

**State of Michigan  
Court of Claims**

Committee to Ban Fracking in Michigan  
and LuAnne Kozma,

Plaintiffs,

v

Case # 16-000122-MM  
Hon. Stephen L. Borrello  
Filed: 6-1-16

Christopher Thomas, Director of Elections;  
Ruth Johnson, Secretary of State; and  
Board of State Canvassers,

Defendants.

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**Affidavit of LuAnne Kozma**

1. I am a plaintiff in this suit along with the Committee to Ban Fracking in Michigan (CBFM), which is sometimes referred to informally as “Let's Ban Fracking,” a name taken from our website URL.<sup>1</sup> I direct CBFM from Charlevoix, where I am registered to vote.

2. CBFM is a ballot question committee, registered as # 515957 with defendants.

3. CBFM is currently engaged in a statutory initiative campaign under article

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<sup>1</sup> <http://letsbanfracking.org> .

2 section 9 of the constitution. It seeks a ballot proposal to ban horizontal hydraulic fracturing (commonly known as “fracking”), frack waste, and the state's longstanding statutory policy of fostering the gas-oil industry and maximizing production. The exact wording is on websites of CBFM and defendants.

4. Article 2 section 9 contains a formula for determining the required minimum number of voter signatures required to be filed for statutory initiatives. For the 2016 and 2018 elections the formula yields a number of 252,523. If sufficient signatures are filed and certified by defendants the measure first receives consideration by the legislature. If not adopted within 40 session days it is placed on the ballot for voters to choose.

5. Defendants' rules require ballot question committees to have one officer, a treasurer, and optionally a bookkeeper as a second officer. I serve in both capacities. I volunteer my time. I have also made direct and indirect donations.

6. Like candidates for office, CBFM submits periodic financial reports which are accessible on a state website. As seen in the reports, CBFM is grass-roots-funded, with 900+ different contributors to date, none of them in mega-amounts.

7. CBFM is not affiliated with any existing entity or organization. Volunteer circulators numbering 800+ from 60 counties have collected signatures. Voters from all 83 counties have signed.

8. I conceived of and initiated CBFM in 2012. That year, after gaining petition format approval from defendant canvassers, campaign volunteers gathered 30,000 signatures for a statewide constitutional amendment, which was less than the

required number. We ended the campaign after 180 days and did not file the signatures.

9. CBFM circulated a new petition in 2013. This time it was for a statutory amendment under article 2 section 9. Defendant canvassers again approved the petition format. Unlike in 2012, this time we hired paid circulators who brought in about 5% of the 70,000 we collected.

10. We assumed MCL 168.472a (“the 180-day statute”) was a valid statute, but it was confusing. It purported to allow rebuttal of a presumption that signatures older than 180 days were stale and void. But defendants did not publish a rebuttal method on their websites or keep a copy in the lobby of their offices in Lansing. According to a memo on the stationery of defendant secretary of state, which is on the website of defendant canvassers,<sup>2</sup> the 180-day statute applied alike to all initiatives, and the rebuttal information was available only by request. In our communications with the election bureau and our own research we had never heard of a statutory initiative campaign even attempting rebuttal.

11. Accordingly we again ended the 2013 campaign after 180 days without filing the signatures, encouraged though that we had more than doubled the previous signature count.

12. CBFM circulated a third ballot proposal in 2015, a statutory initiative with different language. Again the canvassers approved the petition format. The campaign began on May 22, and aimed initially to get on the 2016 ballot. We chose the starting date so as to give time for printing and distributing petitions and organizing and training

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2 [http://www.michigan.gov/documents/sos/Ini\\_Ref\\_Pet\\_Website\\_339487\\_7.pdf](http://www.michigan.gov/documents/sos/Ini_Ref_Pet_Website_339487_7.pdf)

volunteer circulators, and to maximize opportunities for collection during a 180-day summer-fall period.

13. Again by the 180<sup>th</sup> day (November 18, 2015) we more than doubled the previous signature count, collecting over 150,000. This time we had hired more paid circulators, who brought in about 10% of the total.

14. On November 18 we temporarily suspended but did not end signature collection. Meanwhile, prompted by efforts of the ongoing recreational marijuana initiative – which like CBFM's is statutory – we began investigating the constitutional foundations of the 180-day statute.

15. In December CBFM announced signature collection would continue, even despite the onset of difficult winter conditions.

16. In 2016 CBFM hired a consulting firm to verify signatures. We also mobilized volunteers to review petitions and and remove duplicates and invalid signatures. I oversaw the process, which is cumbersome and time-consuming.

17. In January we began making detailed written presentations to defendants pointing out the statute's constitutional defect as applied to statutory initiatives under article 2 section 9.<sup>3</sup> We particularly highlighted the supreme court's 1971 decision in *Wolverine Golf Club v Secretary of State*.<sup>4</sup> CBFM opponents in the gas-oil industry were provided copies. Neither they nor defendants voiced disagreement with our analysis of the implications of *Wolverine Golf Club*.

18. We testified again on March 24, again highlighting the same material, again

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3 Complaint exhibits 10 and 11.

4 384 Mich 641 (1971).

with no specific disagreement from defendants or the gas-oil industry about the implications of *Wolverine Golf Club*.<sup>5</sup>

19. On April 27 we testified again, this time to the Michigan house election committee.<sup>6</sup> Defendant Thomas was present, as were industry representatives. Again none voiced specific disagreement.

20. June 1 was the last date on which signatures could be filed in time for placement on the November 2016 ballot. By this time additional signatures were in hand. We had continued methodical vetting of signatures. This new more-solid total was over 207,000 signatures.

21. On that date we filed this suit, and announced again the continuation of signature collection, noting that

grassroots initiatives like ours may take years to carry out a campaign, and carry an idea and proposal forward, face-to-face with fellow voters. Delegates to the 1961-62 constitutional convention wanted to make sure that big money and big organizations don't always dominate.<sup>7</sup>

The campaign now aims to put the measure on the November 2018 ballot.

22. I have collected signatures myself throughout the campaign, beginning on the first collection day last year, May 22, and continuing to the present. I collected more than 4000 as of June 1, and to date I have over 5000.

23. I signed the petition myself this year on February 29.<sup>8</sup> Unless the court strikes down the 180-day statute (as it is worded today), my signature will become

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5 Complaint ¶ 35, complaint exhibit 12.

6 See complaint exhibit 14.

7 Exhibit 20

8 Exhibit 21.

invalid on August 25. Most of those that everyone has collected so far were from last year, and are already over 180 days old and therefore invalid under the newly-worded statute.

24. Given the growing success the campaign has had so far (having twice doubled our 180-day signature counts and now being near the goal), as well as a national Gallup poll of adult Americans in March,<sup>9</sup> as well as statewide Michigan polls commissioned by CBFM and posted on our website,<sup>10</sup> we anticipate the campaign will collect enough signatures by 2018.

25. As director, it is my obligation to formulate strategy and allocate resources about the timing and venues for collecting signatures, and then vetting them. A declaration about the constitutionality of the 180-day statute will be a critical factor affecting leadership decisions and volunteer morale. If the statute is not ultimately struck down CBFM will have to discard signatures and expend enormous time and resources starting over again, as unfortunately CBFM did after 2013.

LuAnne Kozma  
LuAnne Kozma

Subscribed and sworn to before me this

~~8th~~ day of ~~June~~, 2016

Renee L. Underwood  
Notary Public Charlevoix County

My commission expires:

8/14/17  
Lorain Co., Ohio

<sup>9</sup> <http://www.gallup.com/poll/190355/opposition-fracking-mounts.aspx>

<sup>10</sup> <http://letsbanfracking.org/index.php/new-poll>