# STATE OF MICHIGAN

# COURT OF APPEALS

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| SOCIALIST PARTY OF MICHIGAN and DWAIN C. REYNOLDS III,<br><br>Plaintiffs-Appellants,<br><br>v<br><br>SECRETARY OF STATE,<br><br>Defendant-Appellee. | UNPUBLISHED<br>September 3, 2010<br><br><br><br>No. 299951<br>Ingham Circuit Court<br>LC No. 10-000867-CZ |

Before: BORRELLO, P.J., and O'CONNELL and M. J. KELLY, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order denying their motion for summary disposition and dismissing the action with prejudice. We affirm.

Plaintiffs brought this action for declaratory and injunctive relief seeking access to the ballot for the November 2010 general election. They challenged the constitutionality of MCL 168.685, which establishes the requirements for placing new political parties or formerly disqualified parties on the ballot. The statute provides in pertinent part:

> (1) The name of a candidate of a new political party shall not be printed upon the official ballots of an election unless the chairperson and secretary of the state central committee of the party files with the secretary of state, not later than 4 p.m. of the one hundred-tenth day before the general November election, a certification signed by the chairperson and secretary of the state central committee bearing the name of the party, together with petitions bearing the signatures of registered and qualified electors equal to not less than 1% of the total number of votes cast for all candidates for governor at the last election in which a governor was elected. The petitions shall be signed by at least 100 registered electors in each of at least 1/2 of the congressional districts of the state. All signatures on the petitions shall be obtained not more than 180 days immediately before the date of filing.
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> (6) If the principal candidate of a political party receives a vote equal to less than 1% of the total number of votes cast for the successful candidate for the office of

> secretary of state at the last preceding general November election in which a secretary of state was elected, that political party shall not have the name of any candidate printed on the ballots at the next ensuing general November election, and a column shall not be provided on the ballots for that party. A disqualified party may again qualify and have the names of its candidates printed in a separate party column on each election ballot in the manner set forth in subsection (1) for the qualification of new parties. The term "principal candidate" of a political party means the candidate who receives the greatest number of votes of all candidates of that political party for that election. [MCL 168.685(1) and (6).]

Because it is undisputed that plaintiffs did not satisfy the requirements of MCL 168.685, indeed they made no attempts to qualify for the ballot, plaintiffs' entitlement to relief depends on their ability to establish that the statute is unconstitutional. Plaintiffs argue that the requirements of MCL 168.685 are overly burdensome in terms of both the number of petition signatures required and the costs involved in circulating petitions to obtain the necessary number of signatures. They maintain that the statute unfairly disadvantages new or minor parties.

We review de novo a trial court's ruling in a declaratory judgment action. *Toll v Northville Ltd v Northville Twp*, 480 Mich 6, 10; 743 NW2d 902 (2008). We also review de novo issues of constitutional law and statutory law. *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004).

Although plaintiffs label their argument in terms of an equal protection challenge, they do not apply an equal protection framework to their analysis of MCL 168.685. See *Harvey v Michigan*, 469 Mich 1, 6-7; 664 NW2d 767 (2003). Rather, plaintiffs' argument sounds more in equity than constitutional law. Plaintiffs contend, without undertaking any effort to satisfy the statutory requirements to access the ballot, that the burden of doing so is too great, and this Court should direct their placement on the November ballot. We disagree and find no merit to plaintiffs' argument that MCL 168.685 should be invalidated on the basis of an equal protection argument.

We find no merit to plaintiffs' reliance on MCL 168.560a. The statute provides that a political party is qualified to have its name, vignette, and candidates listed on the general election ballot if in the last general election, its principal candidate received at least "1% of the total number of votes cast for the successful candidate for Secretary of State at the last preceding election in which a Secretary of State was elected[.]" Plaintiff Socialist Party of Michigan was not a designated party on the November 2008 ballot, and therefore had no "principal candidate." On the record presented, § 560a does not entitle plaintiffs to a place on the ballot in the November 2010 election.

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O'Connell
/s/ Michael J. Kelly