

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

LIBERTARIAN PARTY OF MICHIGAN,  
GARY JOHNSON and DENEE ROCKMAN-  
MOON,

Plaintiffs, Civil No. \_\_\_\_\_

v.

RUTH JOHNSON, Secretary of State of  
Michigan, in her official capacity,

Defendant.

/

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. The plaintiffs are a minor political party (the Libertarian Party of Michigan, or “LPM”); the chair of the LPM (Denee Rockman-Moon); and the LPM’s candidate for President of the United States in the election to be held on November 6, 2012 (Gary Johnson, or “Johnson”). Defendant Ruth Johnson (“Secretary”) is the Secretary of State of Michigan and is sued in her official capacity only.

2. Plaintiffs seek declaratory and injunctive relief from a determination made by the Secretary pursuant to Michigan’s “sore loser” law, MCL 168.695, that plaintiff Johnson cannot be listed on the November 6, 2012 general election

ballot as the Libertarian Party candidate for president because he was listed on the February 28, 2012 Republican primary ballot.

3. Plaintiffs additionally seek such prospective declaratory and injunctive relief as may be necessary and proper to ensure that the instant plaintiffs and similarly situated parties are not burdened in future elections by Michigan's sore loser law.

### **Jurisdiction and Venue**

4. Federal jurisdiction is claimed under 28 U.S.C. §§ 1331 and 1343.
5. Venue lies in this district under 28 U.S.C. § 1391(b).

### **Parties**

6. Plaintiff LPM is an affiliation of voters formed for the purpose of influencing public policy by a variety of means, which include running candidates for public office and disseminating the party's views on policy issues through its candidates' campaigns. The party was founded in or about 1972 and is the Michigan affiliate of the national Libertarian Party. It is not a "major political party" within the meaning of Mich. Comp. Laws ("MCL") 168.16 but is a "qualified" party within the meaning of MCL 168.560a. It therefore nominates its candidates by means of caucuses or conventions, as provided in MCL 168.532 and 168.686a, not by means of direct primaries. It certifies its presidential candidate as provided in MCL 168.686.

7. Plaintiff Johnson resides in Santa Fe, New Mexico and is a former two-term governor of that state. Johnson was nominated by the national Libertarian Party as its 2012 candidate for president at the Libertarian national convention held in Las Vegas on May 3 - 6, 2012.

8. Plaintiff Denee Rockman-Moon resides in Fenton, Michigan, is the chair of the LPM, a registered Michigan voter, and is the LPM's candidate for presidential elector from Michigan's fifth congressional district. She wants to support and vote for the LPM and plaintiff Johnson at the general election on November 6, 2012.

9. Defendant Secretary is the Secretary of State of Michigan and has overall responsibility for the conduct of elections and for the supervision and administration of the election laws in Michigan. MCL 168.31.

### **Facts**

10. Through much of 2011, Johnson sought the Republican Party nomination for president, but in late November, 2011, prior to any presidential primaries or caucuses occurring, he suspended his campaign for that nomination.

11. On or about December 28, 2011, Johnson announced that he would seek the Libertarian Party nomination instead.

12. Prior thereto, on or about November 21, 2011, the Secretary had notified Johnson that he would be listed on Michigan's February 28, 2012

presidential primary ballot as a candidate for the Republican nomination who was “generally advocated by the national news media,” MCL 168.614a, unless he withdrew by filing an appropriate affidavit pursuant to MCL 168.615a(1) by 4:00 p.m. E.S.T. on December 9, 2011.

13. Upon information and belief, Johnson timely submitted his affidavit of withdrawal from the presidential primary election.

14. On or about December 13, 2011 the Secretary notified Johnson that he had missed the deadline for withdrawing, by three minutes, and reiterated that he would be listed on the February 28, 2012 presidential primary ballot as a candidate for the Republican nomination.

15. Johnson was indeed listed on the February 28, 2012 presidential primary ballot as a candidate for the Republican nomination. However, he did no campaigning and expended no funds in that primary election.

16. By letter dated May 3, 2012 to counsel for the LPM, the Secretary advised that Johnson would be precluded by Michigan’s sore loser law from being listed on the November 6, 2012 general election ballot as the Libertarian Party candidate for president because he had been listed on the February 28, 2012 presidential primary ballot as a candidate for the Republican Party nomination.

17. The sore loser law, MCL 168.695, provides:

**168.695 Ineligibility of candidate at subsequent election.**

Sec. 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.

18. The State of Michigan has not enforced MCL 168.695 against presidential candidates in the past. In 1980, then Secretary of State Richard Austin accepted the petition of the Anderson Coalition Party and placed John Anderson on the November general election ballot as its presidential nominee, even though Anderson was on the Michigan Republican presidential primary ballot on May 20, 1980 and received 48,947 votes in that primary, placing third behind George Bush (who won the Michigan primary) and Ronald Reagan. Anderson was on the Republican presidential primary ballots of the District of Columbia and 20 states, including Michigan, and was on the November general election ballots of all 50 states and the District of Columbia as an independent or minor party candidate.

19. Michigan law provides that the true candidates in a November general election for president are the party's candidates for presidential elector, and not the presidential candidate of the political party. MCL 168.45 provides:

**168.45 Cross or check mark as vote for presidential electors.**

Sec. 45. Marking a cross (X) or a check mark ( ) in the circle under the party name of a political party, at the general November election in a

presidential year, shall not be considered and taken as a direct vote for the candidates of that political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state pursuant to this chapter.

20. The Libertarian Party nominated Johnson as its candidate for president at the Libertarian national convention held in Las Vegas, Nevada on May 3 - 6, 2012.

21. On June 2, 2012 the LPM state convention ratified Johnson as its candidate for president in the November 6, 2012 general election and, on or about June 4, 2012, notified the Secretary of this action.

22. Notwithstanding its preclusion of "sore losers," Michigan law would permit Johnson to access the general election ballot as a candidate without party affiliation if he chose to expend the resources necessary to obtain the 30,000 valid petition signatures required. MCL 168.590 to 168.590h, 168.544f.

23. In *Anderson v. Celebrezze*, 460 U.S. 780, 794-95 (1980) the Supreme Court pointed out that

. . . in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. \* \* \* Thus in a Presidential election a State's enforcement of more stringent ballot access requirements . . . has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries. \* \* \*

24. Upon information and belief, neither Michigan nor any other state has ever enforced a sore loser law against a minor party candidate for president.

### **Additional Averments**

25. Plaintiffs' First and Fourteenth Amendment rights are substantially burdened by the application of Michigan's sore loser law to Johnson.

26. Prohibiting Johnson from being listed on the general election ballot as the Libertarian Party candidate for president, yet permitting him to be listed as a candidate without party affiliation, shows that Michigan has scant state interest in applying its sore loser law to presidential candidates.

27. In applying Michigan's sore loser law to foreclose Johnson from the general election ballot, the Secretary is acting under color of state law to deprive plaintiffs of voting and associational rights secured by the First and Fourteenth Amendments. The Secretary is therefore liable to plaintiffs pursuant to 42 U.S.C. § 1983.

28. Plaintiffs have no adequate remedy at law and are suffering irreparable harm from the Secretary's application of the sore loser law to Johnson.

### **Claims**

29. Plaintiffs state a claim under the First and Fourteenth Amendments in that the Secretary's application of the sore loser law to Johnson impairs plaintiffs' rights to have equal protection and due process of law, to cast their votes

effectively, and to speak and associate politically, including their “constitutional right . . . to create and develop new political parties,” *Norman v. Reed*, 502 U.S. 279, 288 (1992), and such impairment of plaintiffs’ rights cannot be justified by a sufficient state interest.

30. Plaintiffs state a claim under 42 U.S.C. § 1983.

31. Plaintiffs state a claim for attorney fees and costs under 42 U.S.C. § 1988.

### **Relief Requested**

32. WHEREFORE, plaintiffs request the following relief:

- a. a declaration that the Secretary’s application of the sore loser law to Johnson is unconstitutional;
- b. a declaration that the application of the sore loser law to candidates for president is unconstitutional;
- c. a declaration that the Secretary is in violation of 42 U.S.C. § 1983;
- d. preliminary and permanent injunctions prohibiting the Secretary from refusing to place Johnson’s name on the general election ballot as the Libertarian Party candidate for president;
- e. preliminary and permanent injunctions prohibiting the Secretary from applying the sore loser law to candidates for president;

- f. reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988;
- g. such other and further relief as may be just and proper.

Dated: June 25, 2012

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