

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

STAND UP FOR DEMOCRACY,

Plaintiff,

Court of Appeals No. 310047

v.

BOARD OF STATE CANVASSERS,  
RUTH JOHNSON, in her Official Capacity as  
Secretary of State for the State of Michigan,

Defendant.

**Emergency relief requested  
within 7 days**

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**PLAINTIFF'S MOTION FOR EXPEDITED CONSIDERATION, PURSUANT TO MCR  
7.211(C)(6) OF MOTION FOR IMMEDIATE EFFECT OF ORDER PURSUANT TO  
MCR 7.215(F)(2)**

NOW COMES Plaintiff, by and through its attorneys, and hereby requests this Honorable Court, pursuant to MCR 7.211(C)(6), immediately consider its *Motion for Immediate Effect of Order Pursuant to MCR 7.215(F)(2)* in the above-named matter, filed contemporaneously with this *Motion*, for the reason that time is of the essence and that this Court's Judgment of June 8, 2012 -- finding that Plaintiffs are entitled to have their petition certified for the ballot for the upcoming November election -- must be given immediate effect in order for the Board of Canvassers to meet the August 27, 2012 deadline to certify the petition in accordance with the law. In support of its *Motion*, Plaintiff states as follows:

1. On February 29, 2012, Plaintiff Stand Up for Democracy filed 226,339 petition signatures from voters across the State of Michigan, in 50 boxes, with the Michigan Secretary of State's Office, seeking a referendum on Public Act 4 of 2011, the Local Government and School District Accountability Act, commonly known as the "Emergency Financial Manager Law," for the November 6, 2012 general election ballot.

2. The canvass conducted by the State Bureau of Elections, as staff for the Board of State Canvassers, concluded that Plaintiff had submitted 203,071 valid petition signatures, 41,766 signatures in excess of the 161,305 minimum valid signatures required to place the referendum on the ballot in the Fall.

3. A challenge to the petitions was filed by a group called the Citizens for Financial Responsibility ("CFR"), which incorrectly asserted that the petition heading was smaller than 14 point type.

4. In cavalier defiance of a quarter million Michigan voters, and in contravention of governing case law, the Board of Canvassers voted 2 to 2, to withhold certification of the petitions for the November 6, 2012 general election ballot, on a straight party-line vote, with both Republican Members of the Board of Canvassers voting “No.”

5. Plaintiff filed a Complaint for Writ of Mandamus, and the Court heard oral argument regarding same on May 17, 2012.

6. On or about June 8, 2012, this Court, without specifying an effective date, on June 8, 2012 the Court issued an 18-page a *per curiam* ruling in this matter, holding that, pursuant to *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1; 654 NW2d 610 (2002), Plaintiff had substantially complied with the law and that therefore the petition is to be certified for the ballot, to wit:

“[U]nder *Bloomfield*, plaintiff’s petition substantially complies with The statutory requirements such that plaintiff has a clear legal right to Certification of the petition. Defendants [Board of Canvassers] have a Clear legal duty to certify the petition for the ballot because the petition Has the requisite number of signatures and meets all other statutory requirements. Under all of the circumstances presented here, the act of placing the petition on the ballot is ministerial. Plaintiff does not have an alternate legal remedy. The elements of mandamus thus have been met and **we direct the Board [of Canvassers] to certify plaintiff’s petition for the ballot.**” (Opinion, at 18).

7. Pursuant to MCR 7.215(E)(1), this Honorable Court’s June 8 opinion is a judgment.

8. Also in its June 8 judgment, this Court stayed execution of its order, pursuant to MCR 7.215(J)(3)(a), pending a poll of the full Court of Appeals on whether to review the *Bloomfield* case, *supra*.

Deleted:

9. Under the law, MCL 168.477, the Board of State Canvassers are required to "...make an official declaration of the sufficiency or insufficiency of a petition . . . at least 2 months before the election at which the proposal is to be submitted," which in this case, according to the State Bureau of Elections, necessitates that all petitions for the November 6, 2012 ballot must be certified on or before August 27, 2012.

10. On or about June 14, 2012, the full Court declined by a majority, after having been polled pursuant to MCR 7.215(J)(3)(a), to convene a special panel to review the *Bloomfield* case and issued an Order so ruling.

11. In its original judgment dated June 8, 2012, this Court further ruled that:

"This opinion is given routine issuance pursuant to MCR 7.215(F)(1)..."

12. Under the "routine issuance" provision of MCR 7.215(a)(1), as it applies to this Court's June 8 Order, the effective date would become effective "[a]fter the expiration of the time for filing an application for leave to appeal to the Supreme Court. . .," or within 42 days, as provided in MCR 7.302(C)(2).

13. If the implementation of this Court's June 8 judgment is delayed for 42 days, Plaintiff, along with the entire Michigan electorate, will be irreparably harmed because by then it will be too late for the petition to be timely certified by August 27, 2012, in order for the matter to be placed on the ballot in time for the November election.

14. On June 20, 2012, contemporaneous with the filing of this *Motion*, Plaintiff has filed a *Motion for Immediate Effect of Order*, pursuant to MCR 7.215(F)(2), seeking to find that this Court's June 8, 2012 judgment in this matter be given immediate effect in order to avoid the irreparable harm that will occur if the implementation of this judgment is delayed the Court's June 8 Order, ordinarily becomes effective "[a]fter the expiration of the time for filing an application for leave to appeal to the Supreme Court. . ."

15. At this time, in light of the impending statutory deadline of August 27, 2012 for certifying matters for the ballot established by MCL 168.477, to wait for the expiration of the 42 day time period under MCR 7.215(F)(1) would cause undue delay and substantial hardship to the Plaintiff, to the more than 226,000 Michigan voters who signed the valid petitions in order to have this matter on the ballot for the November 6, 2012 election, and to the entire Michigan electorate.

16. Indeed, such a delay would in effect nullify this Court's lawful order requiring that the Michigan Board of Canvassers certify the petition for the ballot in the upcoming November election.

17. It has long been held that cases involving the certification of elections are anything but routine, and as such require immediate effect. See, e.g., *Settles v Detroit City Clerk*, 169 Mich App 797 (1988), where the court ruled that a ballot measure should proceed, and that its opinion be given immediate effect, "[d]ue to the impending election date." *Id.* at 808.

18. In its *Motion for Immediate Effect*, filed contemporaneously with this *Motion*, Plaintiff respectfully requests that within 7 days of this filing, the Court's June 8, 2012 judgment in this matter be given immediate effect pursuant to MCR 7.215(F)(2), and Plaintiff further respectfully requests that the Court order the Board of Canvassers to schedule a meeting within 18 hours of the Court's order of immediate effect, to certify Plaintiff's initiative petitions.

19. That MCR 7.302(G) provides, "Any party may move for immediate consideration of a pending application by showing what injury would occur if usual procedures were followed." As set forth above, the Court must act in an emergency fashion in order to not frustrate the electorate in light of the impending election date.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court immediately consider *Plaintiff's Motion for Immediate Effect of Order Pursuant to MCR 7.215(F)(2) and for Expedited Consideration Pursuant to MCR 7.211(C)(6)*, and fully grant the relief requested therein.

Dated: June 20, 2012

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