

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ROSALIND KURITA,)
)
 Plaintiff,)
)
 v.)
) No. 3:08-0948
 THE STATE PRIMARY BOARD OF THE) JUDGE ECHOLS
 TENNESSEE DEMOCRATIC PARTY,)
 et al.,)
)
 Defendants.)

ORDER

This case involves a challenge to an election contest in the 22nd Senatorial District of Tennessee during the State Democratic Primary. Plaintiff Rosalind Kurita, an incumbent State Senator, won a narrow election victory by 19 votes, but after an election contest was filed by her opponent, Defendant Tim Barnes, the State Executive Committee of the Tennessee Democratic Party, acting as the State Democratic Primary Board, held a hearing on the grounds cited in the election contest, found the election results were "incurably uncertain," voted to void her election, and referred to the Democratic Party Executive Committees of Montgomery, Cheatham, and Houston Counties the authority to select the Democratic Party's nominee for Senate District 22. At a joint convention, the County Executive Committees selected Defendant Barnes as the Democratic nominee to fill the District 22 Senate seat in the general election in November 2008.

For the reasons explained in the Memorandum entered contemporaneously herewith, the Court rules as follows:

(1) Plaintiff Rosalind Kurita fails to state a legal claim against the Defendants under Federal Rule of Civil Procedure 12(b)(6). Consequently, Plaintiff's Motion For Preliminary Injunction And Temporary Restraining Order (Docket Entry No. 5) is hereby DENIED. Further, Plaintiff's requests in her Verified Complaint for declaratory judgment in her favor and a permanent injunction holding Tenn. Code Ann. § 2-17-104 unconstitutional on its face and as applied to her and directing that her name be placed on the general election ballot as the Democratic nominee for State Senate District 22, or alternatively, that the results of the general election for Senate District 22 be set aside and a special election held, are hereby DENIED. (Docket Entry No. 1.)

(2) The Motion To Dismiss Or Abstain Filed By Defendants Tennessee Democratic Party And State Primary Board of the Tennessee Democratic Party (Docket Entry No. 36), the State Defendants' Motion To Dismiss (Docket Entry No. 32), and Defendant Tim Barnes' Motion To Dismiss (Docket Entry Nos. 23 & 31), are hereby GRANTED IN PART and DENIED IN PART. The Motions are GRANTED under Federal Rule of Civil Procedure 12(b)(6) because Plaintiff fails to state a legal claim against the Defendants. The Motions are DENIED under Federal Rule of Civil Procedure 12(b)(1) because the Court does not lack federal subject matter jurisdiction over the lawsuit.

(3) This case is hereby DISMISSED WITH PREJUDICE.

(4) Entry of this Order on the docket shall constitute entry of final Judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

It is so ORDERED.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE