

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GREG DORSEY,
(Baltimore City)

Plaintiff,

v.

Civil Action No.

LINDA H. LAMONE, in her official :
capacity as the State Administrator :
of the MARYLAND STATE :
BOARD OF ELECTIONS :
(Anne Arundel Co.); :

DAVID J. McMANUS, JR., in his :
official capacity as Vice Chairman :
and a Member of the MARYLAND :
STATE BOARD OF ELECTIONS :
(Anne Arundel Co.); :

PATRICK J. HOGAN, in his :
official capacity as a Member of the :
MARYLAND :
STATE BOARD OF ELECTIONS :
(Anne Arundel Co.); :

CHARLES E. THOMANN, in his :
official capacity as a Member of the :
MARYLAND :
STATE BOARD OF ELECTIONS :
(Anne Arundel Co.); :

KELLEY A. HOWELLS, in her :
official capacity as a Member of the :
MARYLAND :
STATE BOARD OF ELECTIONS :
(Anne Arundel Co.); :

BOBBIE S. MACK, in her :
official capacity as Chairman and a :
Member of the MARYLAND :
STATE BOARD OF ELECTIONS :
(Anne Arundel Co.); :

Defendants.

COMPLAINT

INTRODUCTION

Plaintiff Greg Dorsey wants to gain access to the ballot in Maryland as an

unaffiliated candidate for the 2016 United States Senate election and he wants to cast his vote for himself as an unaffiliated candidate for this U.S. Senate seat.¹

In order for him to gain access to the ballot in Maryland as an unaffiliated candidate for the 2016 United States Senate seat, Maryland law requires that the unaffiliated candidate file, *inter alia*, a ballot access petition signed by not less than 1% of the total registered voters who are eligible to vote for the office of U.S. Senate, with the 1% figure determined as of January 1, 2016. *See* MD Code, Election Law, § 5-703. A fair estimate, based on Maryland's voter registration recent history and the fact that 2016 is a Presidential election year, is that an unaffiliated candidate for the 2016 U.S. Senate election in Maryland would require approximately 38,000 or more verified signatures.

In contrast, a candidate for this same U.S. Senate seat in Maryland in the 2016 election who seeks election to that seat as a representative of a new political party and is selected to be the new political party's candidate for the same, automatically gains access to the ballot as a candidate for that seat or for any elective office in Maryland in 2016 for which his or her new political party selects him or her, if the new political party files a ballot access petition signed by a total of 10,000 registered voters eligible to vote in Maryland on the first day of the month in which the petition is submitted. *See* MD Code, Election Law, §§4-102; 5-703.1.

In this lawsuit, as a qualified Maryland voter and as a Maryland resident-

¹"Unaffiliated" candidates in Maryland are independent candidates running for elective office on their own and not through any political party.

citizen who seeks access to the 2016 ballot in Maryland as a candidate for a seat in the U.S. Senate, Plaintiff Dorsey challenges the onerous requirements under Maryland law for an unaffiliated candidate to gain access to the ballot for a U.S. Senate seat. He specifically challenges such requirements, under the First and Fourteenth Amendments to the United States Constitution, insofar as Maryland law places a far more severe burden on unaffiliated candidates for such a seat and on their supporters and qualified voters who seek to cast their votes for him than the burden placed on candidates from a partisan political party and their supporters and voters.

Plaintiff seeks a declaratory judgment and injunctive relief in this action.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question) and § 1343 (Civil Rights). Plaintiffs bring this action under 42 U.S.C. § 1983. Plaintiffs also seek relief authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
2. This Court is an appropriate venue for this action pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff Greg Dorsey (“Dorsey”) is an adult resident-citizen of Maryland, residing in Baltimore, Maryland and has been at all times relevant to this lawsuit a qualified voter in the State of Maryland and is fully eligible under state and federal law to seek election as and to serve as a United States Senator from the State of

Maryland if elected to that office. Plaintiff Dorsey believes that he and like-minded Americans and their interests have been excluded and ignored by the major political parties, run by an elite and exclusive political class and he wishes to change that through his election to the United States Senate as an unaffiliated candidate, promoting true American values for his constituents.

4. Defendant Linda H. Lamone is the Administrator of the Maryland State Board of Elections. She is the chief state election official, appointed to that position by the Maryland State Board of Elections, pursuant to MD Code, Election Law, § 2-103. All Defendants in this case are being sued solely in their official capacity, based on their position with the Maryland State Board of Elections.

5. Defendants Bobbie S. Mack, David J. McManus, Jr., Patrick J. Hogan, Kelley Howells, and Charles E. Thomann (collectively the “State Board” or “Defendants”) are members of the Maryland State Board of Elections (“State Board”). Defendant Mack is the Chairman of the State Board and Defendant McManus is the Vice Chairman. The State Board, acting through these members and the Administrator the members appoint, is responsible, under MD Code, Election Law, § 2-102, for managing and supervising elections in the State of Maryland and for ensuring compliance with the requirements of state and federal law by all persons involved in the elections process. The State Board also establishes election policies in Maryland which candidates are required to follow. Pursuant to MD Code, Election Law, § 2-101, there are five members of the State Board and only members of a Maryland Principal Political Party can be a member

of the State Board. Each of the Defendant State Board members is a member of a Principal Political Party in Maryland.

FACTS

6. In 2016, an election will be held in the State of Maryland for a seat in the United States Senate.

7. Plaintiff Greg Dorsey meets all of the eligibility requirements for election to office of United States Senator from the State of Maryland and seeks election to that office in 2016 as an unaffiliated candidate.

8. On February 2, 2015, Plaintiff filed and the Defendant received his Certificate of Candidacy for the 2016 U.S. Senate race in Maryland.

9. Plaintiff Greg Dorsey also is a qualified elector in the State of Maryland and he and other qualified Maryland electors wish to cast their votes in Maryland's 2016 U.S. Senate election for Plaintiff Greg Dorsey as an unaffiliated candidate for that office and they wish to associate among themselves and with others to promote his campaign for the 2016 U.S. Senate seat from Maryland and to support his election to that seat as an unaffiliated candidate.

10. Plaintiff Dorsey's candidacy as an unaffiliated candidate is the vehicle by which Plaintiff Dorsey seeks election to Maryland's U.S. Senate seat in the 2016 election and through which the Plaintiff seeks to exercise his rights to political participation, to advocate his agenda for political purposes, and to put forward his political beliefs and points of view, as well as those of Plaintiff Dorsey's constituents, and it is the vehicle by which he and other electors seek his

access to the ballot in Maryland for the seat of U.S. Senator from Maryland in the 2016 election.

11. Under Maryland law, other than as a write-in candidate, there are three avenues for gaining access to the ballot for election as a U.S. Senator.

12. Qualified candidates seeking access to the 2016 general election ballot in Maryland for the office of U.S. Senate through the Democratic or Republican parties simply vie for the party's nomination for that seat and, once nominated, automatically are placed on Maryland's general election ballot for the U.S. Senate race. They do not need to file any ballot access signature petition.

13. Qualified candidates seeking access to the 2016 general election ballot in Maryland for the office of U.S. Senator through a new political party (a political party other than the Democratic or Republican parties) simply vies for selection by the new political party to be its candidate for the seat of U.S. Senator and if the new political party as a whole files a ballot access signature petition reflecting the signatures of a total of 10,000 qualified electors, its nominee is placed on the 2016 general election ballot in Maryland for the seat of U.S. Senator. In addition, all other qualified candidates the new political party selects to be a candidate for any other elective office in Maryland under its party banner on the 2016 ballot also automatically gain access to the ballot by virtue of the new political party having obtained and filed 10,000 verifiable signatures, regardless of whether any support at all has been demonstrated for any such individual candidate running under the new political party's banner. MD CODE, Election Law, § 4-102.

14. Qualified candidates seeking access to the 2016 general election ballot in Maryland for the office of U.S. Senator as unaffiliated candidates must obtain and file by the first Monday in August in 2016, ballot access signature petitions containing verifiable signatures of not less in number than 1% of the total number of registered voters who are eligible to vote for the office of U.S. Senator from Maryland, with such number calculated as of January 1, 2016. MD Code, Election Law § 5-703. The number of signatures that such an unaffiliated candidate in Maryland has to obtain and submit in order to gain access to the ballot is the 4th highest of any state in the country and in the 3 states with a higher number of signatures, the law does not have such a disparity between unaffiliated and new or third party candidates. The unaffiliated candidate for a U.S. Senate seat in Maryland also has to pay a fee of \$290.00. MD Code, Election Law, § 5-401(b)(5).

15. It is impossible for Plaintiff or any unaffiliated candidate for the position of U.S. Senator from Maryland to know the exact number of signatures he or she will be required to obtain to gain access to the 2016 ballot until January 1, 2016. MD Code, Election Law, § 5-703(e)(3); yet a candidate for the same seat running under the banner of a new political party faces no such uncertainty.

16. The State Board estimates that the number of verifiable signatures that an unaffiliated candidate for Maryland's U.S. Senate seat in 2016 will need to obtain and file in order to gain access to the 2016 ballot is in excess of 38,000 and perhaps significantly more since 2016 is a presidential election year. In light of

Maryland's verification process, a responsible unaffiliated candidate needing 38,000 verified signatures must plan to obtain approximately 60,000 raw signatures to have a reasonable safety margin. Obtaining this amount of verifiable or raw signatures would require a tremendous amount of time and energy, limiting the amount of time and energy that can be devoted to the campaign. It also is very expensive, costing perhaps upwards of \$100,000 to retain a reasonable amount of relatively low paid help in undertaking to obtain the signatures.

17. Plaintiff Dorsey has been advised by the State Board that he really must obtain well in excess of the required number of signatures in order to be certain to have enough, given the number of signatures typically disqualified or otherwise not determine by the Defendant to be verifiable.

18. Plaintiff Dorsey has been given widely conflicting information by representatives of the State Board regarding when an unaffiliated candidate can start obtaining ballot access petition signatures.

19. Plaintiff Dorsey has worked diligently at all times to meet all requirements for access to the 2016 ballot in Maryland for the office of U.S. Senator.

20. Requiring Plaintiff to obtain in approximately 38,000 signatures or more for his ballot access petition places a severe burden on the Plaintiff, requiring analysis under a strict scrutiny standard and cannot be justified by any sufficiently compelling state interest.

21. Requiring Plaintiff to obtain in excess of 38,000 signatures to gain access to the ballot as an unaffiliated candidate for U.S. Senator from Maryland on the 2016

ballot unfairly burdens and discriminates against unaffiliated candidates and unfairly treats them in relation to new political party candidates and candidates of the Democratic and Republican parties and others similarly situated.

22. 10,000 signatures has been determined by the Maryland Court of Appeals and the Maryland legislature to fully satisfy the State's interests in requiring a modicum of support for a new political party to gain access for all of candidates running under its party banner, regardless of whether any support has been shown for any individual candidate.

23. It is unfair and a violation of the First Amendment rights and the rights under the Equal Protection Clause of the Fourteenth Amendment of the U.S.

Constitution and a violation of similar provisions of the Maryland Constitution, including, but not limited to the equal protection component of Article 24 of the Maryland Declaration of Rights, to require more than 10,000 signatures for an unaffiliated candidate to gain access to the 2016 ballot in Maryland for U.S.

Senator in light of the requirements for a new political party's candidate for the same seat and in light of the conclusion that 10,000 signatures is sufficient for a new political party to gain access to the ballot for an entire field of candidates.

Requiring an unaffiliated candidate to obtain and file a number of signatures in excess of 10,000 is an unconstitutionally severe burden, demanding strict scrutiny and not justifiable by any compelling state interest.

24. The signature requirement differential and the combination of all of Maryland's ballot access requirements for an unaffiliated candidate to gain access

to the 2016 ballot in Maryland for the office of U.S. Senator poses an unconstitutionally severe burden not sufficiently justified by any State interest(s) and creates a more onerous obstacle and more severe burden for unaffiliated candidates than for a political party's candidates for the same office.

25. The United States Court of Appeals for the Fourth Circuit has written the following:

And as between new (third) party candidacies and independent candidacies, independent candidacies must be accorded even more protection than third party candidacies. This flows from the states' heightened interest in regulating the formation of new parties having the potential not possessed by independent candidates for long-term party control of state government, in combination with the peculiar potential that independent candidacies have for responding to issues that only emerge during or after the party primary process. (Citations omitted)

26. The requirements established under Maryland law, and specifically the requirements under MD Code, Election Law, § 5-703, for an unaffiliated candidate to gain access to the 2016 ballot and the race for U.S. Senate violates this principle established by the United States Court of Appeals for the Fourth Circuit.

27. The disparity between the number of ballot access signatures required for an unaffiliated candidate to gain access to the 2016 ballot for the U.S. Senate race in Maryland and the number of ballot access signatures required for a candidate of a new political party to gain access to the same ballot for the same race (or any other race on the 2016 general election ballot) discourages and unlawfully and unfairly discriminates against candidates wishing to run for elective office unaffiliated with any political party and, in fact, encourages the creation of a sham new political

party - even a single candidate party.

28. The political party and unaffiliated candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other.

Accordingly, it is not constitutionally sufficient to attempt to justify the severe burden created by the number of signatures disparity by providing the option for an unaffiliated candidate to form a new political party instead of running as candidate unaffiliated with any political party.

29. Maryland's severe ballot access requirements for unaffiliated candidates and, specifically the number of signatures required for an unaffiliated candidate's ballot access petition, both in and of itself and in relation to the requirements for a political party's candidates for the same elective office unlawfully limit the opportunities for unaffiliated candidates to impact the State's political landscape.

30. The ballot access requirements of MD Code, Election Law, § 5-703, and specifically the number of signatures it requires, if allowed to remain as currently set and as applied to Plaintiff, will prevent Plaintiff Dorsey from gaining access to the 2016 ballot in Maryland for the race for a U.S. Senate seat, and will prevent Plaintiff Dorsey and others who seek to support him from being able to cast their vote for Plaintiff Dorsey as an unaffiliated candidate.

31. The severe burden of the number of signatures required for an unaffiliated candidate under MD Code, Election Law, § 5-703 has caused tremendous harm to Plaintiff Dorsey's candidacy and will continue to cause tremendous harm because of the amount of time and energy that is required to attempt to obtain required

number of signatures. Such harm limits his ability to effectively campaign, his ability to participate in campaign debates and other candidate forums and more, and this will continue to cause irreparable harm if allowed to stand.

32. MD Code, Election Law, § 5-703, and specifically its number of signatures requirement for unaffiliated candidates serves no compelling state interest, is excessively burdensome and discriminatory, and is unconstitutional on its face and as applied to the Plaintiff and his supporters.

33. Defendant has at all times relevant to this action acted under color of state law in enforcing the provisions of Maryland election law at issue and in promulgating policies thereunder.

34. Defendant's actions under color of law have deprived and will continue to deprive Plaintiff and his supporters of their fundamental constitutional rights, and unless enjoined, will continue to inflict continuing and irreparable injury to the Plaintiff and his supporters.

35. Defendant's application of the unlawful and discriminatory provisions of Maryland election law at issue to Plaintiff and his supporters causes and will continue to cause irreparable injury to their fundamental constitutional rights under the First and Fourteenth Amendments to the United States Constitution and under the Maryland Constitution for which there is no adequate remedy at law. Plaintiff is likely to succeed on the merits in this action, and both balance of harm and the public interest favor granting a preliminary and permanent injunction as hereinbelow requested.

CAUSE OF ACTION (42 U.S.C. § 1983)

36. Plaintiff repeats and re-alleges each of the foregoing paragraphs, incorporating them here by reference.

37. MD Code, Election Law, § 5-703, and specifically § 5-703(e), alone and in combination with other ballot access requirements placed on an unaffiliated candidate seeking access to the 2016 ballot in Maryland for the U.S. Senate race and on his or her supporters and qualified voters who seek to cast their vote for him or her as an unaffiliated candidate on their face and as applied to Plaintiff and his supporters and qualified voters who seek to cast their vote for him as an unaffiliated candidate violate their rights to free speech and association guaranteed to them by the First and Fourteenth Amendments to the United States Constitution.

38. Such provisions of Maryland law on their face and as applied to Plaintiff and his supporters and qualified voters who seek to cast their vote for him as an unaffiliated candidate violate their right to cast their votes effectively and to advance their political beliefs as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

39. Such provisions of Maryland law on their face and as applied to Plaintiff and his supporters and qualified voters who seek to cast their vote for him as an unaffiliated candidate violate their rights to equal protection of the laws guaranteed under the Fourteenth Amendment to the United States Constitution and under Article 24 of the Maryland Declaration of Rights.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

1. Enter a judgment declaring MD Code, Election Law, § 5-703(e) to be violative of the First and Fourteenth Amendments to the United States Constitution and otherwise unconstitutional facially and as applied to Plaintiff and his supporters and qualified Maryland voters who seek to cast their votes for Plaintiff as an unaffiliated candidate on the 2016 ballot in Maryland for the U.S. Senate race;
2. Issue a preliminary and permanent injunction prohibiting the Defendants, their agents, employees, and other persons in concert with them from enforcing the state statutes at issue to prevent Plaintiff Dorsey from gaining access to the 2016 general election ballot in Maryland for the U.S. Senate race and to prevent his supporters and qualified voters from associating with him in his quest to obtain the elective office at issue and from voting for him in the race at issue;
3. Issue an Order decreasing the number of signatures required for ballot access by Plaintiff or any other unaffiliated candidate for the 2016 general election ballot for the U.S. Senate race in Maryland to a number which is fair, reasonable, ascertainable, and constitutionally permissible, with such number, in any event, being less than 10,000 signatures.
4. Give this case expedited treatment on this Honorable Court's docket to permit Plaintiff to effectively campaign and to permit Plaintiff to actively

participate as an unaffiliated candidate for the U.S. Senate seat in the 2016 general election;

6. Award Plaintiff reasonable attorney's fees and costs of this action;
7. Grant Plaintiff such other and further relief as this Court deems just and equitable.

Respectfully Submitted.

/s/ David I. Schoen
Counsel for Plaintiff Greg Dorsey
(Bar No. 28554)

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