

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

DAVID G. CRUM,

D-202-CV-2014-03730

Plaintiff,

vs.

DIANNA J. DURAN, NEW MEXICO SECRETARY OF STATE and
MAGGIE TOULOUSE OLIVER, BERNALILLO COUNTY CLERK,
Defendants.

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE
RELIEF THAT THE NEW MEXICO CONSTITUTION GRANTS VOTERS
REGISTERED AS “DECLINES TO STATE A PARTY AFFILIATION” [DTS] THE
RIGHT TO VOTE IN PRIMARY ELECTIONS**

COMES NOW, Plaintiff, David G. Crum, by and through his attorneys of record, J.
Edward Hollington and Diane P. Donaghy, J. Edward Hollington & Associates, and for his
complaint against Defendants states:

**I
JURISDICTION AND VENUE**

1. Plaintiff, David G. Crum, is a resident of Albuquerque, Bernalillo County, New
Mexico and is a qualified elector [voter] who is registered to vote and his certificate of
registration contains the letters “DTS” which means Plaintiff “declined to designate a party
affiliation.”

2. Dianna J. Duran is the duly elected Secretary of State for the State of New Mexico and
is the state’s Chief Election Officer.

3. Maggie Toulouse Oliver is the duly elected Clerk of Bernalillo County and is the
Bernalillo County Chief Election Officer.

4. On May 21, 2014, Plaintiff attempted to cast his vote in the 2014 primary election at the early voting location of the Clerk's Annex, Union Square, 111 Union Square St. SE, Albuquerque, New Mexico, and was not allowed to vote.

5. Plaintiff files this action to protect his constitutional right to vote in all elections, including primary elections, for public officers.

6. This Court has jurisdiction over the subject matter, the parties, and venue is properly in the Second Judicial District Court.

II **STATEMENT OF FACTS**

7. Plaintiff, David G. Crum, is a registered voter and on January 27, 2014, when the Governor issued the 2014 Primary Proclamation, Plaintiff's certificate of registration listed him as "DTS" which means he declines to state a party affiliation. Plaintiff did not change his "DTS" status on his certificate of registration before he tried to vote in the 2014 primary election.

8. Plaintiff and all New Mexico citizens who meet qualifications as an elector [voter] are given the right to decline to designate a political party on their Certificate of Registration. [See NMSA 1978 §1-4-15[C]]

9. Article VII Section 1 of the New Mexico Constitution [NM Const.] grants to Plaintiff and every citizen who is a qualified elector [registered to vote] the right to vote "at all elections for public officers."

10. The New Mexico Primary Proclamation of 2014 proclaims that the 2014 primary is an election for public officers.

11. Article II Section 8 of the NM Const. requires that all elections shall be “free and **open**, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” [*emphasis added*]

12. The primary elections in New Mexico are paid for by public funds and tax payers.

13. Plaintiff and other DTS registered voters are prohibited by NMSA 1978 §1-12-7[B] and [C] from voting in primary elections because Plaintiff and other DTS registered voters choose not to designate a party, which is their right pursuant to NMSA 1978 §1-4-15[C].

14. The New Mexico Registration Statistics Report of Registered Voters as of December 31, 2013, published by the New Mexico Secretary of State, shows there are 238,500 DTS voters statewide, including 84,057 in Bernalillo County.

15. Plaintiff and 238,499 other DTS voters are not allowed to exercise their right to vote for candidates for public offices in primary elections.

16. On May 21, 2014, Plaintiff attempted to vote during the 2014 primary election and Defendants, through their designated election official, refused to allow Plaintiff to request a political party’s ballot and vote. Plaintiff and all other DTS registered voters are denied a choice of associating with a political party at primary elections when they are prohibited from voting.

17. Defendants are denying Plaintiff and other DTS registered voters their constitutional right to vote in all elections for public officers as guaranteed by Article VII Section 1 of the NM Const.

18. Defendants are violating the requirement of having open elections, which includes open primary elections, as required by Article II Section 8 of the NM Const. Closing primary elections to Plaintiff and other DTS registered voters violates the NM Const.

19. The New Mexico Legislature violated Article II Section 8 and Article VII Section 1 by enacting NMSA 1978 §1-12-7[B] and [C], which closes primary elections and prohibits over 238,000 registered voters from exercising their constitutional right to vote in primary elections.

20. The right to vote in all elections is guaranteed by the New Mexico Const. Prohibiting Plaintiff and other DTS registered voters the right to vote in primary elections is a severe restriction on Plaintiff and other DTS voters' constitutionally protected right to vote.

21. The Defendants are denying Plaintiff and other DTS registered voters the right to vote in all elections for public officers, including primary elections. Their actions and interpretations of NMSA 1978 §1-12-7[B] and [C] are subject to "strict scrutiny review."

COUNT I **DECLARATORY JUDGMENT**

22. Plaintiff realleges the allegations contained in paragraphs 1 through 21 of this Complaint as fully set forth herein.

23. Plaintiff brings this claim pursuant to NMSA 1978 §44-6-1 et seq.

24. Prohibiting Plaintiff and other DTS registered voters from exercising their right to vote in primary elections violates Article II Section 8 and Article VII Section 1 of the New Mexico Const.

25. NMSA 1978 §1-12-7[B] and [C] violates Plaintiff and other DTS registered voters constitutionally guaranteed right to vote in all elections for public officers and is contrary to the constitutional requirement of Article II Section 8 of the New Mexico Const. that requires all elections be open and no power can interfere with the right to vote.

26. Plaintiff and other DTS registered voters do not necessarily decline to associate with a party when they choose to "decline to designate a party affiliation" at the time they register to

vote. Plaintiff and other DTS registered voters should be allowed to associate with a party of their choice by requesting a particular party's ballot when voting in a primary election.

27. Permitting Plaintiff and other DTS registered voters at primary elections to request a particular party's ballot and to vote for that party's candidates, does not violate a political party's right of association.

28. A political party's right of association does not include the right to prohibit Plaintiff and other registered DTS voters from associating with that party when voting in a primary election.

29. The Defendants and the New Mexico Legislature have shown no compelling interest in prohibiting Plaintiff and other registered DTS voters from exercising their constitutionally protected right to vote in all elections for public officers, including primary elections.

30. Applying strict scrutiny review, Plaintiff and other DTS registered voters should be permitted to vote in primary elections.

31. The costs and expense of conducting primary elections is borne by all tax payers of the state and paid for with public funds.

32. Plaintiff requests the Court decree as follows:

A. Article VII Section 1 requires that Plaintiff and other DTS registered voters be allowed to vote in all elections for public officers including primary elections;

B. Article II Section 8 requires that all elections be open to Plaintiff and other DTS registered voters including primary elections;

C. The New Mexico Legislature violated Article II Section 8 and Article VII Section 1 of the New Mexico Constitution by enacting NMSA 1978 §1-12-7 [B] and [C] and that statute is unconstitutional, and should no longer be enforced in such a manner that it prevents Plaintiff and other DTS registered voters from voting;

D. Plaintiff and other DTS registered voters who are registered as DTS on the date the Governor issues a Primary Proclamation and by the deadline for voter

registration before primary elections, are allowed to vote in a primary election as follows:

- i. Plaintiff and other DTS registered voters may request a particular party ballot;
- ii. Plaintiff and other DTS registered voters, after receiving a requested party ballot, can vote for the candidates and issues on those ballots of their choice; and
- iii. Votes casts by Plaintiff and other DTS registered voters during a primary election shall be cast and counted as all other votes cast in the primary election.

COUNT II
INJUNCTIVE RELIEF

33. Plaintiff realleges the allegations contained in paragraphs 1 through 32 of this Complaint as fully set forth herein.

34. Plaintiff requests Defendants be enjoined from taking any action to prevent and prohibit Plaintiff and other DTS registered voters from requesting party ballots and voting in primary elections.

35. Plaintiff further requests his costs and any other relief provided by statute, common law, or rule relating to this complaint.

Respectfully submitted,
J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

/s/ J. Edward Hollington
J. Edward Hollington
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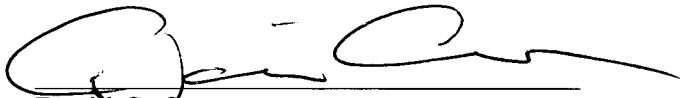
VERIFICATION

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

David G. Crum, being first duly sworn upon oath, deposes and says:

That he is the Plaintiff in the above-entitled cause;

That he has read over, knows and understands the contents of the foregoing *Verified Complaint for Declaratory Judgment and Injunctive Relief that the New Mexico Constitution Grants Voters Registered as "Declines to State a Party Affiliation" [DTS] the Right to Vote in Primary Elections*; and that the statements therein made are true of his own knowledge, information and belief.


David G. Crum

Subscribed and sworn to before me this 21st day of May, 2014 by
David G. Crum.


Notary Public

My commission expires:
5-9-2018

