

FILED

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9TH JUDICIAL CIRCUIT
COUNTY OF KALAMAZOO
KALAMAZOO, MICHIGAN

STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

SABRINA PRITCHETT-EVANS
and KIMBERLY HARRIS,
Plaintiffs,

Case No.: 2023-0169-CZ

v.

Hon. Curtis J. Bell

REPUBLICAN PARTY OF KALAMAZOO
COUNTY, STATE OF MICHIGAN (KGOP),
KALAMAZOO GRAND OLD PARTY
EXECUTIVE COMMITTEE (KGOPEC), and
(AKA) KALAMAZOO COUNTY REPUBLICAN
COMMITTEE (KGOPEC), and KELLY SACKETT,
Defendants.

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OPINION AND ORDER

At a session of said Court held in the City and
County of Kalamazoo, State of Michigan,
on the 10th day of August 2023.

PRESENT: HON. CURTIS J. BELL
Circuit Court Judge

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This matter comes before the Court on Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(1), (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), (C)(8), and (C)(10). Plaintiffs' Amended Complaint sought a declaratory judgment concerning alleged violations of Michigan's Election Law Statute and Bylaws, the application of Michigan's Constitution, Defendants' alleged breaches of fiduciary duties, and Defendants' alleged defamation against Plaintiffs. On July 20th

the Court entertained evidence and heard oral arguments concerning Defendants' Motion for Summary Disposition and the Court took the matter under advisement for thirty days.

The complaint was brought by Plaintiffs Sabrina Pritchett-Evans and Kimberly Harris against Defendants Republican Party of Kalamazoo County (KGOP) and Kelly Sackett. The KGOP is operated by the Kalamazoo County Republican Committee (KCRC), of which, Kelly Sackett has been Chair for all applicable periods of this dispute.

This case involves an intraparty political dispute concerning (1) the replacement of seats on the KCRC reserved for Statutory Members, (2) press release statements and censure notices about Plaintiffs made by Defendants, and (3) the removal of 17 elected precinct delegates.

The Michigan Republican Party's (MIGOP) organizational structure is divided into 83 County Committees across 13 Districts. The KGOP is a County Committee within the Fourth District of the MIGOP. Pursuant to the KGOP Bylaws, the KGOP consists of a County Executive Committee with an equal number of Statutory Members and Elected Members. Statutory Members are those individuals who have been nominated for an elective office, including county-wide elected office and State legislative offices. The Elected Members are those who have been selected through an internal Republican Party selection process. There is a third group of Executive Committee members who serve as *ex-officio* members of the Executive Committee. These members are non-voting members. These are individuals who gain their status by virtue of being affiliated with the Republican Party. The Bylaws dictate that there are 36 individuals who make up the KCRC.

Article III(3)(A) of the Bylaws states how the Statutory Members of the Executive Committee are seated:

Those persons who shall have been most recently nominated at the last two (2) preceding fall primary elections for county and state legislative offices in the fall

elections of even numbered years. These persons shall be known as **Statutory Members** of the Executive Committee.

Pl.'s Ex. 6, 1. Article III(3)(B) of the Bylaws states how the Elected Members are seated:

A number of persons, equal to the number of candidates of the Party for election to county and state legislative office in Kalamazoo County, shall be selected by the precinct delegates to the Fall County Convention of the Party taking place in even-numbered years. These persons shall be known as **Elected Members** of the Executive Committee.

Id. Michigan's legislature provides structure to political parties pursuant to MCL 168.599(1), which states:

In the year 1966 and every second year thereafter, the delegates to the fall county convention of each political party in each county in this state having a population of less than 1,500,000, shall convene at the call of the county chairperson within 20 days following the November election to select a number of persons equal to the number of county offices and state legislative offices for which candidates were nominated at the last 2 preceding fall primary elections, who, together with the persons most recently nominated by the party for each of those offices shall constitute the executive committee of their party for that county. When a new nomination is made for an office, the nominee for which is entitled to serve as a member of the executive committee, the new nominee shall replace the former nominee as a member of the executive committee. If a vacancy occurs in the position of delegate-appointed member of the executive committee, the remaining delegate-appointed members shall fill the vacancy. Except as otherwise provided in this section, the executive committee may appoint the officers it considers proper to carry out the purposes of the committee, and may fill a vacancy in any of its offices.

MCL 168.599(1).

Prior to the instant lawsuit, there existed hostility within the local Republican Party at large and specifically between the litigants. Plaintiffs were members of the KGOP Executive Committee. Am. Verified Compl. ¶¶ 2-3. Plaintiff Harris was an Elected Member with voting power on the Executive Committee. *Id.* As Chair of the Kalamazoo Republican Women's Association, Plaintiff Pritchett-Evans was an *ex-officio* member of the Executive Committee. Due to her *ex-officio* status, she was a non-voting member. *Id.*

Defendants allege Plaintiff Harris is part of a minority who wishes to “burn the party down.” Am. Br. In Supp. Of Def.’s Mot. For Summ. Disposition 2. Defendants further allege that Plaintiff Pritchett-Evans has “a history of donating to Democrats and supporting Democrat candidates and ideals” and that she “is a disruptor who as late as 2021 supported liberal causes such as Diversity, Equity, and Inclusion (DEI), Social Emotional Learning (SEL), and Critical Race Theory (CRT).” *Id.*

Plaintiffs claim that Defendant Sackett breached her fiduciary duty as Chair of the KGOP on January 9, 2023, when a vote was held to allow the nomination and election of three open Statutory seats. Three Statutory Members who were nominees for elected office vacated their position. Compl. ¶ 8. The vote to replace them passed with 14 votes in favor of filling the seats and nine votes against. Compl. ¶ 9. After the vote, the KGOP minutes from January 9, 2023, indicate that a “[d]iscussion ensue[d] if the chair can vote or is a nonvoting member.” Pl.’s Ex. A, 3. The minutes continue, stating “[t]he Chair is a statutory member...” *Id.* On February 13, 2023, the previously nominated replacement statutory seats received an affirmative vote. Compl. ¶ 10. Plaintiffs believe this was unlawful and in violation of MCL 168.599(1) and the Bylaws.

The MIGOP State Convention was held on February 17, 2023. The night before, the Chairs of each County Committee within the Fourth District voted on specific rules for the convention, including Rule 9. Def.’s Ex. 3, 1. Rule 9 states “[e]ach county will caucus and its voting delegates shall elect the nominees for each State & District position assigned to said county, as available.” *Id.* The caucus’ purpose was to elect district and vice chairs, district committee members, and county representatives to serve on the MIGOP. Am. Br. 1. Plaintiff Harris wished to be elected to the MIGOP State Committee and Plaintiff Pritchett-Evans wished to be elected as Fourth District Vice-Chair. *Id.* at 2.

At the February 17, 2023, Caucus for the Fourth District, a vote to amend Rule 9 as to Kalamazoo County only was brought to the floor. The amendment would make the nomination of Plaintiffs, among others, be voted upon by the entire district floor, instead of just Kalamazoo County delegates. Compl. ¶ 20. Defendants allege Plaintiffs did not have enough support in Kalamazoo County to win their nominations under Rule 9; therefore, Plaintiffs decided to formulate a plan whereby a motion would be brought at the February 17 Caucus to suspend Rule 9 as to Kalamazoo County. Am. Br. 2-3. The vote to amend Rule 9 needed a two-thirds vote (116 votes) by MIGOP District 4 to pass. Compl. ¶ 21. The measure passed with Plaintiffs among the votes in favor. *Id.*

Plaintiffs' justify their conduct at the Fourth District Caucus by referencing Defendant Sackett's February 13, 2023, action in allegedly unlawfully seating non-Statutory individuals into Statutory seats. They assert the action concerning Rule 9 was a direct consequence of Defendant Sackett's "defiance of the statutory language and binding Bylaws." Compl. ¶ 20.

On February 20, 2023, The KGOP sent Plaintiff Harris a "cease and desist" letter demanding that she stop her conduct. Am. Br. 5, Ex. 27. Defendants allege she ignored the demand letter. *Id.* Plaintiffs also claim that Defendants published a libelous press release on February 21, 2023. Plaintiffs' Ex. D. On February 27, 2023, the KGOP submitted a letter to the MIGOP Chair demanding action be taken against its members for the events at the February 17 Caucus. Am. Br. 3, Ex. 12. No response has been received. *Id.*

On March 1, 2023, the KGOP distributed censure notices of Plaintiffs. The KGOP's censure notices stated that Plaintiffs "falsely stated the KGOP Executive Committee took an illegal vote on February 13, 2023." Pl.'s Ex. E, 1, 3. Plaintiffs allege that these censures are "slandorous statements" and "have appeared on the internet and have been distributed to their entire email list

and to all the members in the [KGOP Executive Committee], Kalamazoo County duly elected precinct delegates, and KGOP membership with no substantiation.” Compl. ¶ 21.

On March 13, 2023, a Motion to Consider the Removal of Plaintiff Harris, and two other Elected Members was made. Am. Br. at 6. Article V(3) of the Bylaws outlines the requirements for quorum:

3 – Quorum A quorum of the Executive Committee shall consist of at least 30 percent of the total voting members of the Executive Committee. The affirmative vote of a majority of those present shall be necessary to take formal action, except as otherwise provided herein or by law.

Pl.’s Ex. 2, 5. Article III(7)(E) of the Bylaws outlines the procedure of a Motion to Consider Removal for an Elected Member:

A motion to consider the removal of an Elected Member from the Executive Committee requires a two-thirds vote of the Elected Members present at a regular meeting of the committee. If the motion to consider removing an Elected Member is approved, a letter must be sent to the delegate informing [her] of the action taken, and the right to appear at the next regular meeting of the organization to appeal the action taken. Final approval to remove and Elected Member requires a two-thirds vote of the members present at the meeting held subsequent to the one where the motion to consider removing an Elected Member was approved.

Id. at 3.

There must have been at least 30 percent of the Elected Members present to meet the quorum. There were 17 out of the 18 members present, thus meeting the quorum. *See* Pl.’s Ex. 2, 5. The vote count needed was two-thirds (12 votes out of 17) to pass. *See* Pl.’s Ex. 2, 3. There were 11 votes in favor of considering the removal of Plaintiff Harris and six votes against. Def.’s Ex. 31. This vote alone did not meet the two-thirds requirement under Article III(7)(D) of the Bylaws. Chair Sackett, as a non-voting member, cast her vote to consider removal. *Id.* With her vote, the Motion to Consider Removal passed by two-thirds. *Id.* As noted hereinabove, the issue of whether Chair Sackett could vote was discussed two months previously. *See* Pl.’s Ex. A, 3. Plaintiff Harris

was then given notice that a vote to remove her would take place on April 10, 2023. Am. Br. at 6. Defendants maintain that Plaintiff Pritchett-Evans was subject to removal as an *ex-officio* member because she allegedly violated rules and procedure and her “organization’s anti-Muslim rhetoric was against KGOP principals.” *Id.* at 5. There are no guidelines within the Bylaws to remove an *ex-officio* member. *See* Pl.’s Ex. 6.

On April 10, 2023, the KGOP Executive Committee voted and removed three Elected Members of the Executive Committee, including Plaintiff Harris. *See* Compl. ¶ 20. On that same day, the Executive Committee also removed 17 elected county-wide delegates. Pl.’s Ex. 1. In effect, Plaintiff Harris was removed from both her Executive Committee role as well as her role as an elected delegate. Plaintiff Pritchett-Evans was also one of the seventeen county delegates removed. *See* Pl.’s Ex. 1. Also, with her removal as an *ex-officio* member of the Executive Committee, she lost both of her positions. The very next day, the KGOP notified the County Clerk’s Office of its action. Pl.’s Ex. 1.

At the July 20th, 2023, Evidentiary Hearing, Plaintiffs and Defendants produced one witness each. Plaintiffs witness was Joel Studebaker. Mr. Studebaker was not offered as an expert. He was presented to provide background information concerning recent historical events as described hereinabove. He also provided testimony concerning his experience involved in local and State Republican party politics. Mr. Studebaker acknowledged that he was new to politics, having only been involved for the last few years. He had run for a delegate position in 2022 and was elected Chair of the Ottawa County Republican Party in December of that same year. He testified that, effective February 2023, he is Chief of Staff for the Michigan Republican Party.

The Defense witness, David Dishaw, was stipulated to be an expert in the field of parliamentary procedure, Republican Bylaws, and Republican Party history. His Republican Party

experience spans almost three decades. His positions include Republican polling, data aggregation, and political consulting. He has been a precinct delegate for 26 years and chaired the most recent Republican State Convention. There is no question that the experience and expertise of Mr. Dishaw was vastly superior to that of Mr. Studebaker. With this being said, there were some areas of agreement. There was one significant area of disagreement concerning the application of Robert's Rules of Order to the current issues before the Court.

Mr. Dishaw's discussion concerning the replacement of the three statutory members included an acknowledgment that the Bylaws were unclear as to the process of replacement. He had advised that "custom and tradition" permitted their replacement in accordance with the actions of Defendants. He also indicated that the removal of the 17 members was permissible. During his testimony, he recited two incidents under which statutory members had been replaced. This discussion concerned two former State Senate candidates, Dick Posthumus and Brian Calley. Both State Senate candidates became the Republican nominees for Lieutenant Governor. In each case, the subsequent replacement Senate Nominee became a statutory member of their local committee. In the case of Brian Calley, Mr. Dishaw indicates that three County Republican Committees selected Brian Calley's replacement for the Senate candidacy and thus the replacement nominee became a Statutory Member. He also indicates that for Dick Posthumus, the Kent County Executive Committee selected his replacement nominee. He further testified that the other counties in Michigan have a similar Executive Committee structure, though not all have Bylaws. In the case at bar, the Statutory seats were not nominees for a general election. They were Statutory Members as former nominees in the general election. Therefore, their replacement would not be running in a general election.

The summons and complaint for this matter were filed by Plaintiffs on March 29, 2023.

The same day, a Motion to Amend the Complaint was made by Plaintiffs. On April 10, 2023, this Court denied Plaintiff's Motion for Injunctive Relief, or in the Alternative Motion for an Order to Show Cause/Motion and Request for Mandamus. On April 28, 2023, Defendants made a Motion for Summary Disposition pursuant to MCR 2.116(C)(1), (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), (C)(8), and (C)(10) and Demand for Sanctions pursuant to MCR 1.109(E). On May 19, 2023, Plaintiffs submitted their Amended Verified Complaint. After the complaint was amended, Defendants filed a second Motion for Summary Disposition pursuant to MCR .116(C)(1), (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), (C)(8), and (C)(10) on June 9, 2023.

ANALYSIS

Defendants argue that Plaintiffs' claims are not justiciable. Am. Br. 7. Defendants state that "Plaintiffs lack the capacity to sue because this is a dispute of internal party politics, and the issues are not justiciable by this court," and that the issues brought by Plaintiffs are governed by the "political questions doctrine." *Id.*

Federal courts have spoken clearly to complaints related to State intervention with political parties. In *O'Brien v. Brown*, the United States Supreme Court stated that:

Judicial intervention in [the political] area has traditionally been approached with great caution and restraint. It has been understood since our national political parties first came into being as voluntary associations of individuals that the convention itself is the proper forum for determining intra-party disputes as to which delegates shall be seated.

409 U.S. 1, 4 (1972).

In *O'Brien*, Plaintiffs were unseated delegates that contested the recommendations of replacement delegates to the Democratic National Convention. 409 U.S. at 2. The Supreme Court stated that "[n]o case is cited to us in which any federal court has undertaken to interject itself into the deliberative processes of a national political convention; no holding of this Court up to now

gives support for judicial intervention in the circumstances presented here, involving as they do relationships of great delicacy that are essentially political in nature.” *Id.* at 4. Additionally, the Court said that “any alteration by Federal Courts of the system whereby political parties determine controversies as to seating of convention delegates should not be done under the circumstance and time pressures involved in the instant proceedings.” *Id.* at 5.

Three years subsequent to the *O’Brien* decision, the U.S. Supreme Court, once again turned to the question of how far the government can go in involving itself with political party matters. In *Wigoda v. Cousins*, the U.S. Supreme Court addressed the question of whether the political questions doctrine extends to State law. 419 U.S. 477 (1975). It noted:

We granted certiorari to decide the important question presented whether the Appellate Court was correct in according primary to state law over the National Political Party’s rules in the determination of the qualifications and eligibility of delegates to the Party’s National Convention.

Id. at 483. The Supreme Court stated, referencing the U.S. Court of Appeals, that:

The Appellate Court justified the injunction, however, on the ground that the “interest of the state in protecting the effective right to participate in primaries is superior to whatever other interest the party itself might wish to protect.” *Id.*, at 477, 302 N. E. 2d, at 629. In other words, the Appellate Court identified as the State’s legitimate interest the protection of votes cast at the primary from the impairment that would result from stripping the respondents of their elected-delegate status.

Id. at 488 (emphasis added). The *Cousins* Court concludes in:

Thus, Illinois’ interest in protecting the integrity of its electoral process cannot be deemed compelling in the context of the selection of delegates to the National Party Convention. Whatever the case of actions presenting claims that the Party’s delegate selection procedures are not exercised within the confines of the Constitution – and no such claims are made here – this is a case where “the convention itself [was] the proper forum for determining intra-party disputes as to which delegates [should] be seated.”

Id. at 491 (quoting *O’Brien v. Brown*, 409 U.S. 1, 4 (1972)). Jurisdiction that overcomes the

political questions doctrine can be conferred by statute. *Steele v. Johnson*, 458 P.2d 889, 890 (Wash. 1969); *Langone v. Secretary of Commonwealth*, 388 Mass. 185, 194 (Mass. 1983); *Bentman v. Seventh Ward Democrat Executive Committee*, 421 Pa. 188, 193 (Pa. 1966); *El Paso Republican Party of El Paso Cnty., Inc. v. Baca*, 656 S.W.3d 529, 537 (Tex. Ct. App. 2022); *Matter of Auerbach v. Suffolk County Comm. Of the Conservative Party*, 96 N.Y.S.3d 323, 328 (N.Y. App. Div. 2019). However, as described above, there are clear limits placed on the government's ability to do so. The Federal Sixth Circuit Court of Appeals has held that MCL 168.599(1) remains good law excluding certain unconstitutional portions. *Heitmanis v. Austin*, 899 F.2d 512, 529 (1990).

Plaintiffs rely upon MCL 168.599(1) for justiciability. Compl. ¶ 7. Plaintiffs argue this court has jurisdiction over this complaint since the Michigan Legislature created the Executive Committee structure through MCL 168.599 and the KGOP has modeled the Bylaws after the statute. *Id.* at ¶ 32.

The Michigan Legislature created a blueprint under which partisan political parties must structure their local governing body. In 1990, the Sixth Circuit U.S. Court of Appeals determined that some of the requirements were unconstitutional. In *Heitmanis v. Austin*, 899 F. 2d 521 (1990) the U.S. Court of Appeals considered the constitutionality of MCL 168.599. The Court held:

In *Ferency v. Austin*, 666 F.2d 1023 (6th Cir. 1981), this court found that the Michigan Election Law was unconstitutional insofar as it controlled “the method of selection of the Michigan delegates to the Democratic National Convention” in violation of Democratic National Party rules. The instant case involves similar provisions of the Election Law—controlling selection of delegates at state and county conventions and the makeup of county executive committees of the political parties—which conflict with State Party rules. We hold that these portions of the Election Law significantly burden the right to freedom of association of the State Party and its members. By compelling the State Party to automatically place incumbent legislators and nominees to county offices as delegates, the Election Law infringes upon the right of political parties to choose a method for selection of their party nominees. By requiring the county executive committees to be made up

of an equal number of elected delegates and legislators, the Election Law directly controls the internal structure of the political parties. Since Michigan has not demonstrated any compelling state interest for such a significant restriction of the freedom of association, we conclude that the relevant parts of the Election Law are facially unconstitutional. As such, we need not reach the remaining questions of whether the Election Law violates the one person, one vote requirement of the Fourteenth Amendment and the Voting Rights Act.

Id. at 529-30 (emphasis added).

MCL 168.559 has not been updated by the Michigan Legislature since this holding. Therefore, MCL 168.599 should be interpreted as written except for the unconstitutional portion. The KGOP Bylaws were amended on February 9, 2015, and were originally adopted on April 19, 2012. *Id.* at Ex. 2 at 9. The Bylaws adopted Statutory language that has been determined to be an unconstitutional interference by the government in the internal structure of political parties. By adopting the governing structure subsequent to *Heitmanis*, this Court concludes the KGOP endorses and adopts the original language of the statute. Therefore, the determination by the *Heitmanis* Court has no bearing on the application of this language in the Bylaws.

The Michigan Supreme Court provides a similar analysis as the federal courts do on the political questions doctrine. In *American Independent Party v. Secretary of State*, 397 Mich. 689, 692-93 (1976), the plaintiff split from the party, formed its own committee, called its own State convention, considered itself entitled to the political party's name, and made no attempt to qualify as a new party. *Id.* When both slates were presented to the State Director of Elections, the director stated that he would only accept one slate of candidates certified by both chairmen. *Id.* at 696. The Michigan Supreme Court held that the "Director of Elections correctly left to the American Independent Party the resolution of the intraparty dispute" because "the convention itself is the proper forum for determining intraparty disputes." *Id.* at 696. Also, it held that previous decisions from the Court were no longer controlling "because of intervening changes in the election code."

Id. at 694.

Other State courts have provided varied analyses on this question as well. In *Bentman v. Seventh Ward Democrat Executive Committee*, 421 Pa. 188, 191-192 (Pa. 1966), the plaintiffs were elected committeemen from their respective districts, removed from office, and replaced with appointed successors with a notice of a meeting that gave no statement of the charges against them. The charges given to them at the subsequent meeting were for disloyalty that took place prior to their election as party committeemen. *Id.* at 192. The Pennsylvania Supreme Court took notice that the Pennsylvania legislature had recently added a new section to the Election Code which reads:

Whenever two or more members of a political party shall be elected or appointed, as the rules of the party may provide, as members of a political committee to represent the members of such party in the respective election districts, such members shall constitute a political committee of said political party to function within such election district: Provided, that, When acting in the capacity of a political committee, such duly elected or appointed members shall be subject to the control, direction and supervision of the political committee of which they are members.

Id. at 192-93. Ultimately, the Supreme Court of Pennsylvania held that the statute had the “intent of the legislature to confer upon political or party committeemen such legal status as to make them amenable to the jurisdiction of the courts.” *Id.*

The decision in *Bentman* is narrowed in *Mohn v. Bucks County Republican Committee*, 259 A.3d 449, 459 (Pa. 2021). The Pennsylvania Supreme Court provides that *Mohn* “centers on just how broadly *Bentmen* should be read, particularly in terms of its ‘direct and substantial’ litmus for state action.” *Id.* at 457. The Court states that “an individual must point to some discrete acts or actions entailing state action to establish the required direct-and-substantial nexus, such as the nomination of candidates for local judgeships raised in *Bentman*.” *Id.* Ultimately, the Supreme Court of Pennsylvania in *Mohn* decided that Plaintiff failed to establish the required direct-and-substantial nexus, unlike the plaintiffs in *Bentman*. *Id.*

In *Steele v. Johnson*, 458 P.2d 889, 890 (Wash. 1969), the plaintiff was an unsuccessful U.S. Congressional Representative candidate. While the Supreme Court of Washington eventually held that it did not have jurisdiction over the case, it did say “[t]here is no rule of law, however, that prevents a political party from making contracts, nor is there any rule that immunizes them from liability for tortious conduct.” *Id.* at 891. Additionally, the Court stated, “[e]xcept to the extent that jurisdiction is conferred by statute, the law of private and voluntary associations applies to political parties.” *Id.* at 890. However, the Supreme Court of Washington held that the plaintiff’s argument relied on the “custom and tradition” of the political parties, not statute, and thus, the court had no jurisdiction over the customs and traditions. *Id.* at 890.

In the present case, Defendants argued that the customs and traditions of the KGOP are the ruling authority when deciding the rules of procedure. They argued that even though the Bylaws lay out certain rules and procedures, this Court should instead look to the procedures that the KGOP has customarily followed, instead of what their Bylaws provide. Analyzing this argument under the analysis of *Steele*, it is hard to agree with Defendants. If this Court has the jurisdiction to adjudicate this matter, it cannot be based on the customs when there are Bylaws and/or statute on point. Clearly, customs and traditions can be used in areas where the controlling authority conflicts or is unclear.

Plaintiffs were removed from the KGOP Executive Committee due to alleged behavior that was opposite to KGOP’s ideals. Defendants argue that the decision and reasoning in *O’Brien* means that this Court should leave the KGOP to deal with this intraparty issue on its own. It’s supported by *American Independent Party*, where the Michigan Supreme Court decided that Courts should not interfere with an intraparty issue about which slate is to be put on a ballot. *Bentman*, though not binding authority, determined that Courts did have jurisdiction to decide an

arguably political matter when the Plaintiffs were elected committeemen that were removed from office where there was a statute that had “intent of the legislature to confer upon political or party committeemen such legal status as to make them amenable to the jurisdiction of the courts.” Further, in *Steele*, though not binding authority, the court reasoned that jurisdiction can be conferred by statute, but that the court did not have jurisdiction over the “custom[s] and traditions” of the party. *Steele*, 458 P.2d 889, 890 (Wash. 1969).

Defendants’ expert, Dishaw, testified that when a Statutory Member seat is open the Committee fills the seat. The two examples he provided were nominees that were in the midst of a general election. In the case before the Court, the three statutory seats vacated by individuals were not in the midst of a general election. The general election had passed. Accordingly, there would be no one qualified as a Statutory Member by definition. Here, there is a relevant statute that “[has] the intent of the legislature to confer upon political or party committeemen such legal status as to make them amenable to the jurisdiction of the courts.” See *Bentmen*, 421 Pa. at 192-93. Excluding the parts deemed unconstitutional, MCL 168.599(1) states that:

[E]ach political party in each county in this state having a population of less than 1,500,000 shall convene at the call of the county chairperson within 20 days following the November election to select a number of persons . . . who, together with the persons most recently nominated by the party of each of those offices shall constitute the executive committee of their party for that county.

This is similar to the statute in *Bentmen* which states:

Whenever two or more members of a political party shall be elected or appointed, as the rules of the party may provide, as members of a political committee to represent the members of such party in the respective election districts, such members shall constitute a political committee of said political party to function within such election district: Provided, that, When acting in the capacity of a political committee, such duly elected or appointed members shall be subject to the control, direction and supervision of the political committee of which they are members.

Bentmen, 421 Pa. at 192-93.

Defendants adopted their Bylaws in 2012 and made them consistent with MCL 168.599(1). The Bylaws have most recently been amended in 2015. If Defendants wanted to adopt and/or amend the Bylaws to match the ruling in *Heitmanis*, which held parts of MCL 168.599(1) unconstitutional, they would have. The ruling in *Heitmanis* is from 1990 and the adoption of the Bylaws took place 22 years subsequent to the decision. Therefore, the Bylaws must be construed as intentionally modeling the original language of MCL 168.599(1).

This Court is a State Court, and *O'Brien* dealt with federal courts. *O'Brien* explicitly states:

[N]o case is cited to us in which any federal court has undertaken to interject itself into the deliberative processes of a national political convention; no holding of this Court up to now gives support for judicial intervention in the circumstances presented here, involving as they do relationships of great delicacy that are essentially political in nature.

O'Brien, 409 U.S. at 4. *O'Brien* mentions federal courts five times throughout its short opinion and not once does it mention State courts. Additionally, its reasoning is entirely reliant upon the circumstances that are presented in each controversy.

Further, *American Independent Party* has vastly different facts from the case here. In *American Independent Party*, the political party had two separate slates for a ballot and the Court held that the party should decide which would be valid. This decision by the Michigan Supreme Court can be differentiated from the present case because this Court's decision would not directly determine who would be put onto a ballot for an election.

Additionally, the analysis in *Mohn* is distinguishable. *Mohn*'s analysis focused on the issue of whether the Court had jurisdiction based on State action. In *Bentmen*, jurisdiction was conferred by a statute that created political committees within political parties. In *Mohn*, the Pennsylvania Supreme Court narrowed *Bentmen* regarding "how broadly *Bentmen* should be read, particularly in terms of its 'direct and substantial' litmus for state action." Here, State action is only one avenue

of jurisdiction that Plaintiffs put forth. Plaintiffs also assert that this Court has jurisdiction by statute through the KGOP's Bylaws modeled after MCL 168.599(1).

In the instant case, Plaintiffs do not assert a claim of breach of contract by the KGOP's of the Bylaws. However, it must be noted that Michigan has recognized that contracts can be formed by application of Bylaws. In *El-Khalil v. Oakwood Healthcare, Inc.*, 504 Mich. 152, 164 (2019) the Michigan Supreme Court decided a case where a plaintiff pleaded a claim for breach of contract, arguing that defendants breached the Bylaws. The Court states that “[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in injury to the party claiming breach.” *Id.* The Court continued, “[p]laintiff asserts that the denial of his privileges was in breach of the bylaws . . . [p]laintiff's assertion is legally sufficient for his breach-of-contract claim to survive MCR 2.116(C)(8).” *Id.* at 166. Even though in the instant case Plaintiffs did not assert a breach of contract claim, it is possible that a breach of contract claim involving KGOP's breach of its Bylaws could be adjudicated by this Court. This would be true only if the question was not one concerning internal political decisions.

The analysis of whether jurisdiction can be conferred must be applied to each of Plaintiffs's claims.

Plaintiffs seek a Judicial Declaration regarding the applicability of Michigan Compiled Laws 168.599, MRSC Bylaw Article XIII, and KGOP Bylaw Section 7 to the administrative action of Defendants. Compl. ¶ 38-42. Plaintiffs pray for a grant of equitable relief and a declaratory judgment, a grant of Plaintiffs' costs, expenses, and attorney fees, and a grant of compensatory, incidental, noneconomic, and punitive damages. *Id.* at ¶ 42.

Plaintiffs allege that Defendants violated MCL 168.599 by voting and seating precinct

delegates into Statutory seats. The Michigan Legislature has provided a structure for how Statutory seats be filled, and the KGOP's Bylaws have modeled that. Elected Members "who, together with the persons most recently nominated by the party for each of those offices shall constitute the Executive Committee of their party for that county." MCL 168.599(1). The Bylaws state that "[t]hese persons shall be known as Statutory Members of the Executive Committee." Def,'s Ex. 2, 1. Also, Elected Members "must be equal to the number of candidates of the Party for election to county and state legislative office in Kalamazoo County." *Id.*

Neither the Michigan Legislature nor the Bylaws provide guidance in the event that a vacancy of a Statutory seat occurs. The guidance given by the Michigan Legislature is that "the Executive Committee . . . may fill a vacancy in any of its offices." MCL 168.599(1). Additionally, the Bylaws simply state that "[i]f a vacancy occurs in the position of a Statutory Member of the Executive Committee and there is a special election held to fill the office, the vacancy may only be filled by the person who is the new Republican nominee for the office in question." Def,'s Ex. 2, 2.

Reading the Bylaws as plainly written, against the backdrop of Kalamazoo County having 18 county and State legislative offices, there must be 18 Statutory Members and 18 Elected Members. When three Statutory Members left, it meant that there were only 15 Statutory Members. The party then had to choose whether to only have 15 Statutory and Elected Members each, violating Article III(3)(A), or to elect three members in Statutory Seats, violating Article III(3)(B).

No matter what the Party does it will violate its Bylaws in some way. The first option places importance on the idea that the amount of Statutory and Elected Members should be balanced between one another. The second option places importance on the idea that the more people there are to have their voices heard, the better. There is no guidance given to the KGOP regarding how

to settle this situation. When the KGOP chose to elect members into Statutory Seats, it had the discretion to do so under MCL 168.599(1) and its Bylaws. Therefore, the Party is allowed to fill those seats as it determines under its customs and traditions.

Plaintiffs next argue that Defendants violated the Bylaws when they removed 17 delegates, including Plaintiffs. The 17 delegates were duly elected by individuals who voted in the election on the Republican ballot. There has been significant litigation concerning the removal of elected delegates in similar positions. The analysis has been thoroughly presented hereinabove. The KGOP has no provision in its Bylaws concerning the removal of elected delegates. However, clearly, this has been done in other contexts and resulted in litigation. Courts have continued to determine that this issue falls under the political questions doctrine. Some Courts have discussed Court intervention when there is a direct and substantial nexus between the conduct taken and the resulting impact on the partisan voter and/or the general electorate. However, in looking at the analysis by the *Cousins* Court, it is clear that this does not provide a basis for judicial intervention. As the Supreme Court determined in *Cousins*, even when the dispute concerns the nomination of a presidential candidate, the Court should not involve itself. This Court cannot think of a more direct and substantial nexus than the nomination of a presidential candidate. As such, this Court has no jurisdiction.

Plaintiffs argue that their removal from the Executive Committee is also actionable. Plaintiff Pritchett-Evans is a nonvoting *ex-officio* member of the Executive Committee. Because of her *ex-officio* status, the Bylaws give no guidance as to the process of her removal from the KGOP. Pursuant to the analysis above, the question of the removal of an *ex-officio* member is an internal political question. Regarding Plaintiff Harris, the KGOP's Bylaws dictate how to remove an Elected Member from the Executive Committee. "A motion to consider the removal of an

Elected Member from the Executive Committee requires a two-thirds vote of the Elected Members present at a regular meeting of the committee.” Pl.’s Ex. 6, 3.

Here, a vote of two-thirds of the body of Elected Members was needed to consider the removal of an Executive Committee Member. When voting to consider the removal of the three Executive Committee Members, including Plaintiff Harris, there were 11 votes in favor of removal and six against. Def.’s Ex. 31, 1. Defendant Sacket, acting as Chair, then made a two-thirds vote in favor of removal and the motion passed. *Id.*

The conclusion is simple. Seventeen Elected Members were present and voted. For a two-thirds vote to pass, 12 votes must have been submitted in favor of removal, but only 11 were cast in favor. Defendant Sackett then made a two-thirds vote to pass the Motion to Consider Removal regarding Plaintiff Harris. But Defendant Sackett is not one of the “Elected Members,” and she did not have the authority to cast a vote. The Motion to Consider Removal regarding Plaintiff Harris should not have passed, and she was unjustly removed from the Executive Committee because Defendant Sacket acted ultra-virus to her authority.

With clear overreach by the Chair, the question becomes whether this is internal party politics as defined by *O’Brien* and its progeny. Does the improper removal of an Executive Committee member confer jurisdiction for this Court? This is a question that is not only governed by the Bylaws in question but also has a direct-and-substantial nexus to the potential nomination of Republican candidates as described herein above by Defense expert Dishaw.

Plaintiffs also seek a Judicial Declaration for the Michigan Constitution pursuant to Article 1 § 2 Equal Protection of the Laws and Due Process. Compl. ¶ 43-50. Plaintiffs pray for equitable relief and a declaratory judgment, a grant of declaratory judgment that Defendants violated Plaintiffs’ Michigan Constitutional rights, a grant of Plaintiffs’ costs, expenses, and attorney fees,

and a grant of compensatory, incidental, noneconomic, and punitive damages. *Id.* at ¶ 50.

“Constitutional protections apply to governmental action only . . .” *Marhsall v. Cent Med. Imaging MRI & CT Ctr.*, 2014 Mich. App. LEXIS 701, 2014 WL 1515279 (2014) (citing *City of Grand Rapids v. Impens*, 414 Mich. 667, 673; 327 N.W.2d 278 (1982)). Furthermore, a “private entity can qualify as a state actor in a few limited circumstances – including, for example, (i) when the private entity performs a traditional exclusive public function . . . (ii) when the government compels the private entity to take a particular action . . . or (iii) when the government acts jointly with the private entity. *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019).

However, constitutional relief “simply does not apply outside the context of a claim that *the state* (or a state official sued in an official capacity) has violated individual rights protected under the Michigan Constitution.” *Jones v. Powell*, 577 N.W.2d 130, 136 (Mich. Ct. App. 1998). Additionally, “[i]n cases involving entities other than the state as a party defendant, the plaintiffs have available a number of alternative remedies.” *Id.* at 134.

In *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 354 (1974) it was held that “[d]octors, optometrists, lawyers, Metropolitan, . . . are all in regulated businesses, providing arguable essential goods and services, ‘affected with a public interest’” and that the Supreme Court “does not believe that such a status converts their every action, absent more into that of the State.” Additionally, In *Blum v. Yarertsy*, 457 U.S. 991, 1011 (1982) there was “state subsidization of the operating and capital costs of the facilities, payment of the medical expenses of more than 90% of the patients in the facilities, and the licensing of the facilities by the State” and the Supreme Court was “nonetheless unable to agree that the State is responsible for the decisions challenged by respondents.”

Here, we have a political party, a private entity, that was performing its intraparty private

actions. To claim constitutional relief, the entity that Plaintiffs claim relief from must be a State actor or entity performing State actions. Defendants in this case are not State actors. Furthermore, they were not performing State actions when deciding whom their intraparty delegates will be. Therefore, Plaintiffs are unable to assert claims for constitutional relief, and Defendant's Motion for Summary Disposition regarding this count is granted.

Plaintiffs' third count alleges a Breach of Fiduciary Duty. Compl. ¶ 51-56. They pray for costs, expenses, and attorney fees, compensatory, incidental, noneconomic, and punitive damages in excess of \$25,000. *Id.* at ¶ 56.

Plaintiffs allege that Defendant Sackett, acting as KGOP chair, breached her fiduciary duty, by "knowingly moving forward with a vote for three precinct delegates as Statutory Members of the KGOP Executive Committee and then seating them as elected precinct delegates in a Statutory seat contrary to MCL 168.599(1) and Article XIII of the MRSC Bylaws." *Id.* at ¶ 11. A "fiduciary duty" is defined by *Black's Law Dictionary* as "[a] duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another). For example, directors have a duty not to engage in self-dealing to further their own personal interests rather than the interests of the corporation." *Black's Law Dictionary* (11th ed. 2019). As well, the relevant portion of Article XIII(A) of the MRSC Bylaws states: "[t]he county executive committee of each county shall adopt its own bylaws and rules of procedure." Pl.'s Ex. C, 20.

Defendants allegedly violated MCL 168.59(1), which states that the KGOP, as a "political party," is to "select a number of persons equal to the number of county offices and state legislative officers for which candidates were nominated at the last [two] preceding fall primary elections." Compl. ¶ 11. By voting to seat three precinct delegates into the statutory seats, Plaintiffs argue that

Defendants essentially made the balance between the Statutory Members and Elected Members not equal. *Id.* Plaintiffs also allege that seating Elected Members in seats of Statutory Members diluted Plaintiff Harris's vote. *Id.* at ¶ 37.

Plaintiffs also allege that Defendant Sackett breached her fiduciary duty by removing Plaintiffs, among others, from their positions. *Id.* at ¶ 17. Plaintiffs further allege that Defendants violated MCL 168.599(1) and Article III(3)(B) by removing Elected Members, including Plaintiff Harris. *Id.* at ¶ 11. Plaintiffs allege that they will suffer irreparable harm by being permanently removed from the KGOP. *Id.* at ¶ 37. Plaintiffs also allege that they have been denied equal protection of the law. *Id.*

The right of an organization to select its own leader is fundamental to a political party. Here, Plaintiffs allege that Defendant Sackett, the KGOP's Chair, breached her fiduciary duty. When deciding whether this count is able to be adjudicated in this Court, it is fundamental to consider that this count is wholly internal in nature. The body of the KGOP selected Defendant Sackett to be its Chair and now Plaintiffs disagree with some of her actions and state that they are entitled to monetary relief, among other types of relief.

This count is an intraparty dispute. Also, the relief that Plaintiffs seek is monetary. Plaintiffs do not seek to right wrongdoing by Defendant Sackett through equitable relief here.

There exist cases in Michigan where Courts have subject-matter jurisdiction to hear cases involving claims of breach of fiduciary duty regarding embezzlement. *Impressions Apparel v. Porter*, 2007 Mich. Cir. LEXIS 1090, *12 (6th Jud. Cir. Ct. 2007). *Foster v. Oliver*, 2015 Mich App. LEXIS 1783, *2, 12 (Mich. Ct. App. 2015). However, there does not exist cases in Michigan where Courts have subject-matter jurisdiction to hear claims of fiduciary duty regarding a political party's internal disputes. Even ignoring the political questions doctrine put forth by Defendants, it

is unclear whether this Court has the jurisdiction to hear this count. Taking into account the political questions doctrine, it is clear that this Court does not have the jurisdiction to hear this count. Defendant's Motion for Summary Judgment regarding this claim is granted.

Plaintiffs' final count alleges an Action for Libel or Slander pursuant to MCL 600.2911. Compl. ¶ 57-63. They pray for costs, expenses, and attorney fees, compensatory, incidental, noneconomic, and punitive damages in excess of \$25,000. *Id.* at ¶ 63. Plaintiffs allege that Defendants defamed them in a press release published on February 21, 2023, and in censure notices distributed on March 1, 2023. Defendant's Motion for Summary Disposition is denied with respect to this count because there is not sufficient evidence at this time to grant it and further development of the record is needed. Summary disposition under MCR 2.116(C)(10) is generally considered to be premature if discovery concerning a disputed issue is incomplete. *Ensink v. Mecosta Cnty. Gen. Hosp.*, 262 Mich. App. 518, 540; 687 NW2d 143 (2004).

Issues such as defamation allegations are heavily fact specific. With discovery incomplete, analysis of these issues is premature and not subject to summary disposition. At this point in time, the Complaint lays out enough to put Defendants on notice of what is being alleged. Whether or not those allegations can be proven is something to be analyzed after discovery has finished.

CONCLUSION

This Court is a Court of record endowed by the Michigan Constitution with "original jurisdiction in all matters not prohibited by law," in addition to having "power to issue, hear and determine prerogative and remedial writs, supervisory and general control over all inferior courts and tribunals," and "jurisdiction of other cases and matters as provided by rules of the Supreme Court." Mich. Const. art. VI, § 13. Thus, this Court is assumed to have jurisdiction unless the matter in question is specifically excluded by law. *Lester v. Spreen*, 84 Mich. App. 689 (1978).

MCR 8.117 and the Supreme Court Administrator's Office recognize that, among circuit court case type codes is "CC" for "all condemnation proceedings."

Moreover, unless divested of its presumptive jurisdiction by a specific statute, this Court, or any Court, must exercise the jurisdiction conferred upon it as summarized in *Union Pac. RR Co. v. Brotherhood of Locomotive Eng'rs*, 558 U.S. 67, 71 (2009). Michigan courts, like their federal counterparts, "are not permitted either to enlarge or diminish the jurisdiction conferred by statute or the constitution." *In re Hatcher*, 443 Mich. 426, 433 (1993).

If the Supreme Court has found unconstitutional government actions that serve to protect against political disenfranchisement, then certainly a claim by Plaintiffs relying on that same argument cannot be considered proper before this Court. See *supra Cousins*, 419 U.S. at 491. Those individuals who voted to elect Plaintiff Harris, and the other two members, do not have a vested right to those Elected seats. The Bylaws provided for a method of removal. See Pl.'s Ex. 6, 3.

The more challenging question concerns whether there is a contractual claim based on a clear violation of the Bylaws in the removal of Ms. Harris. As discussed hereinabove, this is not part of Plaintiffs' Complaint.

It is hereby ordered and adjudged that Plaintiffs Counts I, II and III are dismissed for the reasons stated hereinabove. No costs or attorneys' fees are assessed.

It is further ordered that discovery can resume consistent with the scope of this decision.

IT IS SO ORDERED.

Dated: August 10, 2023



CIRCUIT COURT JUDGE
Honorable Curtis J. Bell