

SERENA BRYSON, et. al, * IN THE
Plaintiffs, * CIRCUIT COURT FOR
v. * ANNE ARUNDEL COUNTY
WESTLEY MOORE, et. al, * MARYLAND
Defendants. * Case No.: C-02-CV-25-001586

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MEMORANDUM OPINION

This matter came before the Court for a motions hearing on Defendants Motion to Dismiss docketed July 30, 2025, Plaintiffs' Opposition docketed August 29, 2025, and Defendants' Reply docketed September 8, 2025. Plaintiffs challenge Maryland's closed primary system on Constitutional grounds. Upon consideration of the pleadings, statutes, relevant case law, and the oral arguments, the Court finds that Maryland's closed primaries do not violate Plaintiffs' right to vote under the Maryland Declaration of Rights and the Maryland Constitution. Therefore, Plaintiffs have failed to state a claim, and the Court will grant Defendants' Motion to Dismiss.

I. **BACKGROUND AND ARGUMENTS OF THE PARTIES.**

Plaintiffs are a group of "unaffiliated" voters, meaning they are registered to vote in Maryland, but have chosen not to affiliate with any political party. Amend. Compl. ¶ 2. As a result, Plaintiffs were excluded from the 2022 and 2024 Maryland primaries. Amend. Compl. ¶ 35. Under Maryland law the principal political parties must hold a primary election on a date specified by statute. *See* Md. Code, Elec. Law § 8-201. The parties must use these primaries to select their nominee for the general election in each race. *See* Md. Code, Elec. Law § 8-202(a)(1). Primary elections are unique because they are a function of the political parties as well as the state. "A primary election is merely an officially supervised party nominating procedure." *State Admin. Bd. of Elec. Laws v. Calvert*, 272 Md. 659, 676 (1974). While the principal political parties are required

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to use the primary system, “primary elections are not wholly creatures of the State Government, for the State must share the governance of such elections with the political party from which the primaries are born.” *Suessmann v. Lamone*, 383 Md. 697, 708 (2004). Notably, Maryland law does not require the parties to exclude unaffiliated voters from the primaries, instead, that decision is left to the parties themselves. Md. Code, Elec. Law § 8-202(c). Currently, the principal political parties choose to exclude unaffiliated voters. Amend. Compl. ¶ 28.

In their Complaint, Plaintiffs argue that their exclusion infringes on their right to vote as guaranteed in the Maryland Constitution and the Maryland Declaration of Rights. Amend Compl. ¶¶ 1–4. Further, Plaintiffs contend that because the State funds and supports these primaries, they are state elections under the Election Law title, and that by extension, they are entitled to participate. Amend. Compl. ¶ 22; *see also* Md. Code, Elec. Law § 1-101(v)(2); Therefore, Plaintiffs request declaratory judgment holding that the state’s funding of these primaries is unlawful and injunctive relief prohibiting the state from funding election procedures that violate their rights. Amend Compl. at 10–13.

Defendants counter that Plaintiffs lack standing because they failed to plead this action under Md. Code, Elec. Law § 12-202. Mot. to Dismiss at 2–3. Defendants additionally argue that the Complaint, in effect, invokes taxpayer standing because it challenges the use of state funds to support the primary elections. Mot. to Dismiss at 8–9. According to Defendants, because there is a statutory form of relief (§ 12-202), taxpayer standing is unavailable. *Id.* at 9–11. Finally, According to Defendants, because § 12-202 provides a cause of action to challenge election results, declaratory judgment is unavailable. Defendants also argue that Plaintiffs’ failure to specifically invoke the Maryland Uniform Declaratory Judgments Act is fatal to the Complaint. Reply at 2–3.

II. STANDARD OF REVIEW.

Under Md. Rule 2–322(b), a party may move to dismiss an action for failure to state a claim upon which a court may grant relief. Dismissal is appropriate where “the complaint does not disclose, on its face, a legally sufficient cause of action.” *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 785 (1992). When ruling on a motion to dismiss, the court considers “only the sufficiency of the pleading.” *Id.* at 784. Accordingly, the court “must assume the truth of all well-pleaded facts and allegations in the complaint, as well as all inferences that can be reasonably drawn from them.” *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995). The facts and allegations giving rise to the cause of action, however, must be pleaded with “sufficient specificity,” and the Court may disregard the pleader’s “bald assertions and conclusory statements” *Bobo v. State of Maryland*, 346 Md. 706, 708–09 (1997). In construing the pleadings in this manner, dismissal by a court is only proper where the “alleged facts and permissible inferences, even if later proven to be true, would fail to afford relief to the Plaintiff.” *Morris*, 340 Md. at 531.

III. ANALYSIS.

A. *Plaintiffs Have Standing.*

Defendants offered three grounds upon which they argue Plaintiffs lack standing. First, Defendants argue that this action should have been brought under Md. Code, Elec. Law., § 12-202. Mot to Dismiss at 10. This provision enables a registered voter to challenge “an act or omission” that is inconsistent with the Election Law title or “other law applicable to the elections process” and that “may change or has changed the outcome of the election.” Elec. Law, § 12-202(a)(1)-(2).

Here, Plaintiffs have not alleged an act or omission that may affect the outcome of a specific election. Instead, their contention is that their voting rights have been infringed through their exclusion from partisan primaries in general. *See* Amend. Compl. ¶¶ 41, 50, 56. They do not seek to challenge a discrete election result, rather they contend that the state’s financial and logistical support of the party’s closed primaries is unlawful. Based on a plain reading of the statute, the catchall cause of action in § 12-202 does not cover a claim, outside of an election cycle, challenging the overall structure of the state’s primary elections. Therefore, Plaintiffs’ claims could not have been brought under § 12-202.

Defendants argue that because—in their view—this case should have been brought under § 12-202, taxpayer standing is not available to Plaintiffs. Mot. to Dismiss at 9–11. “Taxpayer standing doctrine permits a taxpayer to invoke the aid of a court of equity to restrain the action of a public official, which is illegal or *ultra vires* and may injuriously affect the taxpayer’s rights and property.” *InletAssocs. v. Assateague House Condominium Assn.*, 313 Md. 413, 440–41 (1988). A taxpayer standing suit is brought “as taxpayers and on behalf of all other similarly situated taxpayers.” *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 547 (2014). When a taxpayer does not have an adequate remedy, taxpayer standing exists “unless the General Assembly has pre-empted this common law right.” *Id.* at 542.

First, the Court concludes that the Plaintiffs’ claims do not fall under the scope of § 12-202. Putting aside this Court’s ruling, Plaintiffs have not pled under taxpayer standing. Plaintiffs have not alleged any pecuniary injury as taxpayers related the unlawful use or waste of taxpayer funds. Instead, Plaintiffs’ reference to state funding of primary elections in the Amended Complaint serves to allege government involvement. Amend. Compl. ¶¶ 27–34. Therefore,

Defendants' argument that taxpayer standing is unavailable because of the alleged statutory relief is inapplicable in this matter.

Finally, Defendants argue that the declaratory and injunctive relief sought by Plaintiffs is unavailable for two reasons: 1) the statutory cause of action that Defendants maintain is available to Plaintiffs in § 12-202 preempts equitable relief, and 2) Plaintiffs failed to specifically invoke the Maryland Uniform Declaratory Judgments Act in the Amended Complaint. *See Reply* at 2–3.

The Court agrees with Defendants that if there is a form of statutory remedy available, that statutory remedy must be followed in lieu of a proceeding under the Declaratory Judgments Act. Md. Code, Courts & Jud. Proc. § 3-409. As discussed above, the Court has found that there is no statutory remedy applicable to Plaintiffs claims as § 12-202 is inapplicable. As a result, Plaintiffs claims are not preempted.

Additionally, Defendants' argument that Plaintiffs needed to specifically invoke the Maryland Uniform Declaratory Judgments Act is misguided. When evaluating a pleading, courts consider the substance not the form in deciding the outcome. *Miller v. Mathias*, 428, Md. 419, n. 15 (2012). This principal also applies when evaluating a motion to dismiss: “it is not essential for the plaintiff to identify the particular ‘legal name’ typically given to the claim he has pled.” *Tavakoli-Nouri v. State*, 139 Md.App. 716, 730 (2001). “The critical inquiry is not whether the complaint specifically identifies a recognized theory of recovery, but whether it alleges specific facts that, if true would justify recovery under any established theory.” *Id.* In the Amended Complaint, the Court finds that Plaintiffs have laid out sufficient facts to satisfy the necessary elements to obtain declaratory judgment and will not deny relief on these grounds.

The Maryland Uniform Declaratory Judgments Act empowers a court to grant declaratory judgment if granting it will terminate the controversy giving rise to the proceeding and if:

- (1) An actual controversy exists between the parties;
- (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; and
- (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has a concrete interest in it.

Md. Code, Cts. & Jud. Proc., § 3-409(a).

Plaintiffs assert a legal right which is disputed by Defendants: that they have a fundamental right to vote in partisan primary elections. Additionally, declaratory judgment would terminate the controversy by adjudicating the rights asserted. The state also has a concrete interest in the matter because of its statutory role in overseeing the primary elections. The Court concludes Plaintiffs' failure to specifically name the Maryland Uniform Declaratory Judgments Act is an issue of form rather than substance and is not fatal to their claim. *See Tavakoli-Nouri*, 139 Md. at 730. The Court also finds Plaintiffs have substantively pled the necessary elements for declaratory judgment, and the relief sought has not been preempted by a statutory remedy. Therefore, they have standing to bring their claims under the Maryland Uniform Declaratory Judgments Act.

B. Plaintiffs have failed to plead a claim for relief because they do not have a fundamental right to vote in partisan primaries.

Plaintiffs claim that their right to vote is being infringed by the State's funding and endorsement of closed partisan primaries which exclude them as unaffiliated voters. However, the Maryland Supreme Court has twice considered whether closed primaries violate Article 1 of the Maryland Constitution, Article 7, and Article 24 of the Maryland Declaration of Rights and has twice rejected that contention. The Supreme Court of Maryland has held that unaffiliated voters "have no fundamental right to vote in a principal party's primary election." *Suessmann*, 383 Md at 732. While the Maryland Constitution and Declaration of Rights guarantee the right to vote in state elections, neither grants the right to vote in a political party's primary without affiliating with that party. *See Hennegan v. Geartner*, 186 Md. 551, 559 (1946). Additionally, the U.S. Supreme

Court has affirmed the First Amendment Rights of the political parties themselves to exclude non-members from participating in their process for selecting a nominee. *See California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000).

Plaintiffs' constitutional claims fall squarely within the scope of the holdings in *Seussmann* and *Hennegan*. They assert rights that, under Maryland law, they do not possess. *See Suessmann*, 383 Md. at 732; *Hennegann*, 186 Md. at 559. In their Opposition and at the Motions Hearing before this Court, Plaintiffs attempted to distinguish the facts of this matter from prior precedent. Specifically, they argue that the court's holding in *Suessmann* was limited to a challenge to the nominating procedure for the circuit court judges and the language rejecting a fundamental right to vote in partisan primaries was only dicta. Opposition at 10–13. This Court disagrees.

The *Suessmann* plaintiffs challenged the constitutionality of the primary process for circuit court judges. *Suessmann*, 383 Md. at 704–05. Specifically, they argued that circuit court primaries were “nonpartisan” as that term is defined under the Election Law title. *Id.* at 705. Plaintiffs point to Judge Cathell's concurring opinion which sought to limit the scope of the majorities holding: “because of the way the issues were presented, we are not able to address in this case the question of the constitutionality of partisan elections for circuit court judges.” *Suessmann*, 383 Md. at 733. Judge Cathell's concurrence went on to express serious doubt about the constitutionality of the partisan primary scheme as applied to circuit court judges. *Id.* Plaintiffs rely on this concurrence to present a limited version of the court's holding. However, the court's rejection of the right to vote in a partisan primary was an essential step in its analysis. In ruling against the plaintiffs, the court found that primary contests for circuit court judges are partisan in nature, and because unaffiliated voters do not have a fundamental right to vote in a partisan primary election, their exclusion was lawful. *See Suessmann*, 383 Md. at 729, 733.

Additionally, Plaintiffs seek to distinguish *Hennegan* from the present matter. *Hennegan* involved a challenge to a prior version of the Election Law title which prohibited registered voters who had already chosen a party affiliation from changing that affiliation within six months of a primary contest. *Hennegan*, 186 Md. at 553–54. The plaintiff, a veteran who had returned home from service in the Second World War sought to challenge this restriction. *Id.* He attempted to change his affiliation from Republican to Democrat but missed the six-month deadline due to his service obligations. The plaintiff argued that this restriction violated the Maryland Constitution’s equal protection clause by subjecting him to greater restriction than unaffiliated voters, and Article 1 of the Maryland Constitution and Article 7 of the Maryland Declaration of Rights by denying him the right to vote. *Id.* at 554. The court held that the plaintiff’s rights were not violated for two reasons: first, the legislature had the power to restrict the reclassification of voter affiliation within six months, and second, the plaintiff’s rights were not violated by the six-month restriction because he did not have a right under Maryland law to vote in a partisan primary as a member of the opposing political party. *Id.* at 558–59. Once again, the court’s rejection of the rights asserted by the plaintiff was not dicta, but an indispensable analytical step in the analysis. *Id.*

This state’s precedent is clear; Plaintiffs do not have the rights they assert in the Amended Complaint. For this reason, they have failed to state a legally cognizable claim that their right to vote has been infringed.

IV. Conclusion.

Plaintiffs have standing to bring this suit under the Maryland Uniform Declaratory Judgments Act and their failure to specifically plead the statute is not fatal. However, for the reasons explained in this Memorandum Opinion, Plaintiffs have failed to state a claim upon which relief can be granted. Therefore, Defendants' Motion to Dismiss shall be granted.

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Date

A handwritten signature in blue ink, appearing to read "Pamela K. Alban", with a long horizontal flourish extending to the right.

Judge Pamela K. Alban

Pamela K. Alban, Judge
Circuit Court for Anne Arundel County