State of Michigan
Court of Appeals

Committee to Ban Fracking in Michigan
and LuAnne Kozma,
Plaintiffs-Appellants

v

Christopher Thomas, Director of Elections;
Ruth Johnson, Secretary of State; and
Board of State Canvassers,
Defendants-Appellees
_____/

Court of Claims Case # 16-000122-MM
Hon Stephen L. Borrello
CA Case # 334480

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True, they would have no legal claim against her, but that misses the point. Inevitably Kozma would be drawn into the prosecutions as a witness, taking up her valuable time. Apprehension even of the possibility of being drawn in does the same today, but apprehension would evaporate were the court to rule on the merits.

Further, she could face criminal liability under MCL 168.544c(1), (8)(b), and (14), (which is applicable to ballot question committees under MCL 168.482(6)):

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6. The state asserts "CBFM has not alleged any business injury."[26] This is not so. In a grass-roots volunteer-driven organization like CBFM, damage to volunteer morale is damage to its "business." Possibly the state's point might be well taken were CBFM dominated by paid circulators (as many campaigns have been since *Meyer v Grant*[27]). But it does not apply here.

7. The state asserts[28] that appellants' invocation[29] of "liberal" construction of declaratory cases does not allow the court to decide what it contends is a speculative/hypothetical claim. Aside from that the mere existence of an unconstitutional 180-day statute today would have a damaging effect on CBFM

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> Election cases are special, however, because without the process of elections, citizens lack their ordinary recourse. For this reason we have found that ordinary citizens have standing to enforce the law in election cases.[30]

IV. Conclusion

The state's grand error throughout is its failure to recognize the US supreme court's ripeness teaching: a court must consider the "hardship to the parties of withholding court consideration."[31] The court of claims and the state's brief do not recognize, much less give consideration to, the hardship of the ruling below on appellants if the 180-day statute is unconstitutional.

If the statute turns out to be constitutional, yes, CBFM will have endured no hardship. But if not, the hardship has been enormous. Accordingly, the court should turn now to the constitutional inquiry.

Wherefore appellants ask the court to reverse and remand. Being that this is a petition dispute, the court should order the court of claims to continue to give the matter priority.

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Dated: November 12, 2016

Certificate of Service

Ellis Boal certifies that on the above date he served the above pleading on the above counsel at the above address, and emailed it to them at *bartond@michigan.gov* , *grille@michigan.gov* , *fracassia@michigan.gov* , and *hoj@michigan.gov* .

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