

STATE OF MICHIGAN
COURT OF CLAIMS

MAMIE GRAZIANO, GEORGE
LOUIS CORSETTI, JIM WEST,
and STEVE BABSON,

Court of Claims No.

Hon.

Plaintiffs,

v

JONATHAN BRATER, in his
official capacity as Director of
Elections and Secretary of the
Board of State Canvassers,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

John Anthony La Pietra (P72121)
Attorney for Plaintiffs
611 N Linden St.
Marshall, MI 49068
269.781.9478
jalp5dai@catesby.org

Matthew S. Erard (P81091)
LAW OFFICE OF
MATTHEW S. ERARD, PLLC
Attorney for Plaintiffs
400 Bagley St. #1150
Detroit, MI 48226
248.765.1605
mserard@gmail.com

INTRODUCTION

1. This suit is brought by registered Michigan electors who signed a statutory initiative petition under Const 1963, art 2, § 9 but whose signatures were barred from being counted due to the 180-day restriction of MCL 168.472a. They seek a declaratory judgment that MCL 168.472a is unconstitutional as applied to petitions under art 2, § 9 and an injunction requiring Defendant to canvass their petition signatures with others accompanying their filing and issue a new and/or amended staff report crediting the countability of their signatures and those of other similarly situated electors.

2. MCL 168.472a provides:

The signature on a petition that proposes an amendment to the constitution or is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state.

PARTIES

3. Plaintiff Mamie Graziano is a registered elector of Kent County who signed the petition filed by the Committee to Ban Fracking in Michigan more than 180 days prior to that petition's date of filing.

4. Plaintiff George Louis Corsetti is a registered elector of Wayne County who signed the petition filed by the Committee to Ban Fracking in Michigan more than 180 days prior to that petition's date of filing.

5. Plaintiff Jim West is a registered elector of Wayne County who signed the petition filed by the Committee to Ban Fracking in Michigan more than 180 days prior to that petition's date of filing.

6. Plaintiff Steve Babson is a registered elector of Wayne County who signed the petition filed by the Committee to Ban Fracking in Michigan more than 180 days prior to that petition's date of filing.

7. Defendant Jonathan Brater is the Director of Elections appointed by the Michigan Secretary of State. As such, he is the supervisor of the Bureau of Elections and nonmember Secretary of the Board of State Canvassers and is responsible for the administration of the state's election laws.¹

JURISDICTION

8. This Court has jurisdiction over claims for declaratory relief against state officers under MCL 600.6419(1)(a).

LEGAL BACKGROUND

9. The statutory initiative petition containing Plaintiffs' signatures was filed with Defendant's Bureau of Elections office on November 5, 2018.

10. On June 3, 2020, the Bureau of Elections issued a Preliminary Staff Report on the petition's signatures for the Board of State Canvassers, discounting the signatures of each of the Plaintiffs and other similarly situated electors pursuant

¹ MCL 168.32(1).

to MCL 168.472a and excluding them from the estimated tally of “valid” signatures. Based on such exclusion, the Board declared the containing petition insufficient on June 8, 2020.

11. Upon unsuccessfully seeking Supreme Court review of the Board of State Canvassers’ declaration, the petition’s sponsoring ballot question committee brought an action for declaratory and injunctive relief in this Court seeking to challenge the Board’s finding of insufficiency to the petition.

12. This Court then dismissed the committee’s complaint on the ground that MCL 168.479 divested it of subject matter jurisdiction over the claim.² As a result of that jurisdictional finding, neither the decision of this Court nor that of the Court of Appeals reached the merits of the committee’s constitutional challenge to MCL 168.472a.³

13. In contrast to the committee’s injury by MCL 168.472a, which it incurred only from the statute’s effect of rendering its total quantum of countable signatures insufficient, Plaintiffs are directly and personally injured by the statute’s disenfranchisement of their right as electors to have their own signatures

² *Comm to Ban Fracking in Mich v Bd of State Canvassers*, unpublished opinion of the Court of Claims, issued July 20, 2020 (Docket No. 20-000125-MM), aff’d ___ Mich App ___ (2021) (Docket No. 354270).

³ The Court of Appeals dissent did reach the merits of the constitutional challenge and concluded that MCL 168.472a is unconstitutional. *Comm to Ban Fracking in Mich v Bd of State Canvassers*, ___ Mich App ___ (2021) (Docket No. 354270) (Shapiro, J., dissenting).

counted and accorded legal effect, irrespective of any determination reached in regard to the petition's overall sufficiency.

14. Accordingly, because Plaintiffs' injury is both distinct from and prior in accrual to the Board of State Canvassers' determination of insufficiency to the petition, their claim is not within the narrow scope of MCL 168.479.

GENERAL ALLEGATIONS

15. As originally enacted in 1973, MCL 168.472a provided:

It shall be rebuttably presumed that the signature on a petition which proposes an amendment to the constitution or is to initiate legislation, is stale and void if it was made more than 180 days before the petition was filed with the office of the secretary of state.

16. In OAG 1974, No. 4813, the Attorney General opined that the 180-day signature limitation of MCL 168.472a, as then worded in its less restrictive original iteration, was unconstitutional as to both statutory initiative and constitutional amendatory initiative petitions. As to Const 1963, art 2, § 9, governing statutory initiative petitions, the Attorney General opined:

This provision has been held to be self-executing. *Wolverine Golf Club v Secretary of State*, 384 Mich 461, 466; 185 NW2d 392 (1971). Although that provision concludes with language to the effect that the legislature should implement the provisions thereof, such language has been given a very limited construction by the Michigan Supreme Court, which held that this provision is merely:

“a directive to the legislature to formulate the process by which initiative petitioned legislation shall reach the legislature or the electorate.” *Wolverine Golf Club v Secretary of State*, *supra*, at 466.

I am consequently of the opinion that, as applied to signatures affixed to petitions which initiate legislation pursuant to Const 1963, art 2, § 9, § 472a is beyond the

legislature's power to implement [and] said section and is therefore unconstitutional and unenforceable.

17. OAG 4813 was partially overruled twelve years later by *Consumers Power Company v Attorney General*, 426 Mich 1 (1986), but only as applied to constitutional amendatory petitions under Const 1963, art 12, § 2. However, notwithstanding that decision's full reliance on a unique provision of Const 1963, art 12, § 2, to which art 2, § 9 contains no parallel, Defendant's office immediately began applying the statute to signatures on both constitutional amendatory and statutory initiative petitions alike.

18. On June 9, 2016, the legislature enacted 2016 PA 142, which amended MCL 168.472a by replacing the preceding rebuttable presumption of staleness for signatures over 180 days old with a total prohibition of such signatures from being counted. As amended, the statute now provides:

The signature on a petition that proposes an amendment to the constitution or is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state.

19. In the Governor's press release regarding his signing of the legislation enacted as 2016 PA 142, the Governor asserted no interest relating to the registration of petition signers, but rather attributed it the sole purpose of limiting the "the issues that make the ballot."⁴

⁴ Office of Governor Rick Snyder, *Gov. Rick Snyder Signs Bill Establishing 180-day Deadline for Petition Signatures on Proposed Legislation and Constitutional*

20. Eight years following the Supreme Court's *Consumers Power* decision, the legislature established the Qualified Voter File (QVF) through its enactment of 1994 PA 441. Use of the QVF is now statutorily required for the process of determining the validity of initiative petition signatures.⁵ The QVF provides for the immediate verifiability of voters' registration status and residence information both at the time of canvassing and on the petition signature's date of signing.⁶

COUNT I
VIOLATION OF CONST 1963, ART 2, § 9

21. Plaintiffs incorporate all preceding paragraphs by reference.

22. Plaintiffs, as "petition signers[,] possess a legally protected interest in having their signatures validated, invalidated, empowered, or disregarded according to established law."⁷

23. Because the language of Const 1963, art 2, § 9 summons no legislative aid in the areas of circulating and signing, the legislature's application of MCL 168.472a to statutory initiative petitions unlawfully "impose[s] additional obligations on a self-executing constitutional provision"⁸ and infringes the legislative power that the people reserved to themselves.

Amendments (published June 7, 2016)

<http://michigan.gov/snyder/0,4668,7-277-57577_57657-386394--,00.html>.

⁵ MCL 168.476(1).

⁶ *Id.*; MCL 168.509o; 509q.

⁷ *Deleeuw v Bd of State Canvassers*, 263 Mich App 497, 505 (2004).

⁸ *Wolverine Golf Club*, 384 Mich at 466.

24. In disqualifying their valid signatures from being counted, MCL 168.472a has disenfranchised the Plaintiffs and other similarly situated signers of their constitutional rights as registered electors

25. Because the Michigan Election Law mandates use of the QVF to determine the validity of initiative petition signatures, and even permits the rebuttal of invalidity to signatures of signers whom the QVF indicates to be unregistered on the date of signing,⁹ MCL 168.472a lacks any rational relationship to the interest of ensuring the registration status of voters signing an initiative petition.

COUNT II
VIOLATION OF CONST 1963, ART 1, § 17, ART 3, § 2, AND
ART 6, §§ 4-5 AND 28.

26. Plaintiffs incorporate all preceding paragraphs by reference.

27. Plaintiffs conditionally bring this Count only in the event that the Court should find that MCL 168.479 applicably extends to Plaintiffs' injury and operates to limit subject matter jurisdiction over Count I.

28. In providing in MCL 168.479(2) that "[a]ny legal challenge to the official declaration of the sufficiency or insufficiency of an initiative petition has the highest priority"¹⁰ for the Supreme Court, the legislature clearly intended to mandate the Supreme Court's exercise of judicial review over such claims in contravention of the Court's constitutionally vested "power to . . . hear" or not hear

⁹ MCL 168.476(1).

¹⁰ MCL 168.479(2).

actions for prerogative and remedial writs under art Const 1963, art 6, § 4. In so doing, it also contravened the separation of powers restriction of Const 1963, art 3, § 2. Because that statutory provision's intent is integral to the general practicability of judicial review over such actions, it is nonseverable from the remainder of MCL 168.479(2).

29. In further requiring that such actions “shall be advanced on the supreme court docket so as to provide for the earliest possible disposition,”¹¹ MCL 168.479(2) contravenes the Supreme Court's constitutionally vested power to set the rules governing its own practice and procedure under Const 1963, art 6, § 5. And because that provision is integral to the statute's “stated purpose of . . . hav[ing] any legal challenge to the sufficiency or insufficiency of an initiative petition decided as promptly as possible, by our Supreme Court,”¹² it too is nonseverable from 479(2)'s other provisions.

30. If applied to divest subject matter jurisdiction over Plaintiffs' challenge to MCL 168.472a, MCL 168.479 would contravene Const 1963, art 1, § 17 by depriving Plaintiffs of a protected liberty interest without a meaningful opportunity to be heard.

31. If applied to divest subject matter jurisdiction over Plaintiffs' claim, MCL 168.479 would additionally contravene Const 1963, art 6, § 28 by denying

¹¹ *Id.*

¹² *Comm to Ban Fracking in Mich*, ___ Mich App at ___; slip op at 6.

Plaintiffs judicial review of a decision depriving them of their personal rights as registered electors, including a determination of whether such deprivation is authorized by law.

32. Because the Supreme Court “has no original equity jurisdiction”¹³ under art 6, § 4, MCL 168.479’s divestiture of subject matter jurisdiction would additionally contravene Const 1963, arts 1, § 17 and 6, § 5 by “divest[ing] the court[s] completely of equity jurisdiction”¹⁴ over claims within its statutory scope.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Plaintiffs ask this Honorable Court to:

- a. Declare that MCL 168.472a is unconstitutional as applied to statutory initiatives under Const 1963, art 2, § 9;
- b. Enjoin Defendant to canvass the Plaintiffs’ petition signatures with others accompanying their filing and issue a new and/or amended staff report crediting the countability of their signatures and those of other similarly situated electors; and
- c. Grant such other and further relief as the Court shall deem equitable and just.

¹³ *Stephenson v Golden*, 279 Mich 710, 732 (1937).

¹⁴ *Wikman v Novi*, 413 Mich 617, 648 (1982).

Dated May 19, 2021

Respectfully submitted,

John Anthony La Pietra (P72121)
Attorney for Plaintiffs
611 N Linden St.
Marshall, MI 49068
269.781.9478
jalp5dai@catesby.org

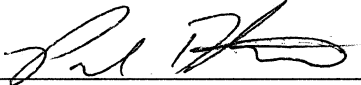
Matthew S. Erard (P81091)
LAW OFFICE OF
MATTHEW S. ERARD, PLLC
Attorney for Plaintiffs
400 Bagley St. #1150
Detroit, MI 48226
248.765.1605
mserard@gmail.com

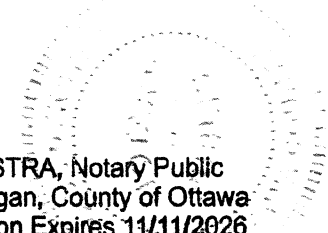
Verification

I declare that the foregoing statements set forth in this Verified Complaint are true to the best of my knowledge, information, and belief.

Mamie Graziano
Mamie Graziano

Subscribed to and sworn (or affirmed) before me this 19th of May, 2021, by
Mamie Graziano.


Notary Public, State of Michigan
County of <u>Ottawa</u>
My Commission Expires <u>11-11-2026</u>
Acting in the County of <u>Kent</u>


PAUL DYKSTRA, Notary Public
State of Michigan, County of Ottawa
My Commission Expires 11/11/2026
Acting in the County of Kent