IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

LIBERTY LEGAL FOUNDATION, JOHN DUMMETT, LEONARD VOLODARSKY, CREG MARONEY,) Case No. 2:12-cv-02143-cgc)
Plaintiffs, vs. NATIONAL DEMOCRATIC PARTY OF THE USA, INC., DEMOCRATIC NATIONAL COMMITTEE, TENNESSEE DEMOCRATIC PARTY, DEBBIE WASSERMAN SCHULTZ, and CHIP FORRESTER, Defendants.	Removal of Case No. CH-11-1757-3 From Chancery Court for the State of Tennessee in Shelby County)))
Detenuants.)

MOTION TO DISMISS PURSUANT TO RULE 12(b)(1) AND 12(b)(6)

Pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants the Democratic National Committee (the "DNC"), the Tennessee Democratic Party (the "TNDP"), Debbie Wasserman Schultz ("Wasserman Schultz"), and Chip Forrester ("Forrester" and collectively with the previously named defendants the "Defendants")¹, respectfully move this Court to dismiss this case in its entirety or in part. Alternatively, Defendants respectfully move this Court to dismiss all parties but for the TNDP, which is the party responsible, under Tennessee law to submit the Democratic Party's nominee to the Tennessee Secretary of State Division of Elections. In support of this Motion to Dismiss, Defendants state the following:

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¹Plaintiffs also name the National Democratic Party of the USA, Inc. as a defendant, but this organization is apparently a sham organization, most likely affiliated with the Shelby County Republican Party, and therefore, as explained in greater detail herein, is not a proper party to this lawsuit. Accordingly, they will not be treated as a proper defendant.

- 1. Pursuant to Rule 12(b)(1), Plaintiffs' claims must be dismissed in entirety because Plaintiffs lack standing to bring their claims;
- 2. Pursuant to Rule 12(b)(6), Plaintiffs' claims must be dismissed because: 1) Federal law prevents this Court from entering the relief requested because the determination of whether a candidate is constitutionally qualified to hold the office of the President of the United States is left, in the first instance, to the electorate and the United States Congress;
 2) the Defendants have an absolute right to nominate whoever they want as their candidate for President of the United States; 3) Plaintiffs cannot show that they will detrimentally rely upon any misrepresentation made by the Defendants and therefore cannot state a claim for either intentional or negligent misrepresentation;
- 3. Finally and alternatively, pursuant to Rule 12(b)(6), all Defendants but for the TNDP must be dismissed in this case because only the TNDP has the authority to submit a name to the Tennessee Secretary of State Division of Elections identifying the Democratic Party's nominee for President of the United States; and
- 4. In support of this Motion to Dismiss, the Defendants rely upon the following:
 - a. All pleadings filed to date;
 - b. All papers filed along with the Notice of Removal, filed on February 23, 2012;
 - c. The Memorandum in Support of the Motion To Dismiss filed contemporaneously herewith ("Memo in Support").

In light of the foregoing, and for the reasons articulated in the accompanying Memo in Support, Defendants move this Court to dismiss this action in its entirety, or in the alternative dismiss all Defendants but the TNDP.

Submitted this 1st day of March, 2012.

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By: /s/ J. Gerard Stranch, IV

J. Gerard Stranch, IV (BPR#023045) Benjamin A. Gastel (BPR#028699) BRANSTETTER, STRANCH

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Counsel for the Democratic National Committee, the Tennessee Democratic Party, Debbie Wasserman Schultz, and Chip Forrester

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served via US Mail, postage prepaid, on March 1, 2012, upon:

Van Irion Liberty Legal Foundation 9040 Executive Park Dr., Ste. 200 Knoxville, TN 37923

> /s/ J. Gerard Stranch, IV J. Gerard Stranch, IV

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