responded to the complaint with a motion to dismiss it, the candidate filed a motion for summary judgment. He filed a motion to expedite on August 19. Observing that the candidate had known since May that he would be excluded from the ballot, the district court also concluded that the complaint should be dismissed on the merits. In 2013, the court of appeals agreed.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; intervention; laches.

On June 25, 2012, the Libertarian candidate for President filed a federal complaint in the Eastern District of Michigan, seeking an injunction placing him on the general election ballot.<sup>1</sup> He alleged that his missing by three minutes the deadline to withdraw his name from the Republican primary ballot and improper enforcement of Michigan's sore loser statute by Michigan's secretary of state would deprive him of his place on the ballot.<sup>2</sup> The party and its chair also were plaintiffs.<sup>3</sup>

The secretary filed a motion to dismiss the complaint on July 31.<sup>4</sup> Two days later, the plaintiffs filed a motion for summary judgment.<sup>5</sup> On August 19, the plaintiffs filed a motion to expedite summary judgment.<sup>6</sup> Ten days later, Judge Paul D. Borman set a telephone conference for the following day.<sup>7</sup> Judge Borman then decided to hear the pending motions on September 6.<sup>8</sup>

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1. Complaint, *Libertarian Party of Mich. v. Johnson*, No. 2:12-cv-12782 (E.D. Mich. June 25, 2012), D.E. 1.

2. *Id.* at 3–7; see Mich. Comp. Laws § 168.695 (“No person whose name was printed or placed on the primary ballots or voting machines as a candidate for nomination on the primary ballots of 1 political party shall be eligible as a candidate of any other political party at the election following that primary.”); see also *Libertarian Party of Mich. v. Johnson*, 714 F.3d 929, 930 (6th Cir. 2013); *Libertarian Party of Mich. v. Johnson*, 905 F. Supp. 2d 751, 755 (E.D. Mich. 2012) (“Gary Johnson never challenged, or took any legal action to reverse the Secretary of State’s decision refusing his untimely request to remove his name from the Michigan primary ballot as a Republican party presidential candidate.”).

3. Complaint, *supra* note 1, at 1–3.

4. Motion to Dismiss, *Libertarian Party of Mich.*, No. 2:12-cv-12782 (E.D. Mich. July 31, 2012), D.E. 4.

5. Summary Judgment Motion, *id.* (Aug. 2, 2012), D.E. 6.

6. Motion to Expedite, *id.* (Aug. 19, 2012), D.E. 9.

7. Transcript, *id.* (Aug. 30, 2012, filed Sept. 4, 2012), D.E. 18; Docket Sheet, *id.* (June 25, 2012).

On September 4, the Republican Party moved to intervene in opposition to the complaint.<sup>9</sup> Judge Borman granted intervention on September 5.<sup>10</sup> In a 25-page opinion issued on September 7, he granted motions to dismiss the complaint, concluding that although the statute's burden on associational rights is not trivial, neither is it severe.<sup>11</sup>

Plaintiffs' dilatory conduct in this action has put the Court and the Defendant Secretary of State in an unnecessarily haste-driven position. The Court put on the record at the September 6, 2012 hearing on this matter its findings regarding Defendant Ruth Johnson's claim that Plaintiffs' motion for an expedited hearing on the merits of this matter should have been denied on the basis of laches. Although the Court has decided, given the importance of the issue to reach the merits, Plaintiffs' failure to act with any sense of urgency in this matter until August 19, 2012 is reprehensible. Plaintiffs were well aware, as early as May 3, 2012, that [the candidate] would be denied general election ballot access in Michigan, but waited until June 25, 2012 to file their Complaint, further waited until July 18, 2012 to serve the Defendant, further waited until August 2, 2012 to file their non-emergency motion for summary judgment, and vexatiously waited until August 19, 2012 to apprise the Court that their motion was of an urgent nature.<sup>12</sup>

On September 12, the court of appeals denied the plaintiffs an emergency injunction.<sup>13</sup> On September 19, the Supreme Court also denied the plaintiffs an injunction.<sup>14</sup> The court of appeals affirmed Judge Borman's ruling on May 1, 2013.<sup>15</sup>

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Tim Reagan interviewed Judge Borman for this report by telephone on November 9, 2012.

8. Notice, *Libertarian Party of Mich.*, No. 2:12-cv-12782 (E.D. Mich. Aug. 30, 2012), D.E. 15.

9. Intervention Motion, *id.* (Sept. 4, 2012), D.E. 20; Motion to Dismiss, *id.* (Sept. 4, 2012), D.E. 21.

10. Order, *id.* (Sept. 5, 2012), D.E. 23.

11. *Id.* at 12, 23–24; *Libertarian Party of Mich. v. Johnson*, 714 F.3d 929, 931 (6th Cir. 2013).

12. *Libertarian Party of Mich. v. Johnson*, 905 F. Supp. 2d 751, 754 n.2 (E.D. Mich. 2012). Research on other states' sore loser statutes was an important factor in the demands on the court's time. Interview with Hon. Paul D. Borman, Nov. 9, 2012.

13. Order, *Libertarian Party of Mich. v. Johnson*, No. 12-2153 (6th Cir. Sept. 12, 2012); *Libertarian Party of Mich.*, 714 F.3d at 931.

14. *Libertarian Party of Mich. v. Johnson*, 567 U.S. 966 (2012).

15. *Libertarian Party of Mich.*, 714 F.3d 929, *cert. denied*, 571 U.S. 1110 (2013).

The district court thoroughly and correctly evaluated the arguments of the parties on the merits. After reviewing the record, the parties' briefs, and the applicable law, we determine that no jurisprudential purpose would be served by a panel opinion on the merits. Therefore, we affirm the district court's judgment for the reasons stated in its September 10, 2012 opinion and order.

*Id.* at 932.