IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

DUANE MALETSKI, SHARON LOPEZ, FRANCES M. ZICK, and all others similarly situated, OBAMA FOR AMERICA, and DEMOCRATIC NATIONAL COMMITTEE,

Plaintiffs,

vs.

MACOMB COUNTY REPUBLICAN PARTY, MICHIGAN REPUBLICAN PARTY, REPUBLICAN NATIONAL COMMITTEE, and JOHN DOES #1-100,

Defendants.
_____/

Case No. 2:08-cv-13982-DML-MKM
Hon. David M. Lawson

DEFENDANT MACOMB COUNTY REPUBLICAN PARTY'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND DECLARATORY RELIEF

John D. Pirich (P23204)
Andrea L. Hansen (P47358)
Attorneys for Defendant Macomb County Republican Party
Honigman Miller Schwartz and Cohn LLP
222 North Washington Square Suite 400
Lansing, MI 48933-1800
(517) 484-8282
jpirich@honigman.com
ahansen@honigman.com

JAMES R. BRUINSMA (P48531)
Attorneys for Individual Plaintiffs
Meyers Nelson Dillon & Shierk, PLLC
125 Ottawa Ave., N.W., Ste. 270
Grand Rapids, MI 49503
(616) 233-9640
jbruinsma@mnds-pllc.com

MARY ELLEN GUREWITZ (P25724)
Attorney for Obama for America and Democratic National Committee
Sachs Waldman, P.C.
1000 Farmer Street
Detroit, MI 48226-2899
(313) 965-3464
megurewitz@sachswaldman.com

ROBERT F. BAUER
General Counsel for Obama for America
Perkins Coie
607 Fourteenth St., N.W.
Washington, D.C. 20005
(202) 434-1602
RBauer@perkinscoie.com

GARY P. GORDON (P26290)
W. ALAN WILK (P54059)
JASON T. HANSELMAN (P61813)
DENNIS M. HAFFEY (P26378)
Attorneys for the Republican National Committee
Dykema Gossett PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9181
ggordon@dykema.com
awilk@dykema.com
jhanselman@dykema.com
dhaffey@dykema.com

JOSEPH E. SANDLER
General Counsel for Democratic National Committee
Sandler, Reiff & Young, P.C.
300 M Street, S.E., Ste. 1102
Washington, D.C. 20003
(202) 479-1111

ERIC E. DOSTER (P41482)
RICHARD C. KRAUS (P27553)
Attorneys for the Michigan Republican Party
Foster, Swift, Collins & Smith P.C.
313 S. Washington Square
Lansing, MI 48933-2193
(517) 371-8100
edoster@fosterswift.com
rkraus@fosterswift.com

TABLE OF CONTENTS

INDEX OF AUTHORITIES iii

STATEMENT OF ISSUE PRESENTED vi

CONTROLLING OR MOST APPROPRIATE AUTHORITY FOR RELIEF SOUGHT vii

I. INTRODUCTION 1

II. STATEMENT OF FACTS 1

A. PARTIES 1

B. PERTINENT AND UNDISPUTED FACTS 2

III. ARGUMENT 5

A. STANDARD FOR INJUNCTIVE RELIEF 5

B. THE PLAINTIFFS ARE HIGHLY UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS. 6

1. Plaintiffs Cannot Succeed on Their § 1983 Claim 6

a. Defendant Macomb County is Not a State Actor 6

b. Plaintiffs have Suffered No Deprivation of Federal Rights 9

2. Plaintiffs Cannot Prevail on Their § 1985(3) Claim 12

a. There is No Conspiracy 12

b. Plaintiffs are Not Members of a Protected Class 13

c. The "Support and Advocacy Provision" Requires Class-Based Animus or State Action 16

C. PLAINTIFFS CANNOT DEMONSTRATE IRREPARABLE INJURY AND THEIR CLAIMS ARE UNRIPE FOR REVIEW 17

1. Plaintiffs have no injury or real threat of injury 17

2. Plaintiffs' Claims are Not Ripe for Review 19

D. DEFENDANTS WILL BE HARMED SHOULD AN INJUNCTION AND DECLARATORY RULING ISSUE BY THIS COURT. 21

E. PUBLIC INTEREST 22

IV. CONCLUSION.....23

INDEX OF AUTHORITIES

Cases

Adult Video Ass'n v. United States Dep't of Justice, 71 F.3d 563 (6th Cir. 1995) 20

Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289; 99 S. Ct. 2301; 60 L. Ed. 2d 895 (1979) 21

Banchy v. Republican Party of Hamilton County, 898 F.2d 1192 (6th Cir. 1990) 8

Bradley v. Detroit Bd. of Educ., 577 F.2d 1032 (6th Cir. 1978) 17

Brentwood Acad. v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288; 121 S. Ct. 924; 148 L. Ed. 2d 807 (2001) 6

Briggs v. Ohio Elections Comm'n, 61 F.3d 487 (6th Cir. 1995) 20

Center for Bio-Ethical Reform, Inc. v. City of Springboro, 477 F.3d 807 (6th Cir. 2007) 12, 16

Charter Twp. of Huron v. Richards, 997 F.2d 1168 (6th Cir. 1993) 5

Conklin v. Lovely, 834 F.2d 543 (6th Cir. 1987) 15

EEOC v. Wooster Brush Co. Employees Relief Ass'n, 727 F.2d 566 (6th Cir. 1984) 23

Federer v. Gephardt, 363 F.3d 754 (8th Cir. 2004) 16

Gregory v. Shelby County, Tenn., 220 F.3d 433 (6th Cir. 2000) 6

Grendell v. Ohio Supreme Court, 252 F.3d 828 (6th Cir. 2001) 17

Griffin v. Breckenridge, 403 U.S. 88; 91 S. Ct. 1790; 29 L. Ed. 2d 338 (1971) 14

Grimes v. Smith, 776 F.2d 1359 (7th Cir. 1985) 15

Gutierrez v. Lynch, 826 F.2d 1534 (6th Cir. 1987) 12

Harrison v. KVAT Food Mgmt., Inc., 766 F.2d 155 (4th Cir. 1985) 14, 15

Haverstick Enters., Inc. v. Fin. Fed. Credit, Inc., 32 F.3d 989 (6th Cir. 1994) 15

Howerton v. Gabica, 708 F.2d 380 (9th Cir. 1983) 7

Jackson v. Michigan State Democratic Party, 593 F. Supp. 1033 (E.D. Mich. 1984) ... 7, 8, 16, 17

Knubbe v. Sparrow, 808 F. Supp. 1295 (E.D. Mich. 1992) 6

Kregger v. Posner, 248 F. Supp. 804 (E.D. Mich. 1966 7

Larsen v. United States Navy, 525 F.3d 1 (D.C. Cir. 2008) 18, 19

Lindstedt v. Missouri Libertarian Party, 160 F.3d 1197 (8th Cir. 1990) 8

Lujan v. Defenders of Wildlife, 504 U.S. 555; 112 S. Ct. 2130; 119 L. Ed. 2d 351 (1992) 20

McDowell v. Jones, 990 F.2d 433 (8th Cir. 1993) 13

Memphis, Tenn. Area Local v. City of Memphis, 361 F.3d 898 (6th Cir. 2004) 7

Mezibov v. Allen, 411 F.3d 712 (6th Cir. 2005) 6

Moltan Co. v. Eagle-Picher Indus. Inc., 55 F.3d 1171 (6th Cir. 1995) 5, 17

Morse v. Republican Party of Virginia, 517 U.S. 186; 116 S. Ct. 1186; 134 L. Ed. 2d 347 (1996) 8

Newell v. Brown, 981 F.2d 880 (6th Cir. 1992) 12, 13

Peoples Rights Org., Inc. v. City of Columbus, 152 F.3d 522 (6th Cir. 1998) 20

S.H.A.R.K. v. Metro Parks Serving Summit County, 499 F.3d 553 (6th Cir. 2007) 17

Sanchez v. Crump, 184 F. Supp. 2d 649 (E.D. Mich. 2002) 6

Simesco v. Emmet County Dep't of Soc. Services, 942 F.2d 372 (6th Cir. 1991) 6

Smith v. Allwright, 321 U.S. 649; 64 S. Ct. 757; 88 L. Ed. 987 (1944) 8

Summit County Democratic Central and Executive Committee v. Blackwell, 388 F.3d 547 (6th Cir. 2004) 11, 22

Superior Consulting Co., Inc. v. Walling, 851 F. Supp. 839 (E.D. Mich. 1994 5

Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568; 105 S. Ct. 3325; 87 L. Ed 2d 409 (1985) 20

United Bhd. of Carpenters and Joiners of America v. Scott, 463 U.S. 826; 103 S. Ct. 3352; 77 L. Ed. 2d 1049 (1983) 13, 14, 15

United Steelworkers of America, Local 2116 v. Cyclops Corp., 860 F.2d 189 (6th Cir. 1988) 20

Williams v. Democratic Party of Georgia, Civ. Action No. 16286 (N.D. Ga., April 6, 1972) 8

Wolotsky v. Huhn, 960 F.2d 1331 (6th Cir. 1992) 7

Statutes/Constitution

42 U.S.C. § 1983 ..... 6, 7

42 U.S.C. § 1985(3) ..... passim

Mich. Comp. Laws §§ 168.1, *et. seq* 10

Mich. Comp. Law § 168.730 8

Mich. Comp. Law § 168.733 8

U.S. Const., art. III, § 2 ..... 18, 19, 21

STATEMENT OF ISSUE PRESENTED

Whether Plaintiffs are entitled to declaratory and injunctive relief even though:

(1) they are highly unlikely to succeed on the merits of either their § 1983 or § 1985(3) claim;

(2) they can demonstrate no realistic probability of *any* injury, must less irreparable harm;

(3) the relief sought would harm the Defendants; and

(4) it would be contrary to the public interest?

CONTROLLING OR MOST APPROPRIATE AUTHORITY FOR RELIEF SOUGHT

Cases

Center for Bio-Ethical Reform, Inc. v. City of Springboro, 477 F.3d 807 (6th Cir. 2007)
Jackson v. Michigan State Democratic Party, 593 F. Supp. 1033 (E.D. Mich. 1984)
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
Memphis, Tenn. Area Local v. City of Memphis, 361 F.3d 898 (6th Cir. 2004)
Mezibov v. Allen, 411 F.3d 712 (6th Cir. 2005)
Moltan Co. v. Eagle-Picher Indus. Inc., 55 F.3d 1171 (6th Cir. 1995)
Summit County Democratic Central and Executive Committee v. Blackwell, 388 F.3d 547 (6th Cir. 2004)
United Bhd. of Carpenters and Joiners of America v. Scott, 463 U.S. 826 (1983)

Statutes or Constitution

U.S. Const. art III, § 2
42 U.S.C. § 1983
42 U.S.C. § 1985

I. INTRODUCTION

The Plaintiffs, in a transparent political maneuver, have filed this lawsuit seeking preliminary injunctive and declaratory relief based on no factual or legal support whatsoever. Indeed, Defendants have each denied any plan or intention to do the very act Plaintiffs seek to enjoin. Plaintiffs know full well that Defendants are not going to engage in the actions alleged, but by filing this action are able to continue the negative publicity for the opposing political party on the eve of the general election. Plaintiffs have shown absolutely no legal entitlement to the extraordinary relief sought here.

II. STATEMENT OF FACTS

A. PARTIES

The individual Plaintiffs are residents of Macomb County who are registered to vote at their current addresses and whose homes are all subject to foreclosure. Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint") at ¶¶ 6-8. Obama for America is a political campaign (*id.* at ¶ 15) and the Democratic National Committee is the governing body of the Democratic Party of the United States. *Id.* at ¶ 16.

The Republican National Committee ("RNC") is the governing body of the Republican Party of the United States *Id.* at ¶ 19. The Michigan Republican Party ("MRP") is the State Central Committee of the Republican Party of Michigan. *Id.* at ¶ 18. The Macomb County Republican Party ("Macomb County") is a county committee of the Republican Party of Michigan. *Id.* at ¶ 17. These three committees are separate legal entities, with their own governance and procedures. One committee cannot legally bind, and does not have the authority to speak for, another committee.

B. PERTINENT AND UNDISPUTED FACTS

James Carabelli is the Chairman for Macomb County. On September 9, 2008, Eartha Melzer, a reporter for a blog entitled the Michigan Messenger, called Mr. Carabelli on his cell phone and requested the opportunity to ask him questions concerning the issues affecting Macomb County voters, which he agreed to do. Exhibit 1, Affidavit of James Carabelli ("Carabelli Aff" at ¶ 4). The conversation lasted approximately 4 minutes. *Id.* at ¶ 5. The following day, the Center for Independent Media published an article on the Michigan Messenger blog, purportedly as a result of that conversation, which then led to this lawsuit. *Id.* at ¶ 9; Complaint at ¶ 34. The actual content of the parties' conversation is highly disputed, a fact of which both parties would and do agree. *Id.* at ¶¶ 9-13; *Id.* at ¶ 51. Ms. Melzer claims that Mr. Carabelli told her that Macomb County would be using foreclosure notice lists to challenge voter eligibility at the polls. *Id.* at ¶ 9; *Id.* at ¶ 34. Mr. Carabelli contends that assertion is completely false, that he never made that statement or even had heard of such a basis for challenge and, in fact, Macomb County does not even engage in poll challenging. *Id.* at ¶¶ 9-13; *Id.* at ¶ 51. Mr. Carabelli further asserts that instead, he had merely said in response to Ms. Melzer's question as to what were the most significant issues facing Macomb County voters: "high unemployment and foreclosure rates." *Id.* at ¶ 6. Later in that conversation, when asked about potential poll challenges, Mr. Carabelli states that he could not answer that question, given that Macomb County does not engage in poll challenging. *Id.* at ¶ 7.

Mr. Carabelli adamantly denies making the statements attributed to him by Ms. Melzer, and denies ever having a plan, or knowledge of a plan, to use foreclosure notice lists as a basis

for challenge. *Id.* at ¶¶ 9-13; *Id.* at ¶ 51[1]. Stephanie Pazdro, Political Director for Macomb County, also denies any knowledge of any plan to use foreclosure notice lists at the polls by Macomb County or any other Republican Committee. Exhibit 3. Affidavit of Stephanie Pazdro ("Pazdro Aff"). Ms. Pazdro confirms that Macomb County does not engage in poll challenges; rather such challenges are all coordinated at the state level, as set forth on their website. *Id.* Ms. Pazdro states further that there has never been any discussion or strategy by Macomb County to challenge voter eligibility based on foreclosure status and that she does not have any list of foreclosures or intention of obtaining such a list. *Id.* The MRP, who coordinates the poll challenges for the State, has also denied any intention to use foreclosure notice lists to raise challenges, as has the RNC. Indeed, Plaintiffs concede that all of the Defendants deny having any plan or intention to use foreclosure notice lists at the polls and that Mr. Carabelli denies making any such assertion otherwise. Complaint at ¶ 51.

Nonetheless, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief setting forth a plethora of alleged historical examples of the Republican Party's purported past practices concerning voter challenges, not one of which are relevant to the instant lawsuit, and not one of which involve Macomb County. Indeed, the sole basis for the instant suit is the unverified blog purporting to describe the disputed conversation with Mr. Carabelli. The Plaintiffs' own Complaint, in a section titled "Recent Statements by Defendant Republicans" admits that Defendants have affirmatively stated that they "have no plans to do anything," . . . that they are "unfamiliar with" any "lose your home, lose your vote" scheme, and that "they will not engage in the conduct alleged by this complaint[.] " *Id.* at ¶ 51 (references omitted).

[1] Indeed, Mr. Carabelli has since filed a defamatory action in State Court as a result of this false article. Exhibit 2, Complaint.

Plaintiffs do not explain why they believe they still have a viable cause of action, despite the Defendants' denials that any such plan exists or will be utilized, other than to assert that these Defendants apparently cannot be trusted based on alleged prior unrelated attempts at voter suppression, as alleged in the Complaint. Yet these allegations all relate to unrelated complaints in other jurisdictions, long since resolved, and not even one of these alleged historical instances assert any wrongdoing or conduct on the part of Macomb County. Plaintiffs' repeated attempt to blur the clear legal distinction between the three Defendant committees is not sufficient to state a claim. These three committees are legally separate and distinct and there are no allegations, facts or legally viable theories to support the Plaintiffs' apparent assumption that the conduct of one can be legally attributed to the other. To even suggest that the alleged unrelated conduct of a Republican Party committee in Ohio or New Jersey several years ago is relevant to the current claims concerning Macomb County is disingenuous, at best.

Furthermore, since the filing of Plaintiffs' Complaint, the Michigan Secretary of State has issued a press release stating that the use of foreclosure notice lists as the basis for a challenge to voter eligibility is not valid under Michigan Election Law and must be rejected if made at the polls. Exhibit 4. Further, as the State's Director of Elections, Mr. Thomas has indicated that a written statement instructing local clerks on this specific issue is forthcoming and will be distributed before the November election. *Id.* Accordingly, even if someone were to make a challenge based on the mere act of foreclosure, the clerks would be without discretion in this regard and would be obligated to reject such a challenge.

Despite the outright denial of Mr. Carabelli of any statements attributed to him concerning the use of foreclosure notice lists, the denial of any intention to do so, and the Secretary of State's statement that such a challenge will not be recognized under Michigan law,

the Plaintiffs are inexplicably maintaining this lawsuit to seek an injunction against parties for action they have never and will not commit. Plaintiffs' Motion for Preliminary Injunctive and Declaratory Relief must be denied.

III. ARGUMENT

Plaintiffs are not entitled to injunctive or declaratory relief because they cannot show that they are likely to succeed on the merits of their claims, cannot show that they will suffer irreparable harm if they do not obtain injunctive relief and cannot show that the public interest weighs in favor of an injunction. Further, an injunction would likely cause irreparable harm to the Defendants, because by granting the relief the Plaintiffs request, there would be an automatic implication that the Defendants were actually engaging in a plan to interfere with voters at the polls, when they unequivocally were not, and that the Chairman of the Macomb County made a statement in this regard, which he adamantly denies. Accordingly, the Motion for Preliminary Injunctive and Declaratory Relief must be denied.

A. STANDARD FOR INJUNCTIVE RELIEF

The Court is to examine four factors in determining whether to issue a preliminary injunction: (1) the likelihood of success on the merits; (2) whether Plaintiffs will suffer irreparable injury without the injunction; (3) the harm to others which will occur if the injunction is granted; and (4) whether the injunction would serve the public interest. *Moltan Co. v. Eagle-Picher Indus. Inc.*, 55 F.3d 1171, 1175 (6th Cir. 1995); *Superior Consulting Co., Inc. v. Walling*, 851 F. Supp. 839, 846 (E.D. Mich. 1994). An injunction is an extraordinary remedy, and the Court must balance the interests of the parties, giving particular attention to the public consequences of an injunction. *Charter Twp. of Huron v. Richards*, 997 F.2d 1168, 1175 (6th Cir. 1993).

B. THE PLAINTIFFS ARE HIGHLY UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.

1. Plaintiffs Cannot Succeed on Their § 1983 Claim

A claim filed pursuant to 42 U.S.C. § 1983 requires the Plaintiffs to establish that (1) the Defendants acted under color of state law, and (2) the offending conduct deprived Plaintiffs of a right secured by federal law. *Mezibov v. Allen*, 411 F.3d 712, 716 (6th Cir. 2005); *Gregory v. Shelby County, Tenn.*, 220 F.3d 433, 441 (6th Cir. 2000). If a plaintiff fails to make a showing on either element of his § 1983 claim, it must fail. *Simesco v. Emmet County Dep't of Soc. Services*, 942 F.2d 372, 375 (6th Cir. 1991). Plaintiffs here can establish neither of those elements.

a. Defendant Macomb County is Not a State Actor

It is essential, in order for a private person to be found to be acting under the color of state law for the purposes of a § 1983 claim, that the person must be working in concert, or jointly engaged, with state officials. For private conduct to constitute state action, there must be "such a close nexus between the State and the challenged action" that the behavior "may be fairly treated as that of the State itself." *Brentwood Acad. v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 295; 121 S. Ct. 924; 148 L. Ed. 2d 807 (2001) (citation omitted).

Acting under color of state law requires that the defendant have exercised the power "possessed by virtue of state law" and made possible only because the defendant "is clothed with the authority of state law." *Sanchez v. Crump*, 184 F. Supp. 2d 649, 654 (E.D. Mich. 2002). The alleged wrongful conduct must be attributable to the State; the State's mere acquiescence is not sufficient to convert a private action into a State action. *Knubbe v. Sparrow*, 808 F. Supp. 1295, 1300, n. 18 (E.D. Mich. 1992). A § 1983 action will not stand when the alleged deprivation of

an individual's rights was effected by private individuals acting in their private capacity. *Kregger v. Posner*, 248 F. Supp. 804, 806 (E.D. Mich. 1966).

Three distinct tests are used to determine when the actions of a private individual constitute state action: (1) the public function test; (2) the state compulsion test; and (3) the governmental nexus test. *Memphis, Tenn. Area Local v. City of Memphis*, 361 F.3d 898, 905 (6th Cir. 2004). The public function test "requires that the private entity exercise powers which are traditionally exclusively reserved to the state." *Id.* (quoting *Wolotsky v. Huhn*, 960 F.2d 1331 (6th Cir. 1992). The state compulsion test "requires proof that the state significantly encouraged or somehow coerced the private party" to take a particular action. *Id.* Finally, the nexus test requires "a sufficiently close relationship between the state and the private actor so that the action taken may be attributed to the state." *Id.* The purpose of these tests is to determine whether there exists "significant" state involvement in the action sufficient to attribute "under color of state law" activity to a private party. *Howerton v. Gabica*, 708 F.2d 380, 382 (9th Cir. 1983).

In *Jackson v. Michigan State Democratic Party*, 593 F. Supp. 1033 (E.D. Mich. 1984), plaintiffs filed a complaint and motion requesting the court to issue a show cause order why injunctive relief should not be granted. The plaintiffs alleged that the defendants had deprived them of their constitutional rights in violation of §§ 1983 and 1985, by establishing certain rules for delegation selection by the caucuses for the democratic national convention. The court held that a state political party was not a "state actor" for purposes of a § 1983 claim. "[T]he actions of defendants in formulating and implementing the challenged rules were through members of the Democratic Party, not by officials of the State of Michigan. There is undisputedly no

authorization for these caucuses in State law, and no state governmental assistance or participation in the event whatsoever." *Jackson*, 593 F. Supp. at 1046.

Plaintiffs cite *Smith v. Allwright*, 321 U.S. 649, 663-64; 64 S. Ct. 757; 88 L. Ed. 987 (1944), for the proposition that a "party operated primary in a single party state constituted state action." Plaintiffs' brief, p. 15. The Sixth Circuit, however, has declined to expand this narrow holding and that decision certainly does not compel a conclusion that any actions undertaken by a political party pursuant to a state law automatically converts that act into a "state action." In *Banchy v. Republican Party of Hamilton County*, 898 F.2d 1192 (6th Cir. 1990), for example, the Sixth Circuit held that a political party does not act "under color of state law merely because they have some governmental duties. There must be some allegation that the activities directly influence the governmental duties." *Banchy*, 898 F.2d at 1195.

Plaintiffs rely on the fact that Michigan provides for poll challengers by statute. Mich. Comp. Laws §§ 168.730, 733. It is unclear whether they would suggest that the democratic party would also be considered state actors by the mere act of appearing at a poll to raise challenges to the eligibility of a voter pursuant to Michigan law. Regardless, there is absolutely no legal support for the Plaintiffs' apparent assumption that simply because the statute provides for some action by a group automatically gives rise to a "state action." *See, e.g., Williams v. Democratic Party of Georgia,* Civ. Action No. 16286 (N.D. Ga., April 6, 1972), cited in *Morse v. Republican Party of Virginia,* 517 U.S. 186, 201; 116 S. Ct. 1186; 134 L. Ed. 2d 347 (1996) ("The State has no connection with the delegate selection process or State Party's rules and regulations other than allowing the rules and regulations to be filed under Ga. Code Ann. § 34-902.") *See also Lindstedt v. Missouri Libertarian Party*, 160 F.3d 1197, 1198-99 (8th Cir. 1990) (holding that

political party was not acting under color of state law where it refused to waive or refund gubernatorial candidate's filing fee or when it acted to expel him from his position within party).

Here, it is ludicrous to suggest that Macomb County is somehow acting as a state actor. Macomb County does not even engage in poll challenges, as demonstrated by the uncontroverted Affidavits. Regardless, the mere fact of raising a challenge at the polls as permitted by State law does not render a person or party acting in concert with or in conjunction with the State. Indeed, it is the election administrators, as directed by the State, who make the decisions based on the challenges raised, as to whether a person is eligible to vote under State law. In this particular instance, the State has publicly stated (and instructed its election administrators accordingly) that it will not accept challenges to voter eligibility based on a person's foreclosure status. Thus, given that Plaintiffs are suggesting that Defendants' intention is to do just that, were that true, their position would actually be directly contrary to the position of the State, making it rather difficult to contend that they are somehow acting jointly or in concert. Plaintiffs' inability to establish that Macomb County is acting as a state actor is alone fatal to their § 1983 claim.

b. Plaintiffs have Suffered No Deprivation of Federal Rights

Plaintiffs are claiming that the Defendants' conduct will deprive them of the right to vote in violation of the First and Fourteenth Amendments to the United States Constitution. Complaint at ¶¶ 55-58. Plaintiffs first assert that the media frenzy surrounding the announcement of Defendants' "plan" has created such mass hysteria and confusion that a declaration by this Court is necessary to alleviate this uncertainty. Plaintiffs then contend that the alleged challenges at the polls by Defendants will lead to undue delay, humiliation and in some cases, the loss of the right to vote all together. These assertions are all completely baseless and lack any factual support whatsoever.

First of all, any mass hysteria and confusion has been directly caused by the media frenzy created by the Plaintiffs and the Michigan Messenger, who falsely reported the issue in the first place. The maintenance of this very lawsuit further encourages and promotes any confusion and fear that may have been unnecessarily caused by the false article, by suggesting that there actually is some merit to the defamatory article or actual plan by the Defendants in this regard. Had Plaintiffs simply accepted and acknowledged each one of the Defendants' many outright denials of any such plan to challenge the votes, combined with the Secretary of State's announcement and direction that any such challenge would be rejected, any concern or confusion that existed would have immediately been alleviated. Instead, Plaintiffs sought to cause further confusion and elevation of this non-issue, knowing full well there was no factual basis for this lawsuit, in a transparent effort to obtain a political advantage. Were Plaintiffs actually concerned about protecting the interests of the voters, rather than their own obvious attempt to gain political advantage in the press, this issue would be long over and resolved.

Moreover, assuming any confusion exists as a result of the publication of the false article and subsequent filing of this lawsuit, a declaration by this Court is wholly unnecessary, given the Secretary of State, Chief Election Officer for the State, has already instructed and declared that such challenges are not valid under Michigan law and will not be accepted as a basis for challenge at the polls.[2] With respect to Plaintiffs' purported concern over voter "humiliation" at the polls, delays by questioning voters with respect to their foreclosure status, or outright suppression of their right to vote, those contentions are likewise ludicrous. Defendants have

[2] Indeed, this action really involves an interpretation of state law, given that is the Michigan Secretary of State that has the authority and duty to interpret and apply Michigan Election Law, Mich. Comp. Laws §§ 168.1, *et. seq.*, including a determination as to what constitutes a proper challenge to voter eligibility under that statutory scheme. Of course, Plaintiffs have not filed any action against the Secretary of State; presumably because they believe that she will not accept challenges in this regard.

each publicly, repeatedly and under oath, stated that they never have, and do not have, a plan to challenge voters based on their foreclosure status, and will not do so at the November election. All Defendants have denied having or seeking to obtain a list of those voters who have had their homes foreclosed upon. Macomb County does not even engage in poll challenges!

Moreover, the Sixth circuit has already held that having challengers present at the polls does not constitute an unconstitutional burden on the right to vote. In *Summit County Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547 (6th Cir. 2004), the plaintiffs filed suit, seeking to enjoin the Ohio Secretary of State and others from permitting challengers from being present at polling places for the sole purpose of challenging the qualifications of other voters. The Sixth Circuit disagreed, holding it was highly unlikely that the plaintiffs would succeed on the merits, as follows:

> [T]he plaintiffs do not appear likely to succeed on the necessary primary finding that the presence of challengers burdens the right to vote. Challengers may only *initiate* an inquiry process by precinct judges, judges who are of the majority party of the precinct. The lower court orders do not rely on the likelihood of success of plaintiffs' challenges to the procedure that will be used by precinct judges once a challenge has been made. Longer lines may of course result from delays and confusion when one side in a political controversy employs a statutorily prescribed polling place procedure more vigorously than in previous elections. But such a possibility does not amount to the severe burden upon the right to vote that requires that the statutory authority for the procedure be declared unconstitutional.

Id. at 551 (emphasis in original).

As explained by the *Summit* Court, here, even if a challenge were to be made based on foreclosure status, which it will not (at least by these Defendants) only the State gets to decide whether a challenge for voter eligibility is acceptable. Both parties presumably will have challengers at various precincts available to challenge voter eligibility, when deemed appropriate. It is the State, however, who gets to determine the validity of those challenges and

when to prevent a person from voting based on Michigan Election Law. And the State has already affirmatively stated that it will not accept challenges based merely on foreclosure status. Clearly, no one will be prevented from voting on that basis. Plaintiffs' assertions in this regard are thus completely specious.

2. Plaintiffs Cannot Prevail on Their § 1985(3) Claim

A claim filed pursuant to § 1985(3) requires (1) a conspiracy involving two or more persons, (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws, and (3) an act in furtherance of the conspiracy, which caused injury to a person or a deprivation of a protected right. *Center for Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 832 (6th Cir. 2007). A § 1985 complaint must "allege both the conspiracy and some class-based discriminatory animus behind the conspirators' action." *Id*. (*quoting Newell v. Brown,* 981 F.2d 880, 886 (6th Cir. 1992)). Further, "conspiracy claims must be pled with some degree of specificity and . . . vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim." *Id.* (*quoting Gutierrez v. Lynch*, 826 F.2d 1534, 1538-39 (6th Cir. 1987)).

a. There is No Conspiracy

Plaintiffs state "the Republicans in this case *appear* to have plotted. . ." Complaint at ¶ 30 (emphasis supplied) or "*On information and belief*, Defendants have entered into an agreement to intimidate." *Id.* at ¶ 61 (emphasis supplied). Plaintiffs cite to the one blog entry (which they concede Macomb County disputes) as an announcement somehow by all three Defendants of an intention to acquire and use foreclosure notice lists to make poll challenges. *Id.* at ¶ 34. There are, however, no allegations at all connecting Macomb County to the MRP or the RNC. Plaintiffs later allege that "press accounts" link the MRP with the RNC (but not Macomb

County) to engage in a coordinated election integrity program, yet fail to cite to any such alleged press accounts. *Id*. at ¶ 35.

Plaintiffs then concede that all three Defendants have affirmatively stated they have no intention or plan to use foreclosure lists at the polls. *Id*. at ¶ 51. Plaintiffs attempt to negate these undisputed facts by asserting that these statements provide them with "little comfort" given the "Defendant Republican's clear statements in the record and their long history of voter suppression tactics." *Id.* at ¶ 52. These contentions are ludicrous.

One outright denied, unverified statement by the Chairman of Macomb County, who has no authority or involvement with poll challenging and does not represent or speak for the MRP or RNC, can hardly be deemed a "clear statement" by all of the Defendants of their plans and agreement. In fact, there is not even one allegation evidencing an agreement between the Defendants, much less any action taken in furtherance of this nonexisting agreement. A plaintiff must make sufficient factual allegations to link two alleged conspirators in the conspiracy to establish the requisite "meeting of the minds" essential to the existence of the conspiracy. *McDowell v. Jones*, 990 F.2d 433, 434 (8th Cir. 1993) (holding that plaintiffs failed to state a claim for conspiracy pursuant to § 1985 for failure to allege a meeting of the minds).

b. Plaintiffs are Not Members of a Protected Class

Plaintiffs are apparently suggesting that those persons who have received foreclosure notices are a member of a protected class as required for a § 1985(3) challenge. The acts that allegedly deprived the plaintiff of equal protection must be the result of class-based discrimination. *United Bhd. of Carpenters and Joiners of America v. Scott*, 463 U.S. 826, 834; 103 S. Ct. 3352; 77 L. Ed. 2d 1049 (1983); *see also Newell v. Brown*, 981 F.2d 880, 886 (6th Cir. 1992). Section 1985(3) was enacted as part of § 2 of the so-called "Ku Klux Klan Act of 1871." The statute was a congressional response to the illegal activities of certain groups in the south

during the Reconstruction Era. *See, e.g., Harrison v. KVAT Food Mgmt., Inc.*, 766 F.2d 155, 156-57 (4th Cir. 1985). In *Griffin v. Breckenridge*, 403 U.S. 88; 91 S. Ct. 1790; 29 L. Ed. 2d 338 (1971), the Supreme Court firmly established a requirement of some class-based discriminatory animus as follows:

> The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.

403 U.S. at 101-02. The Court further stated:

> We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of § 1985(3) before us.

Id. 403 at U.S. 102 n. 9. Twelve years later, the Supreme Court began to decrease further the classes entitled to protection under the statute. *Scott, supra*, presented the question whether § 1985(3) applies to non-union employees who are the victims of the conspiracy of union supporters. The *Scott* Court determined that the provision did not reach conspiracies motivated by an economic or commercial bias. With reference to politically motivated conspiracies, the *Scott* Court stated:

> [I]t is a close question whether § 1985(3) was intended to reach any class-based animus other than animus against Negroes and those who champion their cause, most notably Republicans. . . . Although we have examined with some care the legislative history that has been marshalled in support of the position that Congress meant to forbid wholly non-racial, but politically motivated conspiracies, we find difficult the question whether § 1985(3) provided a remedy for every concerted effort by one political group to nullify the influence or do other injury to a competing group by use of otherwise unlawful means. To accede to that view would go far toward making the federal courts, by virtue of § 1985(3), the monitors of campaign tactics in both state and federal elections, a role that the courts should not be quick to assume. If

> respondents' submission were accepted, the proscription of § 1985(3) would arguably reach the claim that a political party has interfered with the freedom of speech of another political party by encouraging the heckling of its rival's speakers and the disruption of the rival's meetings.

463 U.S. at 836-37.

Circuits to address these issues following the Supreme Court decision in *Scott* have recognized that *Scott* calls for reconsideration of the status of purely political conspiracies under § 1985(3), as that decision is a "powerful indication that, when squarely confronted with the question, the Court would not include such conspiracies within the scope of the provision." *Grimes v. Smith*, 776 F.2d 1359, 1366 (7th Cir. 1985). See also *KVAT Food Management, supra*, (Republicans as a class are not protected by § 1985(3), even though the conduct may be a conspiracy which has at its purpose the discouragement of the participation of a Republican in the affairs of his party). "A class protected by § 1985(3) must possess the characteristics of a discrete and insular minority, such as race, national origin or gender." *Haverstick Enters., Inc. v. Fin. Fed. Credit, Inc.*, 32 F.3d 989, 994 (6th Cir. 1994) (court would not extend § 1985(3) protection to handicapped persons); *But see Conklin v. Lovely*, 834 F.2d 543, 549 (6th Cir. 1987) (*Scott* raises doubts about § 1985(3) claims based on political views, but court bound by earlier decisions within circuit that recognize claim).

Here, Plaintiffs cannot possibly satisfy this prerequisite as they are unequivocally not members of a protected class. There is no possible argument under Sixth Circuit or Supreme Court precedent that individuals whose homes have been foreclosed upon are members of a protected class entitled to § 1985(3) protection. And there is absolutely no evidence to support any theory that a certain political party would be more affected by such a challenge than others. Presumably members of every political party are significantly impacted by the current economic

housing crisis. The alleged nonexistent basis for a challenge, namely one's foreclosure status, would apply regardless of political viewpoint or affiliation.

c. The "Support and Advocacy Provision" Requires Class-Based Animus or State Action

In an apparent concession that Plaintiffs cannot meet the class-based discriminatory animus requirement of § 1985(3), they now contend, based on a lone eighth circuit decision, that one clause of § 1985(3) does not actually require class-based discrimination. Specifically, Plaintiffs contend that the "support and advocacy" portion of § 1985 does not require class-based discrimination and Plaintiffs here have allegedly suffered "voter intimidation" and, thus, come within that so-called exception. Plaintiffs' assertions in this regard are not only factually incorrect, as has been addressed *ad nauseam* throughout this brief, but legally unsound. The Sixth Circuit has never adopted the "exception" set forth by the Eighth Circuit in *Federer v. Gephardt*, 363 F.3d 754, 760 (8th Cir. 2004). Indeed, the Eastern District of Michigan and all Sixth Circuit decisions to address claims of conspiracy under § 1985(3), have affirmatively stated that class-based animus is required to pursue such a claim. *See, e.g., Center for Bio-Ethical Reform, supra; Jackson, supra.*

Moreover, a close reading of *Federer*, *supra*, reveals that it does not actually help Plaintiffs at all, even if it were precedential within this Circuit. The *Federer* Court merely recognized a theoretical right to pursue a 1985(3) claim under limited circumstances without having to demonstrate a class-based animus or state action. As it turns out, that exception did not apply in even that case, because the underlying federal right that the plaintiff wished to vindicate was pursuant to the First Amendment, which requires state action. 363 F.3d at 760. In *Federer*, the plaintiff, a former congressional candidate, brought an action against his opponent and others alleging conspiracy to interfere with his campaign. The Court concluded that because the essence

of his "support and advocacy" claim was a violation of his First Amendment right to advocacy and association, and he could not show state or federal action, his claim for conspiracy must fail. *Id.* at 760.

Here, likewise, Plaintiffs' underlying claims are pursuant to the First and Fourteenth Amendments, both which require state action, *see, e.g., S.H.A.R.K. v. Metro Parks Serving Summit County*, 499 F.3d 553, 564 (6th Cir. 2007), which Plaintiffs here obviously cannot demonstrate. Accordingly, Plaintiffs' conspiracy claim must fail for this reason as well.

C. PLAINTIFFS CANNOT DEMONSTRATE IRREPARABLE INJURY AND THEIR CLAIMS ARE UNRIPE FOR REVIEW

1. Plaintiffs have no injury or real threat of injury

Plaintiffs have no injury and can demonstrate no real threat of injury. A plaintiff must show irreparable harm to justify the granting of a preliminary injunction. *Moltan, supra*. This Court "is not permitted to speculate in an effort to find irreparable injury." *Jackson,* 593 F. Supp. at 1047. Injunctive relief may not be based on unfounded fears or speculative determinations. *Bradley v. Detroit Bd. of Educ.*, 577 F.2d 1032, 1036 (6th Cir. 1978). "[W]here the threat of repeated injury is speculative or tenuous, there is no standing to seek injunctive relief." *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 833 (6th Cir. 2001) (court held that "chain of events" that would have to occur to cause any injury was "too attenuated to establish injury in fact").

In *Jackson, supra*, for example, the plaintiffs, who included Jesse Jackson, Joel Ferguson and others, filed suit against the Michigan Democratic Party challenging the delegation selection scheme and Michigan caucus rules, as minimizing the voting powers of black voters in violation of various provisions of the Constitution. Underlying all of the Plaintiffs' allegations was a presumption, the Court found, that because Jackson was black, only black voters and all black

voters, would vote for him, and vice versa. *Id.* at 1047. The Court rejected that and Plaintiffs' many other unsubstantiated assumptions and conclusory and speculative allegations of injury, concluding not only had the plaintiffs failed to demonstrate irreparable injury, they had failed to demonstrate any injury at all. *Id.* The Court refused to "speculate" in an effort to find irreparable injury." *Id.*

Similar to the case at bar, in *Larsen v. United States Navy*, 525 F.3d 1 (D.C. Cir. 2008), the plaintiffs, rejected applicants for naval chaplaincies, sought declaratory and injunctive relief for claims that the application of religious quotas violated their First and Fifth Amendment rights. The policy at issue, however, had ended in 2001 and the Navy currently maintained no religious quotas. *Id.* at 4. Plaintiffs argued that the voluntary cessation of the challenged action was insufficient to moot a case and that there was nothing to prevent the Navy from reinstating the quotas in the future. *Id.* The plaintiffs further argued that the Navy's continued defense of this case (and thus policy) amounted to evidence that it would reenact the policy. *Id.*

The Navy, however, never stated that it would reenact the policy and currently did not. "[B]ecause the Navy already eliminated the [racial quota policy] and plaintiffs never allege that the Navy will reinstitute it, any injunction or order declaring it illegal would accomplish nothing-amounting to exactly the type of advisory opinion Article III prohibits." *Id.*

Likewise, here, Plaintiffs have offered no evidence of any injury or realistic possibility of injury. Plaintiffs suggest that unless the Court enters an injunction, there is nothing to stop the Defendants from making the challenges at issue at the polls and otherwise conforming to state law (despite their sworn affidavits that they will do so). These allegations are based on nothing but speculation and innuendo and are not only unlikely to occur, but extremely unlikely to ever

happen. In order for the Plaintiffs to suffer the injury alleged by this Defendant, the following would have to take place:

(1) Macomb County would have to, in direct opposition to the affidavits of its Chairman and Political Director, and past practice, engage in poll challenging;

(2) Macomb County would have to obtain a list of foreclosed homes, which it said under oath it would not do;

(3) Macomb County would have to challenge voters at the polls (for the first time ever) based on that list (contrary to the sworn affidavits otherwise); and

(4) Those challengers would have to be accepted by the election administrators in direct contravention of the instructions of the Secretary of State.

This series of events is incredibly unlikely to ever occur. Plaintiffs cannot possibly demonstrate injury, much less the heightened standard of irreparable injury. To order the Defendants to do (or not do) that which they never intended to do, would, like the Court stated in *Larsen*, "accomplish nothing," and constitute the exact type of advisory opinion prohibited by Article III.

2. Plaintiffs' Claims are Not Ripe for Review

Apparently recognizing that their claims are unripe, Plaintiffs argue in their injunctive papers that their claims are in fact ripe. As set forth in Defendant's Motion to Dismiss, Plaintiffs' claims are unripe for review and moot and the Plaintiffs lack standing.[3] It is settled federal jurisprudence that Article III of the United States Constitution prohibits federal courts

[3] The standing and mootness arguments are made in Macomb County's Brief in Support of Motion to Dismiss and will not be repeated here, but are fully incorporated herein.

from issuing advisory opinions. U.S. Const. art. III, § 2. Art III § 2 extends judicial power only to actual cases or controversies. *Id.* In order for a case to be justiciable and not an advisory opinion, two criteria must be met: (1) there must be an actual dispute between the litigants; and (2) there must be a substantial likelihood that a federal court decision in favor of a claimant will have some effect. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61; 112 S. Ct. 2130; 119 L. Ed. 2d 351 (1992) (it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision); *Briggs v. Ohio Elections Comm'n*, 61 F.3d 487, 491 (6th Cir. 1995) ("Our jurisdiction depends upon finding that Briggs has suffered some threatened or actual injury resulting from the putatively illegal action") (internal citations omitted). The ripeness doctrine "is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Adult Video Ass'n v. United States Dep't of Justice*, 71 F.3d 563, 567 (6th Cir. 1995). See also *Peoples Rights Org., Inc. v. City of Columbus*, 152 F.3d 522, 527 (6th Cir. 1998) (citing *Thomas v. Union Carbide Agric. Products Co.*, 473 U.S. 568, 580; 105 S. Ct. 3325; 87 L. Ed. 2d 409 (1985)) (same).

The Sixth Circuit weighs three factors in deciding whether a case is ripe for review: (1) the hardship to the parties if judicial review is denied at the pre-enforcement stage; (2) the likelihood that the injury alleged by the plaintiff will ever occur; and (3) the fitness of the case for judicial resolution. *United Steelworkers of America, Local 2116 v. Cyclops Corp.*, 860 F.2d 189, 194-95 (6th Cir. 1988). "[T]he ripeness requirement aims to prevent the Court from entangling itself in 'abstract disagreements.'" *Peoples Rights Org.*, 152 F.3d at 527 (citing *Thomas*, 473 U.S. at 580.). "We pay particular attention to the likelihood that the harm alleged by plaintiffs will ever come to pass." *United Steelworkers*, 860 F.2d at 194. A case is not ripe when it involves "contingent future events that may not occur as anticipated; or indeed may not

occur at all." *Thomas*, 473 U.S. at 580-81 (internal citation omitted). There must be a "realistic danger of sustaining a direct injury." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298; 99 S. Ct. 2301; 60 L. Ed. 2d 895 (1979).

Plaintiffs' claims here are clearly not ripe for review, given they are entirely speculative and there is no realistic danger of Plaintiffs sustaining any injury. Plaintiffs' Complaint is premised entirely on speculation, conjecture, and assumptions, based on a singular unverified (and, indeed, denied) statement on a web blog. Mr. Carabelli immediately and publicly denounced making any such or similar statement and has submitted an affidavit supporting that denial. The MRP and the RNC have also expressly denied, publicly and by affidavit, that there will be any challenges made at the polls based on foreclosure status. Thus, the Defendants all state under oath that they have never made challenges based on foreclosure notice lists and will not do so at this election. Macomb County does not even engage in poll challenging. The Secretary of State has formally stated that any challenges based on foreclosure status will be rejected.

Accordingly, there is no claim for this Court to adjudicate and no realistic or even possible danger that the harm alleged could ever actually occur. Any decision by this Court on these issues would merely be of an advisory nature, which is clearly not permitted by Article III.

D. DEFENDANTS WILL BE HARMED SHOULD AN INJUNCTION AND DECLARATORY RULING ISSUE BY THIS COURT.

Plaintiffs are asking this Court to issue a declaratory ruling and injunction to prevent the Defendants from doing something that they have never intended to so, have stated publicly, repeatedly and under oath that they will not do, and under current law, given the Secretary of State's declaration in this regard, would actually be contrary to Michigan law. Accordingly, to issue an injunction in this regard would permit the Plaintiffs to publicly proclaim a victory over

the Defendants on a matter over which there is no dispute. The obvious implication of such a ruling would be that the Plaintiffs were successful in this litigation and prevented the Defendants from violating the law and the rights of Michigan voters. Such a pronouncement would be publicly and politically harmful, has already harmed the reputation of the Chairman of the Macomb County, and would further harm all of the Defendants, particularly in this highly charged political environment.

E. PUBLIC INTEREST

It was recognized by the Sixth Circuit in *Summit County Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547 (6th Cir. 2004), that there is a strong public interest in allowing every registered voter to vote freely. The Defendants do not intend in any regard to interfere with that process by challenging voter eligibility based on foreclosure lists. As recognized by the Sixth Circuit in *Summit*, there is a "strong public interest in permitting legitimate statutory processes to operate to preclude voting by those who are not entitled to vote." *Id.* at 551. In *Summit*, the Sixth Circuit refused to grant an injunction preventing the defendants from allowing any challengers other than election judges and other electors into polling places on election day, holding that having challengers present also preserved important state interests in protecting the integrity of the electoral process. *Id.*

Similarly here, pursuant to Michigan Election Law, both parties are allowed to have challengers present at the polls. There is a strong public interest in allowing the process set forth by the Michigan Election Law and the Secretary of State to go forward as is permitted by Michigan law. Moreover, it is contrary to the public interest to allow the Plaintiffs, for their own political maneuvering, to defame or otherwise publicly suggest that the Defendants are in any way going to utilize this challenge process in an illegal fashion, where they have repeatedly denounced any intention to do so. Indeed, to do so would be contrary to Michigan law, given the

Secretary of State's declaration in this regard. Accordingly, there is no public interest in ordering the Defendants to comply with a law that they have never violated nor have any intention to violate. *See, e.g., EEOC v. Wooster Brush Co. Employees Relief Ass'n*, 727 F.2d 566, 576 (6th Cir. 1984) (injunction to simply "obey the law" not appropriate). It is contrary to the public interest to allow the Courts to be used for political maneuvering absent any legitimate legal foundation.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, Defendant Macomb County Republican Party respectfully requests that this Honorable Court deny Plaintiffs' Motion for Declaratory and Injunctive Relief.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Defendant Macomb County Republican Party

By: s/ John D. Pirich
John D. Pirich (P23204)
Andrea L. Hansen (P47358)
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 484-8282

Dated: October 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2008, I electronically filed Defendant Macomb County Republican Party's Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction and Declaratory Relief along with this Certificate of Service to the Clerk of the Court using the

ECF system which will send notification of such filing to the above-referenced attorneys of record.

By: s/John D. Pirich
John D. Pirich (P23204)