

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

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

Plaintiffs,

No. 2:12-cv-12782-PDB-MJH

v.

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

Defendant.

_____ /

**PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO
MOTION TO EXPEDITE**

Statement of Facts

The facts concerning Gary Johnson's exclusion from the November 6, 2012 general election ballot are stated in Plaintiffs' Motion for Summary Judgment, Dkt. # 6, to which the Court is respectfully referred.

Argument

PLAINTIFFS ARE NOT BARRED BY LACHES

"Laches consists of two elements: (1) unreasonable delay in asserting one's rights; and (2) a resulting prejudice to the defending party." *Brown-Graves Co. v. Central States, Southeast and Southwest Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000); *see* Def. Brief at 3.

First, there has been no unreasonable delay on the instant plaintiffs' part. The LPM ratified Gary Johnson as its candidate for president on June 2, 2012, having previously been informed by defendant that he could not appear on the November 6, 2012 general election ballot because he had appeared on the February 28, 2012 Republican primary election ballot. Def.

Brief at 1, 2. Plaintiffs filed their Complaint on June 25, 2012. Dkt. #1. Defendant was served on July 18, 2012, and filed a Motion to Dismiss on July 31, 2012. Def. Brief at 2; Dkt. # 4. Plaintiffs filed a Motion for Summary Judgment on August 2, 2012, and filed their Response to the Motion to Dismiss on August 16, 2012. Dkt. ## 6, 8. On August 6, 2012, the Court scheduled a hearing on the motions for March 13, 2013. Dkt. # 7. On August 19, 2012, plaintiffs filed the instant Motion to Expedite. Dkt. # 9.

Second, defendant has not suffered any prejudice and need not suffer any. Ballots need not be delivered to the town and city clerks until 10 days before the election. MCL 168.714(2). Absent voter ballots need not be distributed until September 22, 2012,¹ which is five weeks after plaintiffs filed their Motion to Expedite on August 19, 2012. Affidavit of Christopher M. Thomas (annexed to Defendant's Brief), ¶ 7; 42 U.S.C. 1973ff-1(a)(8); MCL 168.714 and 759a.

In *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980), upon which defendant relies, the plaintiff-candidate filed suit on March 31, 1980, only *seven weeks* before the March 20, 1980 election in which he sought access to the ballot. In the present case, the plaintiffs filed suit more than *19 weeks* before the election in which they seek access to the ballot. In *Kay v. Austin*, the Sixth Circuit pointed out that when the suit was filed, election preparations were well under way, and the state provided evidence that "all of the necessary preliminary work had been done for the paper ballots, voting machine strips, and punch cards," and that "notices of election, absentee voting material, and registration notices had been completed and shipped." It was under those

¹Defendant's brief erroneously states that September 7, 2012 is the "date on which ballots for the November 2012 general election must be printed." Def. Brief at 6. The affidavit annexed to Defendant's Brief states that September 7, 2012 is the date by which "a final decision in this case is needed" and also states that absent voter ballots must be distributed by September 22, 2012. Affidavit of Christopher M. Thomas, ¶¶ 6, 7. Ballots need not be delivered to the municipalities until 10 days before the election. MCL 168.714(2).

circumstances that the court ruled that the suit was barred by laches. In the present case, no such circumstances obtain.

As of August 22, 2012, Gary Johnson had secured access to the general election ballot in 36 states and was expected to secure access to the ballot in 11 additional states and the District of Columbia in the very near future. Litigation over Johnson's ballot status is in process in the three remaining states (Michigan, Oklahoma and Pennsylvania). Declaration of William Redpath executed on August 22, 2012 (annexed hereto as Exhibit A).

Conclusion

For the foregoing reasons, plaintiffs' Motion to Expedite should be granted.

Respectfully submitted,

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Dated: August 23, 2012

CERTIFICATE OF SERVICE (e-file)

I hereby certify that on August 23, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will provide electronic copies to counsel of record..

s/Gary Sinawski
Gary Sinawski