IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MISSOURI REPUBLICAN STATE COMMITTEE,	)	
Plaintiff,	)	
v.	)	Case No. 24AC-CC02151
SECRETARY OF STATE,	)	
and	)	
DARRELL McCLANAHAN, III,	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT

In this case, the Missouri Republican State Committee ("MRSC") seeks an injunction preventing the Secretary of State from placing Darrell McClanahan on the Republican ballot for Governor at the August 6, 2024 primary election. On May 9, 2024, the Court conducted a trial. Plaintiff, MRSC was represented by attorneys Lowell Pearson and Derrick Good. MRSC presented evidence in the form of testimony from its Executive Director Miles Ross and exhibits. Defendant, Mr. McClanahan appeared by attorney David Roland. Mr. McClanahan did not present testimony, but three exhibits were admitted. Defendant Secretary of State was represented by attorney Frank Jung. The Secretary did not present any evidence though his responsive pleading is informative.

In his responsive pleading, Defendant Secretary of State asserts "...that he does not have the statutory authority to remove a candidate from the ballot once they have filed with his office. As the Court stated in Vowell v. Kander, 451 S.W.3d 267 (Mo. App. W.D. 2014), §115.387, RSMo. "does not reflect that the legislature intended the Secretary of State to judge a candidate's qualification." Id. at 275. Rather, §115.387, RSMo. is a ministerial task performed by the Secretary of State. Id. at 274." (See p.4, Defendant Secretary of State's Answer to Plaintiff's Petition for Injunctive Relief.)

The Court has not been presented with requisite facts nor legal authority to support the relief requested. Consequently, the Court rules in favor of the Defendants.

PARTIES

A. MRSC is the state committee for the Republican Party created under Section 115.603, RSMo.

B. The Secretary of State is Missouri's chief election official and is responsible for transmitting to election authorities "a certified list containing the name and address of each person who has filed a declaration of candidacy in the Secretary's office and is entitled to be voted for at the primary election, together with a designation of the office for which the person is a candidate and the party the person represents." Section 115.387, RSMo.

C. Mr. McClanahan filed a declaration of candidacy with the Secretary of State on February 27, 2024 to seek the Republican Party's nomination for Governor.

VENUE AND JURISDICTION

D. MRSC brings this lawsuit under Sections 526.010, RSMo and Missouri Civil Rules 92.01 to 92.04, seeking relief from the Court to enforce its associational rights protected by the First and Fourteenth Amendments to the United States Constitution.

E. Venue is proper in this Court under Section 508.010.2(2) because the Secretary of State's office is located in Cole County, Missouri.

FINDINGS OF FACT

1. Under Missouri law, an individual who wishes to compete in a partisan primary election for any Federal or state elected office must satisfy two requirements: (1) pay a filing fee to the treasurer of the state party whose nomination the candidate seeks, then (2) file a declaration of candidacy with the Secretary of State's office between the last Tuesday in February and the last Tuesday in March.
2. Due to the large number of candidates who wish to comply with these requirements on the first day of filing the larger political parties, including the Republican party, set up tables near the Secretary of State's office on that day and provide representatives to collect filing fees from candidates.
3. Once a party has given a candidate a receipt for their filing fee, the candidate can then approach the Secretary of State's representatives and submit that receipt alongside their declaration of candidacy.
4. This system provides a reasonably quick and efficient way for candidates to comply with the legal requirements for taking part in the primary elections.
5. The opening day of each filing period sees hundreds of candidates arrive at the Secretary of State's offices.

6. It is common for the Republican party to accept filing fees when a candidate offers them without first reviewing the candidate's background.

7. No state law requires a political party to accept a filing fee simply because a candidate has offered it.

8. No state law requires a political party to accept a filing fee at the time a candidate offers it.

9. No state law requires a political party to accept candidates' filing fees on a first-come, first-served basis.

10. Where a candidate is not already known to the party's representatives, the party could decline to accept that individual's filing fee altogether or it could delay accepting the filing fee until such time as the party has reviewed the candidate's background.

11. Members of the Republican party have recently discussed the possibility of "vetting" would-be candidates for primary elections, with the goal of rejecting the filing fees of those that party leaders felt did not sufficiently align with the party's values.

12. Several months before the start of the 2024 primary election filing period a Republican-affiliated organization circulated a 55-page document explaining the goals, process, and legal basis for vetting candidates in advance of elections.

13. Some county-level Republican central committees implemented this sort of vetting system for the 2024 election cycle; the Vernon County Republican Committee refused to accept the filing fees from eight would-be candidates in the August 2024 Republican primary election. *See Vernon County Republican Committee v. Vernon County Clerk*, Case No. 24VE-CV00185, *1 (Vernon County Cir. Ct. May 7, 2024).

14. On the first day of the filing period for the 2024 primary election, the Plaintiff accepted McClanahan's filing fee, which he offered because he wished to run for the Republican party's nomination for Governor.

15. The Plaintiff gave McClanahan a receipt for his filing fee, which he submitted to the Secretary of State's office alongside his declaration of candidacy.

16. This was not the first time the Republican party had chosen to accept a filing fee from McClanahan.

17. In 2022 McClanahan was on the Republican party's primary election ballot as a candidate for U.S. Senate.

18. After the Republican party accepted McClanahan's filing fee in February 2024, the party's Executive Director became concerned that McClanahan may have made statements that could be construed as racist or antisemitic.[1]

19. The Plaintiff determined in some manner that it did not want McClanahan to be on the Republican ballot in the August 2024 primary election.

20. On March 4, 2024, an attorney for the Plaintiff sent McClanahan a letter stating that it had "decided not to accept" his filing fee and that it was asking the Secretary of State to remove his name from the ballot.

21. That same day the Plaintiff sent a letter to the Secretary of State asking for McClanahan to be removed from the ballot.

22. On March 7, 2024, the Secretary of State's office responded with a letter in which it stated the office did not have the authority to remove a candidate from the ballot.

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[1] The Court takes no position on this issue because the only salient fact (which is undisputed) is that the Plaintiff does not wish to be associated with McClanahan; the Plaintiff's reasons for its position have no legal or constitutional relevance.

23. The Plaintiff filed its Petition for Injunctive Relief on March 21, 2024.

24. The Petition does not seek declaratory judgment.

25. The Petition does not allege that any person has violated state or federal law.

26. The Petition does not identify any provision of Missouri law that it alleges to be unconstitutional, either facially or as-applied.[2]

27. It is undisputed that McClanahan has complied with the statutory requirements to be included as a candidate for Governor on the Republican primary election ballot.

28. The Petition does not contend that Missouri law gives the Secretary of State any discretion when it comes to whose names will be placed on a primary election ballot.

29. The Petition does not identify any statutory mechanism that would authorize the Court to order the Secretary of State to remove a candidate from the ballot.

30. The only specific relief the Petition requests is for the Court to "enter a permanent injunction enjoining the Secretary of State from certifying Mr. McClanahan's name on the Republican Party primary ballot for Governor[.]"

31. The Petition does not allege that the Plaintiff has suffered any existing harm, but rather that it *will* be harmed *if* the Secretary of State certifies McClanahan's name for the primary ballot.

32. The Plaintiff did not offer any evidence regarding the nature or extent of any "harm" it might suffer if the Court does not grant the relief it has requested.

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[2] Indeed, the Plaintiff has not served a copy of its Petition on the Attorney General, as would be required by § 527.110, or the Speaker of the House of Representatives and President Pro Tempore of the Senate, as would be required by § 1.185.

CONCLUSIONS OF LAW

The Plaintiff has not properly pled and proven any constitutional violation. The Plaintiff asserts that certifying McClanahan for the primary election ballot "pursuant to Section 115.387, RSMo." would "force an unwanted association with Mr. McClanahan, violating [the Plaintiff's] First and Fourteenth Amendment rights." Section 115.387 gives the Secretary of State a "ministerial duty to certify the names and addresses for the primary ballot." *Vowell v. Kander*, 451 S.W.3d 267 (Mo. App. W.D. 2014). If a litigant contends that a ministerial duty imposed by a statute (as opposed to a discretionary choice made by a public official) would result in a violation of its constitutional rights, it should challenge the validity of the statute.[3] But the Plaintiff here *does not* challenge the constitutionality of the statute that would require this alleged harm, either facially or as-applied. The Plaintiff's failure to challenge the validity of any statute or discretionary decision leaves this Court with no authority to rule on the constitutional question the Plaintiff attempts to raise.[4]

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[3] Defendant pointed out a proper challenge to an election statute would require the Court to follow a prescribed course of analysis. First, the Court would have to presume the constitutionality of the challenged law and the challenging party would have to prove that the statute "clearly and undoubtedly" violates the constitution. *Black River Motel, LLC v. Patriots Bank*, 669 S.W.3d 116, 123 (Mo. banc 2023). Then, where the statute at issue was an election-related law, the Court would be required to apply the framework established in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and its progeny. The *Anderson* analysis requires a court deciding whether a state law violates First and Fourteenth Amendment associational rights to weigh the "character and magnitude" of the burden the challenged rule imposes against the government's interests in maintaining the rule. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). The Plaintiff may not evade the prescribed analytical framework by failing to properly plead its cause of action.

[4] The cases the Plaintiff cited involved plaintiffs challenging either the constitutionality of a statute or the discretionary acts of government officials. In *Calif. Democratic Party v. Jones*, 530 U.S. 567, 577 (2000), the plaintiff challenged the validity of a state statute that gave voters who had refused to affiliate with a party the authority to participate in the selection of that party's nominees. In *Duke v. Cleland*, 954 F.2d 1526 (11th Cir. 1992), the plaintiff had been excluded from the ballot because a state law gave party members on a state commission the discretion to veto the inclusion of certain candidates on the party's primary ballot—and the party's members exercised that discretion in regard to the plaintiff candidate.

Instead, the Plaintiff has only asked for equitable relief. But "a court of equity will not assist a plaintiff who comes to court with unclean hands." *City of Kansas City v. New York-Kansas Bldg. Assoc's, LP*, 96 S.W.3d 846, 862 (Mo. App. W.D. 2002). "A litigant with unclean hands generally is not entitled to equitable relief such as an injunction[.]" *Purcell v. Cape Girardeau Cnty. Comm'n*, 322 S.W.3d 522, 524 (Mo. banc 2010). Where a plaintiff's own conduct is the source, or part of the source, of their equitable claim, that claim is barred. *Kim v. Mercy Clinic Springfield Communities*, 556 S.W.3d 613, 618 (Mo. App. S.D. 2018). Here, the situation of which the Plaintiff complains only exists because it made the voluntary decision to accept filing fees, on two occasions, that McClanahan offered in accordance with Missouri law.

The importance of the Plaintiff's decision to accept McClanahan's filing fees is illustrated by the Missouri Supreme Court's decision in *Curtis v. Mo. Democratic Party*, 548 S.W.3d 909 (Mo. banc 2018), and the General Assembly's subsequent decision to amend § 115.357. In *Curtis* an incumbent member of the Missouri House of Representatives offered the Missouri Democratic Party a filing fee in an effort to declare his candidacy for the Missouri Senate, but the party's representatives refused to accept the fee and, although the candidate left the money on the party's table, the representatives would not sign a receipt for the fee. *Id.* at 912-13. Because the candidate could not present a signed receipt for the filing fee, the Secretary of State's office would not process his declaration of candidacy. *Id.* at 913. The representative sued, arguing that either the Democratic party or the Secretary of State's office had a ministerial duty to accept his filing fee. *Id.* at 915. The Missouri Supreme Court held that the Democratic party had no duty to accept the candidate's filing fee in part "because the secretary of state may receive the filing fee to be forwarded to the treasurer of the party." *Id.* at 917. The *Curtis* court left open the possibility that § 115.357.2 gave the secretary of state a ministerial duty to accept a candidate's filing fee. *Id.* At

that time, state law allowed a candidate to submit their filing fee to the official accepting the declaration of candidacy. § 115.357.2 (2018). But in 2020 the General Assembly removed that option; candidates required to file their declaration of candidacy with the Secretary of State now must "pay the required sum directly to the treasurer of the appropriate party committee." § 115.357.2.

Missouri law has long held that in appropriate cases a party may waive their rights and, once so waived, it may not later seek to revive them. In order for such a waiver to be effective, three elements must be shown: "(1) the presence of an existing right, benefit or advantage; (2) knowledge of its existence; and (3) an intention on the part of the party to relinquish it." *Pasley v. Marshall*, 305 S.W.2d 879, 882 (Mo. App. K.C. 1957). All three elements are satisfied here. The Plaintiff is a sophisticated entity and the record shows that it was not only aware of a party's authority to reject a filing fee offered by a candidate, but that segments of the Missouri Republican party have already adopted a policy of rejecting filing fees from any candidate who has not completed a prescribed vetting process. The Plaintiff could have chosen to avoid potentially unwanted associations by rejecting filing fees for statewide candidates. It did not do so. Instead, when presented with the binary choice of accepting or refusing filing fees from McClanahan, the Plaintiff twice willingly created the very association of which it now complains, accepting the filing fees and giving McClanahan the receipts he filed along with his declarations of candidacy. In this case, there is not a sufficient basis for the Court's intervention.[5]

[5] The Plaintiff's argument implies that, despite its choice to accept a candidate's filing fee, a party's leadership can assert its right to have a candidate removed from a primary election at *any time* as long as party leadership can plausibly claim to have previously been unaware of whatever controversial circumstances triggered their desire to disassociate from the candidate. This suggestion finds no support either in statute or caselaw. If, having accepted a candidate's filing fee, a party's leadership becomes concerned that the candidate does not reflect the party's values, its remedy is to make the voters aware of the basis for the leadership's concern—then to let the voters determine for themselves whether they share that concern.

"Even though a claim for injunctive relief is founded on violations of constitutional rights, there remains the necessity of showing irreparable injury." *Farm Bureau Town and Country Ins. Co. of Missouri v. Angoff*, 909 S.W.2d 348, 354 (Mo. banc 1995). The Plaintiff did not present to the Court any evidence that having McClanahan on a primary election ballot would cause it any injury. McClanahan's presence on the primary election ballot is not necessarily an endorsement of the candidate by the party. It merely indicates to the public what the evidence in this matter shows—that the Plaintiff accepted his filing fee and that he then filed a declaration of candidacy with the Secretary of State's office. Additionally, one of the central motivations for states adopting primary elections as a method of choosing nominees was to ensure that the nominees would reflect the will of political parties' voters rather than the insiders who control the parties' committees. *Utah Republican Party v. Cox*, 892 F.3d 1066, 1081-82 (10th Cir. 2018). It is the voters in a primary election, not the party leadership, who are the best barometer of the party's values. *See id.* at 1082-83 ("[T]he associational rights of a political party expand beyond the party leadership, and would be toothless if party bosses could dictate how candidates can qualify for the primary ballot, perhaps, for example, by requiring candidates to win the support of 'party bosses' in order to qualify for the primary ballot, leading to primary 'elections' with a single candidate on the ballot.").

The Plaintiff did not offer any evidence as to how it might be harmed by the fact that the Republican party's own voters would have the option of casting their primary ballots for McClanahan. The Plaintiff has made clear that it does not endorse his candidacy and it remains free to publicly disavow McClanahan and any opinions the Plaintiff believes to be antithetical to its values. If the party's voters eventually *did* choose McClanahan as their nominee, it could merely indicate that the Plaintiff did not actually know or correctly represent the values or interests of its

own rank and file members. On the other hand, if (as in the 2022 primary election) a broad majority of the Republican party's voters choose to vote for other candidates, this would seem to vindicate the Plaintiff's claims about the party's preferences far more effectively than any statements the Plaintiff might make. In either circumstance, the Plaintiff has not clearly stated any particular harm it believes it would suffer from McClanahan's mere presence on the ballot. This failure to articulate or prove any specific harm that might result in the absence of the requested relief also precludes this Court from granting the relief sought.

For the reasons set forth above, including, even on constitutional grounds, the absence of requisite facts or legal authority to support the relief requested, the **Court enters judgment in favor of the Defendants.**

IT IS SO ORDERED.

May 17, 2024
Date

Hon. S. Cotton Walker
Circuit Court Judge, Division II
19th Judicial Circuit, State of Missouri