

**State of Michigan**  
**In the Ingham County Circuit Court – 30th Judicial Circuit**

**Socialist Party of Michigan**  
and **Dwain C. Reynolds III**,  
Plaintiffs,

**Complaint for Declaratory  
and Injunctive Relief**

v

Case #: \_\_\_\_\_ - CZ

Michigan Secretary of State  
**Terri Lynn Land**, in her official capacity,  
Defendant.

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**Complaint for Declaratory and Injunctive Relief**

There is no other pending or resolved civil action arising out of  
the transaction or occurrence alleged in the complaint.

For their complaint against the above-named Defendant, Plaintiffs state as follows:

**Introduction**

1. This case challenges 1954 PA 116, MCL § 168.685, as amended by 1988 PA 116 and 2002 PA 399, which prohibits the Secretary of State, and all applicable local election clerks, from placing the names of any “new political party[’s]” candidates on the ballot, unless the chairperson and secretary of such a party’s state central committee submit “Petition[s] to Form [a] New Political Party” which bear “the signatures<sup>1</sup> of registered and qualified electors equal

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<sup>1</sup> Under Michigan election law, and as used herein, a voter’s “signature” refers to that voter’s written declaration of the name of the city or township of the residence within which he or she is registered to vote, a marked checkbox indicating whether his or her said municipality is a city or a township, his or her signature, his or her printed name, the street address or rural route of the residence at which he or she is registered to vote, the ZIP

to not less than 1% of the total number of votes cast for all candidates for governor at the last election in which a governor was elected,” among which at least 100 valid signatures have been collected from voters who are registered within each of at least eight of the State’s congressional districts, within a 180-day period from the date of filing on or before the July deadline in the year preceding the general election for which the “new” party seeks to qualify.

2. This case also challenges the inequitable application of 2002 PA 399 to Plaintiffs’ present ballot-qualification status, under the Secretary of State’s present interpretation of the amendment to 1954 PA 116, MCL § 168.685 as therein applied.

3. Plaintiffs argue that:

A. The present statute, as applied, requires “new” political parties to demonstrate support from a far greater number of voters, and by far more burdensome means, than political parties entitled to automatic ballot placement from the last preceding election – and thereby “imparts a substantial unfair advantage to political parties entitled to automatic placement on the general election ballot.” *Socialist Workers Party v Secretary of State*, 412 Mich 571, 599; 317 NW 2d 1 (1982) (hereafter “*SWP v SOS*”).

B. Failure to apply the votes cast for Plaintiff Socialist Party of Michigan’s principal candidate in the last preceding general election in 2008 to the party’s ballot status for the 2010 State general election results in the inequitable dilution of the weight accorded to the votes of tens of thousands of citizens who chose to cast them for

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code of the residence at which he or she is registered to vote, and the month, day, and year of his or her signing. All voters signing a given “new” party’s petition sheet must be registered electors of the same county, as indicated at the top of each sheet by its circulator.

Plaintiff Socialist Party of Michigan's principal candidate, thereby impairing such citizens' ability to cast their votes equally and effectively.

- C. The present statutory requirements, as applied, function mainly to test a "new" party's ability to raise large-scale financial resources rather than its level of voter support – and thereby function to discriminatorily exclude in general parties oriented toward representing low-income voters, and in particular Plaintiff Socialist Party of Michigan.
- D. The present statutory requirements, as applied, discriminate against "new" parties and their supporters – and impose a particularly chilling effect upon Plaintiffs' ballot-qualification effort – by making "new" party petition signers the only segment of the State electorate required to publicly declare a party affiliation.
- E. The scale and balance of burdens imposed on minor parties seeking to gain or keep ballot access under the provisions of the present statute, as applied, were directly tailored to an explicitly partisan interest, rather than to any compelling or legitimate state interest.
- F. Defendant Secretary of State has subjected Plaintiffs to invidious discrimination by retroactively applying the new ballot-access retention standard established by 2002 PA 399 to restore the ballot access of two other previously disqualified and equally situated parties, while declining to retroactively apply the Act to the ballot status of Plaintiff Socialist Party of Michigan on the same or even better grounds.
- G. Under the facial wording of the Michigan Election Code, 1954 PA 116, MCL § 168.001 *et seq.*, the vote showings of Plaintiffs' party's principal candidate in the 1976 general election (in which Plaintiffs' party was last officially ballot-qualified) and the 2008

general election (in which Plaintiffs’ party – without holding official Michigan ballot qualification itself – nominated candidates who did appear on the ballot), more accurately render Plaintiff Socialist Party of Michigan a ballot-qualified party pursuant to MCL §§ 168.532 and 168.560a, or to MCL § 168.685 by its terms, than a “disqualified party” pursuant to MCL § 168.685(6) as interpreted and applied.

4. On all of the above grounds, Plaintiffs seek legal and equitable relief pursuant to 42 USC § 1983 for violation of Plaintiffs’ rights under US Const, Ams I and XIV, and the Equal Protection (art 1, § 2) and “Purity of Elections” (art 2, § 4) Clauses of Const 1963.

### **Parties**

5. Plaintiff Socialist Party of Michigan (“SPMI”) is a state political party affiliated with the Socialist Party of the United States of America (“Socialist Party USA” or “SP-USA”), a national political party founded in 1901 and one of the eight United States political parties presently designated with national party status by the Federal Election Commission. Although SPMI has run candidates for state and federal office in each of the past three State general elections, all of its candidates have been restricted to being listed on the ballot with either the party label of a different qualified party or with “no party affiliation” due to the prohibitively burdensome obstacles to obtaining state ballot qualification for SPMI under the present statute as interpreted. Plaintiff SPMI also holds a synonymous identity with the political party formerly qualified for the Michigan ballot under the “Human Rights Party” ballot label.<sup>2</sup>

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<sup>2</sup> See “Human Rights Party Newsletter April-May – 1977”, Robert Alexander Papers, Newsletter. Bentley Historical Library, University of Michigan.

6. Plaintiff Dwain C. Reynolds III is a registered elector of Yankee Springs Township, Barry County, Michigan who identifies with SPMI as the party most closely representing his political viewpoints and electoral preferences. Plaintiff Reynolds wishes to ensure that SPMI is able to place all of its nominated candidates on the 2010 ballot under their proper party label so that he may cast a straight-ticket vote for such candidates, and encourage fellow voters to do the same, in hope of electing such candidates to public office. Having also served as SPMI's principal candidate in the 2008 general election, Plaintiff Reynolds wishes to ensure that the tens of thousands of votes he received while campaigning throughout the state on SPMI's behalf are not excluded from being applied to SPMI's ballot status in the general election this November.
7. Defendant Terri Lynn Land is the Michigan Secretary of State and, in that official capacity, is responsible for the conduct of elections and administration of election laws in the State of Michigan. Her principal office is in the City of Lansing, Ingham County, Michigan.
8. Jurisdiction and venue are proper in Ingham County under MCL §§ 600.605 and 600.1615.

### **Factual Allegations**

9. Pursuant to the presently enacted ballot qualification threshold for "new" parties, based on the results of the preceding 2006 Michigan gubernatorial election in which 3,801,256 votes were cast for the office of Governor, no "new political party" will be permitted to nominate candidates for the 2010 general election ballot unless it is able (as described in ¶ 1, *supra*) to collect and submit at least 38,013 valid signatures, satisfying the statutory distribution requirements, before the July 15, 2010 deadline.

10. As a result of the increasing numbers of votes cast in recent state gubernatorial elections, Michigan's current ballot-qualification threshold now requires over 25% more signatures than any successfully qualifying state political party has ever been required to obtain for purposes of qualifying for the ballot in the state's entire electoral history.<sup>3</sup>
11. At least one new political party qualified for the ballot in every general election held between the original enactment of 1954 PA 399 and the general election of 2000 – except the 1978 general election, for which the corresponding “new” party ballot qualification procedures were subsequently found unconstitutional by the Michigan Supreme Court in *SWP v SOS*, *supra*.
12. No “new” party has successfully qualified for the Michigan ballot in any of the four general elections to have been held since the 2000 general election (2002, 2004, 2006, or 2008).<sup>4</sup>

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<sup>3</sup> See Michigan Dep't of State, Bureau of Election, “Performance of Minor Parties in Michigan General Elections 1900-2008” <[http://michigan.gov/documents/sos/Minor\\_Party\\_Chart\\_4-20091\\_274669\\_7.pdf](http://michigan.gov/documents/sos/Minor_Party_Chart_4-20091_274669_7.pdf)> (accessed June 22, 2010) (hereafter “Performance of Minor Parties”). Prior to 1939, Michigan allowed any party to field candidates on the state ballot upon that party's mere request to have its candidates listed and labeled on the ballot accordingly.

<sup>4</sup> *Id.*; see also Tim O'Brien, “Public Act 399 and the Michigan Legislation Factory” <<http://home.comcast.net/~tobrien321/PublicAct399.htm>> (accessed June 22, 2010), noting that the Libertarian Party of Michigan did successfully collect the requisite number of signatures at a cost of over \$30,000, in addition to thousands of hours performed by hundreds of volunteers, to re-qualify for the 2002 general election ballot. Before the enactment of 2002 PA 399, LPM believed such a petition drive to be necessary due to the insufficient vote showing of its Presidential candidate in the preceding 2000 general election. However, due (ostensibly) to the Secretary of State's retroactive application of 2002 PA 399 to the showings of qualified parties in the 2000 general election, the Secretary of State does not include the Libertarian Party's 2002 ballot-qualification status among those marked as having “qualified by petition” in its “Performance of Minor Parties” chart, fn 3 *supra*. Furthermore, even if Defendant Secretary of State were to have instead designated the Libertarian Party's 2002 general election ballot qualification among those that had qualified by petition, rather than by automatic retention from the directly preceding election, the number of signatures that a “new” party is presently required to collect for the upcoming 2010 general election ballot is nevertheless over 25% higher than the number of signatures that a “new” party was required for the 2002 general election ballot, as noted in ¶ 10, *supra*.

Plaintiffs take notice of the filing – on or about July 14, 2010 – of a ballot petition offered to qualify the Tea Party of Michigan for the 2010 general-election ballot. There is evidently some room for disagreement as to whether this filing represents (1) an attempt to form a legitimate new state political party, associated with the nationwide Tea Party movement, branching primarily off from one of the state's two major political parties; or (2) a political ploy to divide that major party's constituency, funded by the other major party (or some of its supporters). In either case (perhaps more particularly in the latter), the facts behind this petition drive – and its cost, estimated by a political consultant with experience in the field, at over \$120,000 – serves only to confirm Plaintiffs' arguments that the petition path to ballot qualification in Michigan discriminates against smaller, less well-funded parties in general and Plaintiffs' party in particular. See Dawson Bell, “Tea Party on the ballot? Some say it's a trick”, *Detroit Free Press*, July 15, 2010 (p 1A of print edition; available on line at <<http://www.freep.com/article/20100715/NEWS06/7150463>>).

13. According to Defendant’s Website, as of June 22, 2010: “No parties [are] attempting to qualify [by petition for the upcoming 2010 general election ballot] at this date.”<sup>5</sup>
14. With the exception of 1978,<sup>6</sup> for which the new-party ballot-qualification procedures were subsequently found unconstitutional by the Michigan Supreme Court in *SWP v SOS*, *supra*, the past four general elections held since 2000 (2002, 2004, 2006, and 2008) additionally mark the first ever elections in which all minor parties that nominated a candidate for a statewide office have successfully retained automatic ballot access into each subsequent election.
15. At the time of the Michigan Supreme Court’s ruling in *SWP v SOS*, *supra*, the minimum number of petition signatures required for a “new” political party to gain ballot access was the same as the number of votes required of the principal candidate of a party eligible for automatic requalification for such a party to stay ballot-qualified in the subsequent general election: that number equaling 1% of the vote for the successful candidate for the office of Secretary of State in the last preceding general election in which a Secretary of State was elected.
16. The Legislature’s enactment of 1988 PA 116 created unequal voter-support thresholds for ballot qualification for automatic-qualification-eligible political parties and “new” political parties. While 1988 PA 116 maintained the “principal candidate” vote threshold for subsequent ballot requalification of the former at 1% of the number of votes cast for the successful candidate for the office of Secretary of State in the last preceding Secretary of State election (with no

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<sup>5</sup> Michigan Dep’t of State, Bureau of Elections, “Political Party Status”, updated June 22, 2009 <[http://michigan.gov/documents/PoliticalPartyStatus\\_135123\\_7.pdf](http://michigan.gov/documents/PoliticalPartyStatus_135123_7.pdf)> (hereafter “Political Party Status 2009”) (accessed June 22, 2010). Regarding the Tea Party ballot petition filing, see fn 4, *supra*.

<sup>6</sup> Though the American Independent Party did maintain automatic ballot access into the 1980 election, it was the only minor party qualified for the ballot in the preceding 1978 general election. “Performance of Minor Parties”, fn 3 *supra*.

distributional requirements), it changed the petition-signature requirement for the latter to 1% of the number of votes cast for all candidates for the office of governor in the preceding gubernatorial election (and kept the distributional requirements described in ¶ 1, *supra*).

17. In addition to the significantly greater burden involved in obtaining valid petition signatures to qualify a political party by petition than is involved in gaining re-qualification for a political party through votes at the polls for one of the party's statewide candidates, MCL § 168.685 now requires a "new" political party to collect nearly twice as many valid signatures in order to qualify for the ballot as the number of votes that a returning party is required to receive for any one of its nominated candidates in order to remain qualified for the ballot (signatures equal to 1% of the number of votes cast for all candidates for the office of governor vs. 1% of the number of votes cast for the successful candidate for Secretary of State – currently 38,013 signatures vs. 20,899 votes).<sup>7</sup>
18. In contrast to the requirement for "new" parties to obtain signatures from voters to qualify for the ballot, presently qualified parties are able to maintain their ballot qualification into subsequent elections solely on the basis of the number of votes received by their highest vote-grossing candidate, rather than those votes that are directly cast for the party itself. Although straight-ticket votes cast for the nominated slates of ballot-qualified parties as a whole are tallied in Michigan general elections pursuant to MCL § 168.804, the number of such votes cast directly for the parties does not impact such parties' continued qualification for the ballot.
19. In Michigan's 1978 and 1980 State general elections, as examined by the Michigan Supreme Court in *SWP v SOS*, *supra*, the minimum signature thresholds required for a "new" party to

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<sup>7</sup> Michigan Dep't of State, Bureau of Elections, "Political Party Status 2009", fn 5 *supra*.



qualify for the State ballot (pending its supplementary receipt of 3/10 of 1% of the vote in the annually corresponding primary election, pursuant to MCL § 168.685 as then enacted) were 17,674 and 18,339 respectively.

20. As shown by ¶¶ 17 and 19, *supra*, since the 1980 general election (which was the last “preceding general election” examined by the *SWP v SOS* Court), the minimum voter-support threshold required of automatically requalifying parties has remained generally stable, having since risen by only 2,560 votes (14%). In contrast, the minimum voter-support threshold now required for a “new” party to get ballot access has since risen by 19,380 signatures (107%).
21. 2002 PA 399 changed MCL § 168.685’s definition of a party’s “principal candidate” from “the candidate whose name shall appear nearest the top of the party column” to “the candidate who receives the greatest number of votes of all candidates of that political party for that election”. This change had the intended effect of allowing any presently ballot-qualified party to retain ballot access in the following general election as long as the number of votes received by at least one of its nominated candidates (not necessarily the top-of-the-ticket candidate, as before) is at least 1% of the number of votes cast for the successful candidate for Secretary of State at the preceding general November election in which a Secretary of State was elected.
22. But 2002 PA 399 also removed the reference in MCL § 168.685 to a “party column” as part of the definition of “principal candidate”. Thus, if any “political party” (a general term not defined by the statute, but which clearly fits Plaintiff SPMI) with or without a ballot column nominates candidates, and if the top vote-getting “candidate[] . . . of that political party” reaches or exceeds the 1% vote threshold, then the terms of MCL § 168.685 (as amended by 2002 PA 399) require that the party be placed on the ballot for the next general election.

23. The Legislature enacted 2002 PA 399 based on an explicit deal reached between officers of the Libertarian Party of Michigan and key Republican members of the then majority-Republican state legislature. The amending legislation was passed in direct exchange for the Libertarian Party of Michigan's agreement not to nominate any candidates to challenge the candidates of the Republican Party in either the 2002 gubernatorial race or the races for fourteen specified State Senate seats in the general election scheduled to be held in November of that year.<sup>8</sup>
24. The last time any "new" parties were able to qualify for the Michigan ballot by petition was early in the previous decade – at which time the required signature threshold was substantially lower. But even then it was, as it continues to be, effectively impossible for any "new" party to qualify for the state ballot without the financial resources necessary to provide an enormous investment into the hiring of paid petitioners. Consequently, those minor parties which have been able to successfully qualify for the Michigan ballot within the past decade<sup>9</sup> have officially and collectively affirmed a statement testifying: "Under the present Michigan election law, it is impossible for a 'new' party to nominate any candidates for the ballot without spending tens of thousands of dollars on a statewide ballot access drive."<sup>10</sup>

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<sup>8</sup> See Tim O'Brien, fn 4 *supra*.

<sup>9</sup> This does not include the Natural Law Party of Michigan. Despite its continued ability to maintain a state party ballot line, the Natural Law Party of Michigan does not presently maintain a structurally operational party organization following its national party's official 2004 dissolution, and has therefore neither affirmed nor disputed this assertion. This statement was officially adopted by all other parties that have held minor-party ballot qualification in Michigan within the past decade (Green Party of Michigan, Libertarian Party of Michigan, Reform Party of Michigan, and U.S. Taxpayers Party of Michigan) and Plaintiff Socialist Party of Michigan.

<sup>10</sup> Michigan Third Parties Coalition. <<http://sites.google.com/site/mserard/michiganthirdpartiescoalition>> (accessed June 22, 2010); see also "House Redistricting and Elections Committee meeting February 7, 2002: Consideration of HB 5237 – Testimony by Councilman Fred Collins (Berkley)" in Tim O'Brien, fn 4 *supra*. Regarding the estimated \$120,000+ cost of the Tea Party ballot-petition drive, see, *inter alia*, Dawson Bell, "Tea Party on the ballot? Some say it's a trick", Detroit *Free Press*, July 15, 2010 (p 1A of print edition; available on line at <<http://www.freep.com/article/20100715/NEWS06/7150463>>).

25. The Michigan Campaign Finance Act (1976 PA 388) imposes no reporting obligations or restrictions on any “new” political party’s raising or expending funds to secure ballot access.<sup>11</sup>
26. One of SPMI’s distinguishing characteristics as a political party is that it holds a specific orientation to providing political representation to those segments of the state electorate who possess no financial assets to sell on the market other than their own individual labor power. In accordance with SPMI’s specific political orientation to relatively low-income Michigan voters, the vast majority of its state membership reports earning less than \$20,000 a year.<sup>12</sup> Consequently, the party operates on a “shoestring budget” without the means to make any substantive investment into financing a statewide petitioning effort to qualify for the Michigan ballot.
27. Plaintiff SPMI also holds the status of being the direct and interchangeably equivalent heir to the Human Rights Party, following the latter’s official name change to the “Socialist Human Rights Party” in 1975 and formal merger into SPMI (and affiliation with SP-USA) in 1977.
28. The Human Rights Party lost its Michigan ballot qualification, after the intervening local elections of 1977, due to its 1976 nominated Presidential candidate having failed to receive votes equal to 1% of the number of votes cast for the successful candidate for Secretary of State in the last preceding general November election in which a Secretary of State was elected.

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<sup>11</sup> Michigan Dep’t of State, “Annual Summary of Declaratory Rulings and Interpretive Statements”, synopsis/summary of interpretative statement to James & Natural Law Party – 5/25/1995” <[http://michigan.gov/documents/CFR\\_ANNUAL\\_SUMMARY\\_84898\\_7.pdf](http://michigan.gov/documents/CFR_ANNUAL_SUMMARY_84898_7.pdf)> (hereafter “1995 Interpretive Statement”) (accessed June 22, 2010) (“The Act does not apply to the circulation of qualifying petitions for a new political party. It follows then that donations made to assist a new political party in qualifying for the ballot are not contributions or expenditures as defined in the Act and a political party committee may accept and use corporate funds to pay for costs incurred in securing ballot access”).

<sup>12</sup> Based on the modal income bracket reported by new and renewing members according to the Party’s graduated scale for payments of annual membership dues according to net income.

29. Despite the fact that the Human Rights Party ran other candidates in 1976 who did meet this threshold, and even gained two partisan electoral victories in the same 1976 general election which led to the Human Rights Party's disqualification,<sup>13</sup> the Michigan Election Code – prior to the enactment of 2002 PA 399 – determined a party's subsequent retention of ballot access exclusively on the basis of the number of votes received for whichever candidate on a party's election slate was nominated for the highest-level office among the slate of candidates it nominated in any given state general election (the "top-of-the-ticket candidate").<sup>14</sup>
30. Similarly, the Natural Law Party of Michigan and the U.S. Taxpayers Party of Michigan were certified on November 27, 2000 by the then-holder of Defendant Secretary of State's office, Candice Miller, to have lost their qualification for the Michigan ballot after their 2000 Presidential candidates failed to receive enough votes to pass the prior ballot-access retention test (then still in effect) requiring a party's top-of-the ticket candidate to receive a number of votes equal to 1% of all votes cast for the successful candidate for Secretary of State in the precedingly applicable general election.
31. Following the aforementioned change to the test for party ballot-access retention established by the enactment of the 2002 PA 399 amendment to MCL § 168.685, then-Secretary of State Miller chose to retroactively restore the ballot access of the U.S. Taxpayers Party and Natural Law Party through a July 15, 2002 ruling – basing that ruling on the fact that both parties had

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<sup>13</sup> Under their Human Rights Party ballot label, Plaintiffs' party nominated candidates Eric Jackson and Harold Baize who thereupon both successfully won their partisan races for seats on the Ypsilanti, Michigan City Council in the same 1976 general election that led to the disqualification of Plaintiffs' party from the ballot.

<sup>14</sup> See Richard Winger, "Michigan Bill Passes: New Law Makes It Easier for Parties to Remain on Ballot", 18 *Ballot Access News* No 2 <<http://www.ballot-access.org/2002/0601.html#1>> (accessed June 22, 2010), noting that "The Human Rights Party also would have been helped by the new law in 1976, when it did place a Presidential candidate on the ballot. That candidate failed to get enough votes. The party's other candidates in 1976 got enough votes, but under the old law, that was no help."

nominated candidates for other offices in 2000 who, unlike their Presidential candidates that year, had met the vote threshold under the new statutory standard as amended two years later.<sup>15</sup>

32. Both the U.S. Taxpayers Party and Natural Law Party continue to be entitled to nominate candidates for Michigan ballots today as a result of the then-Secretary of State's retroactive restoration of their ballot access in 2002.
33. No such retroactive restoration of ballot access was granted to SPMI f/k/a Human Rights Party (hereafter "Plaintiffs' party"), despite the fact that Plaintiffs' party would have also have been relieved from the loss of Michigan ballot qualification if it had been accorded the same retroactive application of the statutory amendment as was accorded to the U.S. Taxpayers and Natural Law Parties in 2002.<sup>16</sup>
34. The only other political party to have been disqualified prior to the enactment of 2002 PA 399 which has since actively maintained its state party organization to the present time, and to which retroactive application of the amendment to the last election results could restore ballot access, is the Workers World Party, which last held ballot qualification in Michigan for the 1996 general election. In contrast to Plaintiff SPMI, however, the Workers World Party, while still actively operating its state party organization, has not continued to run party candidates in recent Michigan general elections.

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<sup>15</sup> See Richard Winger, "Michigan Puts Two Parties on Ballot", 18 *Ballot Access News* No. 4 <<http://www.ballot-access.org/2002/0801.html#6>> (accessed June 22, 2010).

<sup>16</sup> *Id.*

35. Preceding its last period of qualification under the “Human Rights Party” ballot label from 1972-1976, Plaintiff SPMI also held Michigan ballot access in each State general election between 1902 and 1940, and each Presidential election year from 1902 through 1948.

Following efforts of Michigan’s State Legislature and those of other states in the post-WWII period to enact sweeping legislation aimed, explicitly or implicitly, at keeping deemed-subversive communist and socialist parties off the ballot, culminating most enduringly in Michigan with the passage of 1954 PA 116, Plaintiffs’ party was unable to regain its qualification over the following two decades.<sup>17</sup>

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<sup>17</sup> See Bradley A. Smith, *Judicial Protection of Ballot-Access Rights: Third Parties Need Not Apply*, 28 Harv J of Legis 167, 174 (1991 Winter) (noting that “a second major wave of restrictive laws crested in the 1930[]s and 1940[]s, also due largely to fear of communist parties. During this period, a number of states explicitly banned the Communist Party, while others continued to tighten theoretically ‘neutral’ restrictions, primarily by requiring large numbers of signatures on nominating petitions.”)

See also Richard Winger, *Ballot Format: Must Candidates be Treated Equally?*, 45 Clev St L Rev 87, 90-91 (1997), noting that one of the two major impetuses for the Ohio Legislature’s enactment of legislation in 1947 to drastically increase qualification burdens for minor parties seeking to run candidates on the ballot under their party labels (thereupon precluding Plaintiff SPMI’s Socialist Party of Ohio affiliate from continued ballot qualification for the next 40 years until its recent restoration in *Moore v Brunner*, unpublished order of the US District Court for the Southern District of Ohio, entered August 21, 2008 (Docket No. 2:08-cv-00224)) was the exceptionally strong election showing of the Ohio Socialist Labor Party in the directly preceding 1946 election. “While this was still a small vote, Ohio legislators were not pleased. More likely than not, a strong showing by any party espousing socialism displeased Republican legislators because a strong showing added prestige to socialist ideas and helped disseminate socialist views. Naturally, Democrats were just as displeased because they believed they had lost votes to the Socialist Labor Party.”

Prior to the replacement of Michigan’s 1908 Constitution with the current 1963 Constitution, members of the State Board of Education and the controlling boards of the University of Michigan, Michigan State University, and Wayne State University were elected in Michigan’s biennial spring elections, rather than November general elections, and therefore did not constitute races through which minor parties could retain their ballot status through the vote totals of candidates nominated for such offices. Consequently, virtually all minor parties had to rely on re-petitioning for ballot qualification in each general election held between the original 1939 enactment of “new” party petition requirements and the adoption of Const 1963. In April of 1952, the first Presidential election year for which Plaintiffs’ party did not complete a petition drive to re-qualify for the Michigan ballot (then requiring approximately 10,000 signatures), the Michigan Legislature passed 1952 PA 117 (the “Trucks Act”), prohibiting “the name of any communist,” or nominee of “any organization . . . which in any manner advocates, or acts to further, the world communist movement,” from being “printed upon any ballot used in any primary or general election in this state or in any political subdivision thereof.” MCL §§ 752.321-752.332, repealed 1978. Consequently, the first Presidential election year in which Plaintiffs’ party did not qualify for the Michigan ballot since the Party’s 1901 founding was directly preceded by vaguely worded legislation under which Plaintiffs’ party could have then quite likely been arbitrarily denied ballot re-qualification, even after completing an arduous petitioning, and then directly followed by the Legislature’s further preclusively oriented revamping of the State’s party-qualification standards as a whole.

36. Although a “new political party” was previously defined in MCL § 168.685(3) as “a party whose principal candidate received a vote equal to less than 1 percent of the total number of votes cast for the successful candidate for the office of secretary of state at the last preceding election in which a secretary of state was elected,”<sup>18</sup> the Michigan Election Code presently provides no definition of a “new political party”. Nevertheless, MCL § 168.685(1), which prescribes the petition-signature requirements for an unqualified party to gain access to the ballot, still assigns this process only to “a new political party.”

37. Although a “political party” is also presently undefined within the Michigan Election Code statutes, a political party’s ballot-qualified status is provided by MCL § 168.560a:

(“[A] political party the principal candidate of which received at the last preceding general election a vote equal to or more than 1% of the total number of votes cast for the successful candidate for secretary of state at the last preceding election in which a secretary of state was elected is qualified to have its name, party vignette, and candidates listed on the next general election ballot”).

38. The present Michigan Election Code also provides reference to a “disqualified party” status in MCL § 168.685(6):

If the principal candidate of a political party receives a vote equal to less than 1% of the total number of votes cast for the successful candidate for the office of secretary of state at the last preceding general November election in which a secretary of state was elected, that political party shall not have the name of any candidate printed on the ballots at the next ensuing general November election, and a column shall not be provided on the ballots for that party. A disqualified party may again qualify and have the names of its candidates printed in a separate party column on each election ballot in the manner set forth in subsection (1) for the qualification of new parties. The term “principal candidate” of a political party means the candidate who receives the greatest number of votes of all candidates of that political party for that election.

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<sup>18</sup> See the Michigan Supreme Court’s examination of the statute’s previously provided definition of “new political party” in *SWP v SOS*, 412 Mich at 580.

39. The present Michigan Election Code additionally provides in MCL § 168.532:

A political party whose principal candidate received less than 5% of the total vote cast for all candidates for the office of secretary of state in the last preceding state election, either in the state or in any political subdivision affected, shall not make its nominations by the direct primary method. The nomination of all candidates of such parties shall be made by means of caucuses or conventions which shall be held and the names of the party's nominations filed at the time and manner provided in section 686a of this act. The term "principal candidate" of any party shall be construed to mean the candidate whose name shall appear nearest the top of the party column.<sup>19</sup>

40. The greatest number of votes received by a Human Rights Party candidate in the 1976 election, after which that party was certified by the Secretary of State to have lost its Michigan ballot qualification, did exceed 1% of the number of votes cast for the office of Secretary of State at the last preceding general November election in which a Secretary of State was elected.<sup>20</sup> Consequently, even if the Court should interpret the statutory requirements prescribed for a statutorily undefined "new political party" to implicitly apply to both any party that has never been qualified for the state ballot and to any "disqualified party" as referenced in MCL § 168.685(6), the Human Rights Party n/k/a SPMI (i.e., Plaintiffs' party) does not fall directly under either of these two classifications.

41. Plaintiff SPMI has not only met, but exceeded, the present ballot-qualification vote threshold in each of the past three state general elections by means of the only route at its disposal (however indirect) to demonstrate such a level of statewide voter support despite its present preclusion from directly nominating candidates for the state ballot under their correct party label.

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<sup>19</sup> 2002 PA 399 did not amend MCL § 168.532, so the older definition of the term "principal candidate" preserved in this section now does not match the newer definition provided for the term in MCL § 168.685, which was amended by 2002 PA 399: "The term 'principal candidate' of a political party means the candidate who receives the greatest number of votes of all candidates of that political party for that election." If the older definition in MCL § 168.532 still has any effect, it must be limited to use in determining whether a party shall "make its nominations by the direct primary method" or "by means of caucuses or conventions [as] provided in section 686a of this act" – that is, whether the party is qualified to appear for the *primary*-election ballot, not the *general*-election ballot.

<sup>20</sup> See Legislative Council, *Michigan Manual 1977-1978* (Lansing: 1977), pp 566, 568, 570, 572.



42. The number of votes that had to be received in the 2008 general election by at least one of a party's nominated candidates in order for that party to remain ballot-qualified for the 2010 election was 20,899 votes.<sup>21</sup> That year, Dwain C. Reynolds III (Plaintiff Reynolds) was an SPMI candidate for the State Board of Education, and received 94,663 votes – over 4.5 times the vote threshold required for party ballot qualification.<sup>22</sup>
43. The number of votes that had to be received in the 2006 general election by at least one of a party's nominated candidates in order for that party to remain ballot-qualified for the 2008 election was 17,033 votes.<sup>23</sup> That year, Jacob Woods was an SPMI candidate for the State Board of Education and received 60,684 votes – over 3.5 times the contemporaneous vote threshold required for party ballot qualification.
44. In the 2004 general election, the number of votes required for any one of a party's nominated candidates to receive in order for that party to remain ballot-qualified for 2006 was also 17,033 votes.<sup>23</sup> That year, Benjamin Burgis was an SPMI candidate for the Michigan State University Board of Trustees and received 75,047 votes – approximately 4.5 times the contemporaneous vote threshold required for party ballot qualification.
45. Although all three of the aforementioned SPMI candidates (Reynolds, Woods, and Burgis) were listed on the ballot with the party label of the Green Party of Michigan, all three of such candidates were SPMI members who initially sought and received the nomination of SPMI.

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<sup>21</sup> Michigan Dep't of State, Bureau of Elections, "Political Party Status 2009", fn 5 *supra*.

<sup>22</sup> SPMI, "Elections 2008" Webpage <<http://www.spmichigan.org/page.php?55>> (accessed July 21, 2010).

<sup>23</sup> Michigan Dep't of State, Bureau of Elections, "Political Party Status", as updated August 25, 2005 ("Political Party Status 2005") and August 26, 2003 ("Political Party Status 2003"). As the threshold changes only after elections of Secretary of State, the threshold figure calculated after the 2002 election, reflected in "Political Party Status 2003" and affecting the 2004 election year, was unchanged for "Political Party Status 2005" and affected the 2006 election year.

They invariably identified themselves and campaigned as SPMI candidates in their campaign literature, statements, speeches, debates, media interviews, and campaign Websites, and ran on the State Platform of SPMI, as adopted and amended at preceding SPMI State Conventions.

46. Reynolds, Woods, and Burgis were also regularly identified as SPMI candidates in mainstream media coverage. All three had Internet hyperlinks to their respective campaign Websites, presented to Michigan voters on either the Michigan Secretary of State Website and/or voter-information Websites officially sponsored and promoted by the Michigan Secretary of State, on which they were each clearly introduced and identified as SPMI candidates and on which their preclusion from being labeled on the state ballot accordingly was explained.
47. Since added by amendment at the 2004 SPMI State Convention, Article II, subsection (d) of SPMI By-Laws has provided that “[i]t is understood that SPMI members who run on another party’s ballot line will always identify/label themselves clearly as Socialists first and foremost, describe themselves as members of the Socialist Party USA and the SPMI, and run on the basis described in items (a) and (b) above.”<sup>24</sup>
48. Other statewide policies of Plaintiff SPMI further reiterate and expound upon this policy. For example, sections 1-3 of Plaintiff SPMI’s “Resolution on Election Materials and Platform Expressions,” enacted by adoption at its 2005 State Convention, provide that
- (1) [a]ll election campaign statements by or for SPMI members who are running for political office, as an individual or as a state or local Socialist Party candidate, shall always make it clear that the candidates are SPMI members and are Socialist Party candidates specifically.

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<sup>24</sup> Sections (a) and (b) of Article II of the SPMI By-Laws specify the restriction of Plaintiff SPMI’s candidate nominations to candidates who “a) are members of the Socialist Party USA and run in non partisan elections on the basis of the general platform and principles of the SPMI; [and] b) agree to run under the Socialist Party USA, Socialist Party of Michigan or Socialist banner/line, and run on the basis of the general content and spirit of the SP-USA and the SPMI platforms and statements of principles; . . .”

- (2) If and when SPMI members are running for office on the ballot line of another party, it shall be clearly expressed in all campaign materials and electronic platform communications that the member is a Socialist Party candidate running on the ballot line of the other party. If shorthand party designations are used, it shall be done as, for instance, “Socialist/Green” or “Socialist-Green” or “Socialist Party/Green Party”, or some formulation that makes the dual nature of the campaign clear, giving top mention to the Socialist side of it.
- (3) When SPMI members are running on another party’s ballot line, it shall be explained at appropriate points in major literature and electronic communications that Socialist Party candidates sometimes use the ballot lines of other parties because of undemocratic and restrictive ballot access laws that make it very difficult or nearly impossible to get on the ballot themselves.

49. Section (2), sub-section (1) of Plaintiff SPMI’s “Resolution on Socialist Electoral Campaigning”, as amended at its 2005 State Convention, correspondingly provides that “[i]t is understood that SPMI candidates will always be clearly labeled as ‘Socialist’, regardless of what other party label may be included because of the tactical use of another party’s ballot line.”

50. Pursuant to Article VI, Section 3 of the Socialist Party USA Constitution<sup>25</sup>, the 2007 Socialist Party USA National Convention instructed the Party’s National Committee to designate other parties upon whose applicably qualified ballot lines Socialist Party candidates within state’s lacking ballot access are able to run explicitly as Socialist Party candidates, and on the Socialist Party Platform, with the National Committee’s default pre-approval, so long as such candidates continue to meet these requirements. Since the passage of this National Convention resolution, the Green Party of Michigan has been the only state affiliate of the Green Party of the United States to be designated with this ‘pre-approved’ status, due to Plaintiff SPMI’s consistent demonstration of its ability to run explicitly Socialist Party campaigns on its ballot line. Correspondingly, in Section 1, sub-section (c) of its “Resolution

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<sup>25</sup> Providing that “[s]tate and local organizations of the Party may run candidates for political office in other political parties only with the approval of the National Committee.”

on Clarifying Constitutional Requirements and Distinctions Regarding Candidate Party

Affiliation”, enacted in August 2008, the SP-USA National Committee further clarified this:

In situations in which SP nominated candidates are authorized to run on the ballot lines of other parties, such candidates should place a priority on their membership in the Socialist Party and on the Principles and Platform of the SP, rather than on the platform of the other party in which they are a candidate.

51. In his campaign as SPMI’s State Board of Education candidate in the most recent 2008 general election, Plaintiff Reynolds conducted a four-month statewide campaign tour, through which he traveled throughout the state with popular music group La Dispute, opening each of the band’s Michigan concerts with a campaign speech to hundreds of nightly audience members. As a result of the thousands of Michigan voters Plaintiff Reynolds reached with his speeches, throughout all corners of the State including the Upper and Lower Peninsulas, Plaintiff Reynolds ultimately received the highest vote total ever before received by any Socialist or Green candidate for the State Board of Education by a margin of nearly 10,000 votes.
52. Throughout most of the first half of 2004, Plaintiff SPMI intensively conducted and co-ordinated a statewide and exclusively membership/volunteer-based petition drive, officially recognized and listed by Defendant Secretary of State and circulated using petition sheets officially pre-approved by the State Board of Canvassers, in hope of making a best-possible-faith effort to comply with the statutory requirements, as then applied, for gaining party qualification to nominate its candidates for partisan offices in Michigan. As part of this effort, Plaintiff SPMI also published a comprehensive and professionally illustrated handbook titled “A Short Guide to Petitioning for the SPMI”, to facilitate the efforts of its volunteer circulators.

53. MCL § 168.685<sup>26</sup> requires that the top of the petition sheets for a “new” political party seeking to qualify for the state ballot must contain the words “PETITION TO FORM NEW POLITICAL PARTY” and the name of the proposed political party in “24-point boldface type”. The statute also requires that such petitions must include the following paragraph: “Warning: A person who knowingly signs petitions to organize more than 1 new state political party, signs a petition to organize a new state political party more than once, or signs a name other than his or her own is violating the provisions of the Michigan election law.” Moreover, while MCL § 168.685 requires “the balance of the petition [to] be printed in 8-point type” (by reference to MCL § 168.544c), MCL § 168.685 also requires “the word ‘warning’ and the language contained in the warning [to] be in 12-point boldface type.”
54. During the course of Plaintiff SPMI’s 2004 petition drive, volunteer circulators regularly reported that as many as half or more of the electors who declined to sign the petition on any given day of circulating expressed that they supported the effort but were too fearful of being subjected to state surveillance, blacklisting, harassment, danger, or other harmful targeting as a result of their perceived association with socialist or politically radical viewpoints.
55. Likewise, the Socialist Workers Party (a smaller socialist political party historically splintered from Plaintiffs’ party), in its successful 2008 request to the Federal Election Commission for an advisory opinion authorizing renewal of its exemption from the reporting requirements of the Federal Elections Campaign Act, presented testimony on consistently similar experiences during other recent petition drives, and noted that

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<sup>26</sup> No further amendments have made to the statutory wording of MCL § 168.685 between the time of Plaintiff SPMI’s 2004 petitioning campaign and the present time. As applied, however, the minimum number of valid signatures required under the statute has since risen by another 6,237.

during the past year, Roger Calero, the SWP candidate for President of the United States, and Alyson Kennedy, the SWP candidate for Vice-President of the United States, campaigned extensively across the United States, in particular in states where supporters were petitioning to place the party's ticket on the ballot. Many times, people interested in the campaign declined either to sign a nomination petition or make a donation expressly for fear of being placed on an FBI or other government list and being harassed.<sup>27</sup>

56. Following widespread national news media reports that “a highly secretive component of the U.S. Department of Defense, Counterintelligence Field Activity Agency (CIFA), had been accumulating and maintaining information about domestic organizations and their peaceful political activities,”<sup>28</sup> documents obtained by the American Civil Liberties Union in 2006 through Freedom of Information Act requests and associated litigation showed that Plaintiff SPMI's parent national party SP-USA and its Socialist Party of New York City affiliate were among 31 domestic political organizations expressing views critical of U.S. foreign-policy stands to appear in recent CIFA “Threat and Local Observation Notices.”<sup>29</sup>
57. After the growth of opposition to the U.S. military engagement in Iraq in 2003, the Grand Rapids, Michigan Police Department “sent undercover officers to anti-war meetings and rallies, collecting intelligence about the aims of activists, [as] the department's chief confirmed.”<sup>30</sup> Other investigations have uncovered widespread police surveillance on the

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<sup>27</sup> Michael Krinsky, Esq. & Lindsey Frank, Esq., Request from Socialist Workers Party and Socialist Workers Party National Campaign Committee, pp 26-27 <<http://saos.nictusa.com/aodocs/1017847.pdf>> (accessed June 22, 2010); request granted March 20, 2010 in AO 2009-01 <<http://saos.nictusa.com/aodocs/AO%202009-01%20final.pdf>>.

<sup>28</sup> American Civil Liberties Union, “No Real Threat: The Pentagon's Secret Database on Peaceful Protest”, at 1 <[http://www.aclu.org/pdfs/safefree/spyfiles\\_norealthreat\\_20070117.pdf](http://www.aclu.org/pdfs/safefree/spyfiles_norealthreat_20070117.pdf)> (accessed June 22, 2010).

<sup>29</sup> *Id.* at 2.

<sup>30</sup> Ted Roelofs, “Police Infiltrate Peace Rallies”, *The Muskegon Chronicle*, March 29, 2004; page B1.

members and activities of innumerable radical, anti-war, and civil rights organizations by state and local police agencies in numerous states throughout the nation.<sup>31</sup>

58. Following over 25 years of voluntary restrictions on Federal Bureau of Investigations (FBI) operational conduct, imposed in the wake of widespread exposure of FBI's Counter-intelligence Program's (COINTELPRO's) decades of investigations and disruptive efforts covering "the entire spectrum of the social and labor movement in the country"<sup>32</sup> for the alleged purposes of "fortify[ing] the government against subversive threats,"<sup>33</sup> a May 30, 2002 directive by the Bureau and U.S. Justice Department has since lifted the post-COINTELPRO limitations on the Bureau's ability to conduct surveillance on domestic political and religious organizations without probable cause of criminal activity, while also expanding the Bureau's domestic data-mining efforts.<sup>34</sup> Consequently, FBI counterterrorism agents have since widely returned to the practice of "surveillance and intelligence gathering operations" targeting left-wing political organizations similarly politically situated to Plaintiff SPMI.<sup>35</sup> According to the American Civil Liberties Union, furthermore, the federal government's consolidated terror watch list has, as of July 2008, now reached over one million names.<sup>36</sup>

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<sup>31</sup> See American Civil Liberties Union of New Mexico, "Spying On Freedom – Fact Sheet" <[http://aclu-nm.org/PDF/SpyingOnFreedom\\_web.pdf](http://aclu-nm.org/PDF/SpyingOnFreedom_web.pdf)> (accessed January 11, 2010; copy received June 23, 2010).

<sup>32</sup> Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, S. Rep. No. 94-755, Bk III, at 78 (1976).

<sup>33</sup> *Id.*

<sup>34</sup> See Don Van Natta & David Stout, "F.B.I. Given Broader Authority to Monitor the Public", *The New York Times*, May 30, 2002 <<http://www.nytimes.com/2002/05/30/politics/30CND-SPY.html?pagewanted=all>> (accessed June 22, 2010).

<sup>35</sup> Eric Lichtblau, "F.B.I. Watched Activist Groups, New Files Show", *The New York Times*, December 20, 2005 <<http://www.nytimes.com/2005/12/20/politics/20fbi.html?pagewanted=all>> (accessed June 22, 2010).

<sup>36</sup> American Civil Liberties Union, "Terrorist Watch List Hits One Million Names" <<http://www.aclu.org/technology-and-liberty/terrorist-watch-list-hits-one-million-names>> (accessed June 22, 2010).

59. In the most recent 2008 general election, the sole SPMI candidate for a seat in Michigan's State House of Representatives (Matt Erard, running in the 53rd State House District) received the highest vote totals of any minor-party candidate running in a three-or-more-candidate race for a Michigan House seat, as well as the highest vote percentage received by any minor-party candidate challenging opposing candidates from both major parties for any state- or federal-level office in Michigan that year.
60. Though precluded from being listed on the ballot with the SPMI label, 53rd District State House candidate Matt Erard, like Reynolds, Woods, and Burgis, was also initially nominated for his 2008 State House race by SPMI; principally identified himself as a Socialist Party candidate and campaigned on SPMI's state platform; and was consistently identified to voters as an SPMI candidate in campaign literature, newspaper articles and interviews, major media and non-profit questionnaires and candidate guides, Websites to which links were provided from Michigan Department of State-sponsored candidate and sample ballot listings, and campaign radio/television appearances throughout the 2008 campaign season.
61. While listed under the Socialist Party USA label on the most recent general-election ballot of Rhode Island, in which Socialist Party candidates are not statutorily precluded from an accessible route to ballot qualification under their true party label, 2008 candidate Jonathan R. Osborne received 22% of the vote for the 34th District State Senate seat.
62. Michigan is among a minority of states<sup>37</sup> that does not allow the candidate of an unqualified party, for any state, federal, or local office, to list a party designation on the ballot, even upon

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<sup>37</sup> Richard Winger, "Good bills signed into law in Ohio and Pennsylvania." 18 *Ballot Access News* No 9, January 1, 2003 <<http://www.ballot-access.org/2003/0101.html#1>> (accessed June 22, 2010) ("A majority of states let candidates who qualify for the November ballot by petition choose a partisan label. . .").



such a candidate having independently satisfied the qualifying petition requirements for the office to which he or she seeks to run for election.<sup>38</sup>

63. Although Plaintiff SPMI has successfully met the petitioning requirements to independently qualify a limited number of its non-statewide candidates for the ballot in recent elections, such an alternative qualification method cannot provide any degree of relief to Plaintiffs' invariable preclusion, under the present Michigan Election Code, from fielding candidates on the ballot under their true party label or influencing the status of their party's subsequent ballot qualification through the number of votes its candidates receive.<sup>39</sup>

64. In *SWP v SOS*, *supra*, the then-Secretary of State "argue[d] that legitimate state interests in prevention of the clogging of this state's election machinery and in avoidance of voter confusion are furthered if no more than nine parties with straight-ticket voting are allowed."<sup>40</sup> But the 1974 and 1976 state general elections remain the only ones in Michigan's history

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<sup>38</sup> MCL § 168.590; MCL § 168.590f; MCL § 168.590h.

<sup>39</sup> See *Storer v Brown*, 415 US 724, 745; 94 S Ct 1274; 39 L Ed 2d 714 (1974) ("[T]he political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other. A new party organization contemplates a state-wide, ongoing organization with distinctive political character. Its goal is typically to gain control of the machinery of state government by electing its candidates to public office"). See also *Libertarian Party of Ohio v Blackwell*, 462 F3d 579, 592; 2006 Fed App'x 0342P (CA 6, 2006) (quoting from *Storer v Brown*, 415 US at 745) ("Political parties, especially for national elections, aim to gather members together under a common title and common ideological beliefs. On many ballots, the option of a 'straight-ticket' vote is even available, which allows an individual to mark one box that automatically selects the candidates from one of the major parties. Thus, in many cases party affiliation has the same, if not more, importance than the identity of the candidate. . . . A candidate's appearance without party affiliation is not a substitute for appearing under a party name, and it does not lessen the burden imposed by Ohio's restrictions on minor parties").

<sup>40</sup> The Court did not find it necessary to reach the question of whether this claim from Defendant Secretary of State constituted a compelling state interest, since the associated statutory requirements neither were necessary, nor provided the least drastic means, for meeting Defendant Secretary of State's claimed state interest. In evaluating this claimed interest by Defendant Secretary of State, the Michigan Supreme Court further observed that "Conceding for the sake of this argument that the limits of the capacity of voting machines do further these interests, a justifiable inference is that the evils sought to be addressed by the Legislature do not occur if nine or fewer parties are on the ballot. Significantly, there has been no allegation or showing to the contrary." *SWP v SOS*, 412 Mich at 592.

(since the enactment of 1954 PA 116) in which as many as nine parties were qualified for the ballot (and only seven actually nominated any partisan candidates in those elections).<sup>41</sup>

65. In no Michigan state general elections since the general election of 1976 have more than seven parties (five “minor parties” plus two “major parties”) ever been concurrently recognized as ballot-qualified.<sup>42</sup> At present, Defendant only recognizes six parties as qualified to nominate candidates for, and to be listed on, any State or local election ballot in Michigan.<sup>43</sup>

66. In the most recent state general election (November 4, 2008), only two state- or federal-level partisan races for single offices (or tickets, such as President/Vice President and Governor/Lieutenant Governor) had as many as six candidates on the ballot: the President/Vice President ticket and US Senator. All other such races had five or fewer candidates. On average, each such race had under 2.7 candidates or tickets on the ballot.<sup>44</sup>

67. Due to the Ohio legislature’s failure to establish a constitutionally valid process for unqualified parties to gain access to the state ballot, the U.S. District Court for the Southern District of Ohio ruled on August 21, 2008 that “the Socialist Party USA has the requisite community support to be placed on the ballot in the state of Ohio.” *Moore v Brunner*, fn 17 *supra*.

68. In the past decade, Plaintiff SPMI has held over 100 state membership meetings and conventions, and innumerable meetings conducted by its chartered local branches and annually elected State Executive Committee officers, as prescribed by the national party constitution and state by-laws.

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<sup>41</sup> See Michigan Dep’t of State, Bureau of Elections, “Performance of Minor Parties”, fn 3 *supra*.

<sup>42</sup> *Id.*

<sup>43</sup> See Michigan Dep’t of State, Bureau of Elections, “Political Party Status 2009”, fn 5 *supra*.

<sup>44</sup> Michigan Dep’t of State, Bureau of Elections, “2008 Official Michigan General Candidate Listing” <[http://miboeefr.nictusa.com/election/candlist/08GEN/08GEN\\_CL.HTM](http://miboeefr.nictusa.com/election/candlist/08GEN/08GEN_CL.HTM)> (accessed June 22, 2010).

69. Hoping for a chance to directly petition members of the State Legislature to consider amending MCL § 168.685 to make qualification requirements for “new” political parties more equitable and reasonably achievable, SPMI State Chairperson Matt Erard arranged a March 20, 2008 meeting with then-Michigan House Ethics and Elections Committee Chair State Representative Mark Corriveau, represented by Corriveau’s lead staff person Steve Purchase, as a reported prerequisite for gaining permission to testify before the Committee at one of its future hearings.
70. After meeting Mr. Erard and representatives of the Green, Libertarian, Reform, and U.S. Taxpayers Parties who spoke in support of such prospective amendatory legislation, Mr. Purchase informed Mr. Erard by telephone that – while St. Rep. Corriveau was “unaware of how high the ballot-access burdens are in Michigan”, and “very sympathetic” to the “plight” such minor parties presently face – St. Rep. Corriveau nevertheless did not feel that he was appropriately situated politically to introduce such legislation. Mr. Purchase further stated that St. Rep. Corriveau would not be likely to recognize either Mr. Erard or any collectively designated representative of Michigan’s minor parties to speak on this issue at any future hearing of the House Ethics and Elections Committee, as had been principally requested at, and prior to, their scheduled meeting at the Capitol.
71. In its *Presidential Ballot Access: State By State Scorecard*, the Reform Institute, founded by U.S. Senators John McCain (R-AZ) and Robert Kerrey (D-NE), gave Michigan’s ballot-access petition requirements for “new”-party and independent Presidential candidates a grade of “F” and urged the Michigan Legislature to “make remedial action a priority.”<sup>45</sup>

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<sup>45</sup> December 2003, <<https://www.policyarchive.org/bitstream/handle/10207/5646/2003scorecard.pdf?sequence=1>> (accessed June 22, 2010).

72. Reflecting the widespread increase in popular identification with, and political discourse regarding, the socialist political viewpoints championed by Plaintiffs' political party, the word "socialism" took third place among Merriam-Webster's 2008 Words of the Year.<sup>46</sup>
73. According to an April 2009 U.S. public-opinion poll by Rasmussen Reports, "Only 53% of American adults [currently] believe capitalism is better than socialism." The Rasmussen poll found that 20% of American adults now decisively favor socialism over capitalism and another 27% of American adults are presently undecided between capitalism and socialism. The poll further found that "adults under 30 are essentially evenly divided: 37% prefer capitalism, 33% socialism, and 30% are undecided."<sup>47</sup>
74. Another April 2009 opinion poll, by Pew Research Group, found that the percentage of American adults identifying as Democrats and Republicans has fallen to 33% and 22% respectively.<sup>48</sup>
75. Combining the findings of these two polls suggests (a) that the percentage of Americans now favoring socialism over the economic system presently promoted by both of Michigan's two major parties falls just behind the percentage of American adults identifying with the latter of the two major parties (20% vs. 22%); and (b) that the percentage of American adults who hold no preference for capitalism over socialism now falls just behind the total percentage of Americans who identify with either one of the two major parties combined (47% vs 55%).

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<sup>46</sup> "Merriam-Webster's Word of the Year 2008" <<http://www.merriam-webster.com/info/08words.htm>> (accessed June 22, 2010).

<sup>47</sup> Rasmussen Reports, "Just 53% Say Capitalism Better Than Socialism", April 9, 2009, <[http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/april\\_2009/just\\_53\\_say\\_capitalism\\_better\\_than\\_socialism](http://www.rasmussenreports.com/public_content/politics/general_politics/april_2009/just_53_say_capitalism_better_than_socialism)> (accessed June 22, 2010).

<sup>48</sup> Pew Research Center, "GOP Party Identification Slips Nationwide and in Pennsylvania; No Indication of Further Democratic Gains", <<http://www.pewresearch.org/pubs/1207/republican-party-identification-slips-nationwide-pennsylvania-specter-switch>> (accessed June 22, 2010).

**Count 1: Violation of the Equal Protection Clauses of US Const (Am XIV) and Const 1963**

**(Art 1, § 2) and the “Purity of Elections” Clause of Const 1963 (Art 2, § 4)**

76. Plaintiffs incorporate by reference all prior paragraphs as though repeated herein.

77. By disequilibrating the voter support threshold between “new” political parties and automatic-qualification-eligible parties through the enactment of 1988 PA 116, and thereby legislatively underpinning the presently applied requirements whereby a “new” political party must demonstrate the support of nearly double the number of voters as a political party entitled to automatic ballot placement in order to appear on the same subsequent general-election ballot, the Legislature has “[i]mpart[ed] a substantial unfair advantage to political parties entitled to automatic general election ballot placement . . . as distinguished from ‘new’ political parties . . .” and thereby legislatively undermined “the goal of ‘equality of treatment’ of parties and their candidates seeking access to the general election ballot in violation of the ‘purity of elections’ clause, Const 1963, art 2, § 4,” as well as the Equal Protection clauses of US Const, Am XIV and Const 1963, art 1, § 2.<sup>49</sup>

78. By (a) requiring “new” political parties seeking ballot access to demonstrate support from nearly twice the number of voters as an automatic-qualification-eligible party seeking to retain ballot access, through a far more difficult and burdensome procedure; and (b) requiring “new” political parties seeking to field candidates on the ballot to collect a number of valid signatures over 25% higher than any presently qualified party has ever before been required to collect, MCL § 168.685 (as applied) violates the “Purity of Elections” Clause of Const 1963, art 2, § 4, and the Equal Protection clauses of US Const, Am XIV and Const 1963, art 1, § 2.

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<sup>49</sup> Quoting *SWP v SOS*, 412 Mich at 599-600.

79. MCL § 168.685 (as presently applied by Defendant Secretary of State) tests a then-qualified political party's level of public support for purposes of maintaining ballot qualification by whether it is able to field a single candidate capable of obtaining a number of votes equal to 1% of the votes cast for the successful candidate for Secretary of State in the last preceding applicable election. But no equivalent recognition<sup>50</sup> is given to Plaintiff SPMI's candidates' consistent demonstration of the party's ability to exceed this qualification standard in the past three state general elections. Thus, MCL § 168.685 (as applied) results in the arbitrary and discriminatory dilution of the votes of registered Michigan voters seeking to have their votes for SPMI candidates influence SPMI's subsequent ballot qualification. This further violates Const 1963, art 1, § 2, and art 2, § 4 and US Const, Am XIV.
80. There is no compelling or legitimate state interest in making "new" political parties bear so much greater a burden in order to qualify to nominate candidates for the ballot in subsequent elections than those political parties which have already qualified.
81. The requirements presently imposed on "new" political parties seeking to field candidates on the ballot – far more burdensome than are, or have ever previously been, imposed on any political parties already recognized as qualified to field candidates on the ballot – are not narrowly tailored, rationally related, or necessary to achieve any legitimate interest that the state could ostensibly seek to advance through MCL § 168.685.
82. By effectively requiring a "new" political party to be able to put forth a financial expenditure of tens of thousands of dollars in order to finance "the costs incurred in securing ballot access,"<sup>51</sup>

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<sup>50</sup> Particularly given the statute's present lack of definition of a "political party", much less a "new political party".

<sup>51</sup> Michigan Dep't of State, "1995 Interpretive Statement", fn 11 *supra*.

MCL § 168.685, as applied, unlawfully discriminates against “new” political parties with limited financial resources at their disposal. “To the extent that the system requires [‘new’ parties seeking to nominate] candidates to rely on contributions,” such a system overwhelmingly “falls with unequal weight on voters, as well as candidates, according to their economic status.” *Bullock v Carter*, 405 US 134, 144; 92 S Ct 849; 31 L Ed 2d 92 (1972).

83. In its specific application to Plaintiff SPMI, MCL § 168.685 has the effect of politically discriminating against the associational and representational rights of low-income voters seeking to form a “new” political party to represent the common political interests of such a segment of the state electorate.
84. The Michigan Legislature’s choice to allow for the complete lack of regulation of the financial operations involved in obtaining ballot access for a “new” political party<sup>52</sup> clearly illustrates that there is no compelling or legitimate state interest in effectively requiring a “new” political party to possess the ability to acquire and expend such immense financial resources as a precondition on gaining the right to put its candidates on any state or local ballot in Michigan.
85. There is no compelling or legitimate state interest in effectively barring Plaintiffs from direct and meaningful participation in the political process as a consequence of their choice to pursue a political orientation that directly limits their capacity to acquire large-scale financial resources.
86. By retroactively applying 2002 PA 399 to restore the ballot access of the Natural Law and U.S. Taxpayers Parties of Michigan, while not also retroactively applying 2002 PA 399 to restore the ballot access of Plaintiff’s equally situated and applicably resuscitable party upon the same

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<sup>52</sup> Michigan Dep’t of State, “1995 Interpretive Statement”, fn 11 *supra*.

grounds, MCL § 168.685 – as interpretatively applied, following its 2002 amendment, by the Secretary of State – unlawfully established an even further layer of arbitrary and inequitable treatment between SPMI and its competitor parties.

87. There is no compelling or legitimate state interest in retroactively applying the amended ballot-access retention standard established by 2002 PA 399 to parties which were disqualified following the 2000 general election, but which would have remained qualified had the new standard been in place at the time they were disqualified – while not also retroactively applying the amended ballot-retention standard to other still-operational parties which were disqualified following earlier general elections, and would have likewise remained qualified had the new standard been in place at the time they were disqualified.

88. Plaintiffs are also inequitably burdened by the statutory requirements for “new” party petitions under MCL § 168.685 in which signers are implicitly required to declare their intention to “form a new political party” and refrain from then on from “sign[ing] a petition to organize more than one new political party” or “sign[ing] a petition to organize a new political party more than once” for the ostensibly indefinite future or else risk “violating the provisions of Michigan election law.” Given the ambiguity of the terms “form a new political party” and “organize a new political party”, the implicitly binding exclusivity of such an association and the lack of reference to any expiration time for or termination process for such an association present potential signers with at least the appearance that their choice to sign entails a commitment that extends well beyond their mere support for placing such a party on the ballot.

89. Plaintiffs are likewise inequitably burdened by the resulting status of “new” party petition signers, under MCL § 168.685, as the only state voters who are legally compelled to declare



and publicly disclose a partisan association. Given that the State of Michigan conducts open primaries and lacks any process of party registration for voters, no other segment of the state electorate is required to become directly associated as voters with a political party of any kind, much less to go on the public record as voters as official “organize[r]s” of any one particular political party exclusively.

90. Particularly within the context of requiring “new” party petition signers to make such an inordinate, ostensibly committal, and publicly reviewable declaration of partisan association, such petitioning efforts by Plaintiff SPMI are exceptionally burdened by the chilling effect on political association resulting from both recently and historically prevalent state surveillance of Plaintiffs’ party and other politically similar organizations.
91. There is no compelling state interest in exclusively requiring those voters who sign “new” party petitions to publicly make such a direct and explicit form of partisan affiliation. As Defendant Secretary of State herself recently argued while attempting to defend the now-invalidated MCL § 168.615(c), restricting access to primary voter data to only the two major parties was allegedly necessary for purposes of “assuring Michigan voters that if they declare the party they want, the information will not be made available to the general public” (as quoted in *Green Party of Michigan v Land*, 541 F Supp 2d 912, 922 (ED Mich 2008)). By contrast, even prior to the U.S. District Court’s invalidation of MCL § 168.615(c) in *Green Party of Michigan*, signers of minor-party petitions were – as they still remain – the only class of Michigan voters who have actually been required to publicly and directly “declare the party they want,” and to have such information “made available to the general public.”

92. Plaintiff SPMI is injured by being denied the right to field its nominated candidates on the ballot under its party label while its competitor parties freely and effortlessly maintain their ability to continue exercising such a right as long as they merely continue to respectively certify the nomination of a candidate for a statewide education office before each state general election.<sup>53</sup>
93. Plaintiff Reynolds is injured by being denied the right to vote and campaign for a complete slate of accurately-labeled candidates on his ballot from the party most representative of his views, while his fellow voters who are aligned with other parties are able to locate and vote for a complete slate of accurately-labeled candidates from the parties they support, either individually or simultaneously by casting straight-ticket votes for the candidate slates nominated by the differing parties with which they align.
94. Plaintiff Reynolds is further injured as a voter by being denied the right to have his vote for Plaintiff SPMI's principal candidate in the 2008 election influence Plaintiff SPMI's ballot qualification status in the upcoming 2010 election while the votes of competing parties' principal candidates in the 2008 election have been applied toward keeping those parties ballot-qualified. Also, as the principal candidate of SPMI in the last preceding November general election, Plaintiff Reynolds is correspondingly injured by having the votes he received excluded from being applied to the ballot status of his principally associated party.
95. On all these grounds, MCL § 168.685 violates Plaintiffs' rights under the Equal Protection clause of US Const, Am XIV; the Equal Protection (art 1, § 2) and "Purity of Elections" (art 2, § 4) clauses of Const 1963; and 42 USC § 1983.

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<sup>53</sup> See Richard Winger, "How Many Parties Ought to Be on the Ballot?: An Analysis of *Nader v. Keith*", 5 *Election Law Journal* 170, 178 fn 59 (2006).

**Count 2: Violation of US Const, Am I**

96. Plaintiffs incorporate by reference all prior paragraphs as though repeated herein.

97. MCL § 168.685, as applied, subjects Plaintiffs to the violation of “two different, although overlapping, kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.” *Williams v Rhodes*, 393 US 23, 30; 89 S Ct 5; 21 L Ed 2d 24 (1968). By precluding Plaintiff SPMI from the right to legal recognition of its candidate nominations or the ability to place any candidate on the ballot under its party label for any state, federal, or local office in Michigan, and by precluding Plaintiff Reynolds from either casting a straight-ticket vote for his preferred political party’s candidate slate or engaging in meaningful advocacy in support of even a single such accordingly-labeled candidate, MCL § 168.685, as applied, does both direct and severe injuries to Plaintiffs’ First Amendment rights.

98. By effectively imposing such increasingly severe hurdles that a successful petition now requires over 25% more valid signatures than any successfully qualifying “new” party has ever been required to obtain in the State’s history, and no “new” party has been able qualify for the state ballot since the turn of the preceding decade, while contrastingly having eased party ballot access retention requirements so greatly that any state party holding ballot qualification in the general election preceding the enactment of 2002 PA 399 has been thereupon given almost a guarantee of continued ballot qualification so long as it merely continues to file nominations for one or more statewide educational office candidates biennially, MCL § 168.685 (as applied) directly “operate[s] to freeze the political status quo” among the state’s presently qualified parties, *Jenness v Fortson*, 403 US 431, 438; 91 S Ct 1970; 29 L Ed 2d 554 (1971).

99. In adopting 2002 PA 399, key majority-party members of the State Legislature explicitly and repeatedly stressed pre-arrangement of compensatory political benefits to reduce competition for their own party's candidates, rather than the purity and integrity of the electoral process, as their principal and determinative interest.<sup>54</sup> This shows that the statute's incongruities and increasingly severe hurdles are not "politically neutral"<sup>55</sup> – and were tailored, not to any compelling or legitimate state interest, but to a clearly illegitimate one.
100. In 1982, the then-Secretary of State claimed an interest in imposing prior barriers to party ballot qualification, derived chiefly from an aim of not letting voting machines' alleged nine-party capacity be exceeded. The Michigan Supreme Court rejected that rationale in *SWP v SOS*, *supra*. Furthermore, that alleged nine-party capacity was not reached, much less exceeded, in any of the three general elections held between the 1982 *Socialist Workers Party* ruling (invalidating barriers previously enacted under 1976 PA 94) and the Legislature's enactment of 1988 PA 116. That enactment, escalating and disequilibrating the ballot-access barriers for "new" minor parties, constituted a constitutionally impermissible "premature elimination"<sup>56</sup> of "new" political parties otherwise capable of qualifying for the State ballot.
101. MCL § 168.685 not only fails to provide the least restrictive means to further the state's interest in preserving the integrity of elections, but serves to fundamentally undermine the integrity of elections by inequitably, unnecessarily, and arbitrarily denying Plaintiffs their most fundamental associational and representational rights under the First Amendment.

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<sup>54</sup> As extensively and sequentially documented by former Libertarian Party of Michigan Chair Tim O'Brien in "Public Act 399 and the Michigan Legislation Factory", fn 4 *supra*.

<sup>55</sup> See *Burdick v Takushi*, 504 US 428, 438; 112 S Ct 2059; 119 L Ed 2d 245 (1992).

<sup>56</sup> *SWP v SOS*, 412 Mich at 592-93.

**Count 3: Violation of MCL §§ 168.532 and 168.560a**

102. Plaintiffs incorporate by reference all prior paragraphs as though repeated herein.

103. MCL § 168.560a says that any political party “is qualified to have its name, party vignette, and candidates listed on the next general election ballot” if, at the last preceding general election, its “principal candidate . . . received . . . a vote equal to or more than 1% of the total number of votes cast for the successful candidate for secretary of state at the last preceding election in which a secretary of state was elected”. Plaintiffs’ party meets this criterion, whether the “last preceding general election” used to measure ballot qualification is better interpreted to mean

A. the 1976 general election – when Plaintiffs’ party (then known as the Human Rights Party) last officially held Michigan ballot status, and in which Plaintiffs’ party’s principal candidate did meet this threshold; or

B. the 2008 general election – in which Plaintiffs’ party was precluded from appearing on the ballot itself, or placing its nominees on the ballot directly, but in which Plaintiffs’ party’s principal candidate still easily exceeded the threshold in spite of this preclusion from properly campaign-reflective party identification on the ballot.

104. Neither MCL § 168.560a nor any other section of the Michigan Election Code presently defines “political party” – though Plaintiffs’ party fits the common definition. MCL §§ 168.3(b) and 168.16 give a definition of a “major political party”, irrelevant here; MCL § 168.685(6) has an indirectly definitional specification of what constitutes a “disqualified party”; and MCL § 168.685(1) spells out the procedures required of a statutorily undefined “new political party” – which MCL § 168.685(6), by reference, further extends to “disqualified part[ies].” Also, as

noted in ¶ 22, *supra*, 2002 PA 399 removed the prior statutory language referring to appearance in a “party column” as a requirement for a candidate to be a party’s “principal candidate” as defined in MCL § 168.685 – and thus for votes for that candidate to apply to the party’s subsequent ballot status. These facts support the application of MCL § 168.560a to the ballot-qualification status of Plaintiff SPMI, and thus to the status and rights of Plaintiff Reynolds.

105. Plaintiffs’ party cannot be a “new” party in any sense of never before having qualified for the Michigan ballot. Historically, Plaintiffs’ party has put candidates with its label on the ballot in many more general elections than has any other presently qualified party apart from the two major parties. So it can only be subjected to the effectively preclusive burdens of a “new political party” if it can legally be classified as a “disqualified party” per MCL § 168.685(6).
106. For Plaintiffs’ party to be a “disqualified party” under MCL § 168.685(6), its principal candidate would have had to “receive[] a vote equal to less than 1% of the total number of votes cast for the successful candidate for the office of secretary of state at the last preceding general November election in which a secretary of state was elected.” However, as noted with respect to MCL § 168.560a in ¶ 103, *supra*, the vote total received by Plaintiffs’ party’s “principal candidate”, as presently defined by the terms of MCL § 168.685(6) as amended by 2002 PA 399, was well above this threshold – whether the threshold is applied retroactively (as Defendant Secretary of State did for the Natural Law and U.S. Taxpayers Parties following enactment of 2002 PA 399) or to the state’s most recently conducted general election in 2008. Thus, Plaintiffs cannot legally be classified as a disqualified party, subjected to the conditions imposed on a “new political party” for ballot access, or otherwise precluded from enjoying all other applicable rights granted under the Michigan Election Code to political parties generally.

107. The only authority and basis for the then-holder of Defendant Secretary of State's office to retroactively restore the ballot qualification of the Natural Law and U.S. Taxpayers Parties following enactment of 2002 PA 399 was their legislatively changed status under the new wording of MCL § 168.685 – i.e., that they were no longer “disqualified parties” because their “principal candidates” under the amended wording had not “receive[d] a vote equal to less than 1% of the total number of votes cast for the successful candidate for the office of secretary of state at the last preceding general November election in which a secretary of state was elected”, MCL § 168.685(6). Defendant has an equal obligation and duty to re-certify Plaintiffs' ballot-qualification status on the basis of that same legislative amendment.

108. MCL § 168.532 clearly grants the right to appear on the general-election ballot, and to nominate candidates for that ballot “by means of caucuses and conventions”, to any “political party whose principal candidate received less than 5% of the total vote cast for all candidates for the office of secretary of state in the last preceding state election” but still meets the requirements of MCL § 168.560a. Plaintiffs' party meets these requirements, and is entitled to those rights.

**WHEREFORE** Plaintiffs ask this Court to grant the following relief:

- A. Declare that MCL § 168.685, as wrongly and wrongfully applied, is unconstitutional;
- B. Issue a temporary restraining order and/or preliminary injunction to bar Defendant Secretary of State from applying or interpreting MCL § 168.685 either
  - i) to deny Plaintiff SPMI or its candidates ballot-qualification status, or
  - ii) to enable or allow ballots to be printed or issued for the November 2, 2010 general election which do not include Plaintiff SPMI or its candidates;

C. Order Defendant Secretary of State to place the name, vignette, and candidates of Plaintiff SPMI on the November 2, 2010 ballot – either

- i) based on SPMI’s meeting the “requisite community support” standard under which a court may place political parties on the ballot of a state which has no constitutionally valid statutory mechanism for obtaining state-party ballot qualification;<sup>57</sup> or
- ii) by retroactively restoring Plaintiff SPMI’s state-ballot qualification, as Defendant’s July 15, 2002 interpretive ruling did for the then-similarly-situated Natural Law Party of Michigan and U.S. Taxpayers Party of Michigan; or
- iii) because Plaintiff Reynolds, as Plaintiff SPMI’s principal candidate in 2008 under the terms of MCL § 168.685 as amended by 2002 PA 399, exceeded the threshold set in that section by its terms to qualify Plaintiff for the 2010 general election ballot;

D. Order that Defendant pay Plaintiffs’ costs and attorneys fees, pursuant to 42 USC § 1983 and 42 USC § 1988(b); and

E. Grant such other relief as the Court deems just and equitable.

Respectfully submitted,

By:

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Date: July 21, 2010

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<sup>57</sup> *Libertarian Party of Ohio v Brunner*, 567 F Supp 2d 1006, 1015 (SD OH, 2008) (citing *McCarthy v Briscoe*, 429 US 1317, 1323; 97 S Ct 10; 50 L Ed 2d 49 (1976)); see also *Moore v Brunner*, fn 17 *supra*.