

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 IMMEDIATE
EFFECT OF ORDER PURSUANT TO MCR 7.215(F)(2)**

NOW COMES Plaintiff, by and through its attorneys, and for its Motion states as follows:

1. That 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. That 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. That 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. Plaintiff presented sworn expert testimony that the petition heading type was, in fact 14 point type, using the standard-in-the-industry measurement process with software designed for such measurements. CFR's challenge inappropriately used a Computer Point Scale ("CPS") measurement scale ruler to assert that Plaintiff's heading was smaller than 14 point type. Using CFR's CPS measurement scale ruler, *not one of the past seventeen (17) statewide initiative*

petitions, that made it onto the ballot, had headings which were smaller than 12 point type, let alone 14 point type.

4. Because previous statewide initiatives were allowed onto the ballot with headings that were smaller than 14 point type using the CPS scale, keeping Plaintiff's initiative petition off the ballot amounts to discriminatory content-based discrimination under the First Amendment to the Constitution. See, *Ashcroft v. ACLU*, 124 S. Ct. 2783 (2004).

5. That Plaintiffs obtained through discovery and affidavits, information clearly showing that Defendants were in possession of documents verifying that Plaintiff's petition heading was 14 point type.

6. That Plaintiffs were in *total* compliance with MCL 168.482(2). Even if Plaintiff, *arguendo*, was not in total compliance, it was in *substantial compliance* under *Bloomfield Charter Twp v. Oakland Co Clerk*, 253 Mich App 1 (2002), which states, in pertinent part that "[a]s a general principle, all doubts as to technical deficiencies or failure to comply with the exact letter of procedural requirements are resolved in favor of permitting the people to vote and express their will on any proposal subject to election." *Id.* at 21.

7. 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."

8. That this was a breach of the Board of Canvassers' clear legal duty. MCL 168.467; *Ferency v. Secretary of State*, 409 Mich 569 (1980).
9. That Plaintiff filed a Complaint for Writ of Mandamus, and the Court heard oral argument regarding same on May 17, 2012.
10. That without specifying an effective date, on June 8, 2012 the Court issued a *per curiam* ruling in this matter, stating that

“[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).
11. That, pursuant to MCR 7.215(J)(3)(a), this Honorable Court stayed the effective date of its Order, pending a poll of the full Court of Appeals on whether to review the *Bloomfield* case, *supra*. The court rule has a 28 day time frame in which the poll can be conducted.
12. That on June 14, 2012, Plaintiffs filed a Motion to Expedite Polling of Judges, requesting that the poll be concluded within 72 hours, in light of the impending statutory deadline for certifying matters for the ballot established by MCL 168.477 (“The Board of State Canvassers shall 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.”).

13. That, according to the State Bureau of Elections, all petitions for the November 6, 2012 ballot must be certified on or before August 27, 2012.

14. That, accordingly, the 28 day time frame for the poll of judges would have resulted in “substantial delay and undue hardship.”

15. That on June 14, 2012, the Court issued an Order denying the appointment of a special panel to review the *Bloomfield* case.

16. That under MCR 7.215(F)(1)(a), 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. . .”

17. That under MCR 7.302(C)(2), an application for leave to appeal in civil cases “[m]ust be filed within 42 days.”

18. That the Board of Canvassers must be given a specific date in which to meet to certify Plaintiff’s petition in accordance with the Court’s June 8, 2012 Order, otherwise the delay will result in an undue hardship of the Michigan electorate.

19. That cases involving the certification of elections are anything but routine, and as such require immediate effect. This was the conclusion reached by the Court of Appeals in *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. Moreover, immediate effect was given by the Court of Appeals in another analogous writ of mandamus election matter involving a decision of the Board of Canvassers and applying the “substantial compliance” doctrine. See, *Citizens Protecting Michigan's Constitution v. Sec'y of State*, 280 Mich. App. 273, and *Citizens Protecting Michigan's Constitution v. Sec'y of State*, 280 Mich. App. 801. Immediate effect was granted in two other unpublished opinions of the Court of Appeals, *Muma v. City of Flint Fin. Review Team*, 2012 Mich. App. LEXIS 986, and *Davis v. City of Detroit Fin. Review Team*, 2012 Mich. App. LEXIS 987 in the context of the Open Meetings Act, where public policy demanded swift justice. Such is the case in the instant matter where delay in implementing the Court’s judgment will only serve to deprive the Michigan electorate of its right to vote.

20. That therefore, 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.

WHEREFORE, Plaintiff requests that this Honorable Court grant the relief requested as set forth above.

Dated: June 20, 2012

Respectfully submitted,

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