

**State of Michigan  
Court of Appeals**

COMMITTEE TO BAN FRACKING IN  
MICHIGAN, Plaintiff,

v

Case No. 346280

RUTH JOHNSON, in her official capacity  
as Secretary of State, and SALLY WILLIAMS,  
in her official capacity as Director of Elections,  
Defendants.

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**Amended and Supplemented Complaint**

**Introduction**

Plaintiff sued in this court for emergency mandamus relief on Tuesday, November 6, 2018, which was governor election day. In sum, the complaint alleged that the preceding day defendants refused to allow filing of signatures for an initiative petition

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under constitution article 2 section 9, despite assurances both of this court and defendants themselves (see complaint ¶ 9) in 2016 litigation that plaintiff “would be able” to file the very same petition signatures prior to the next governor election.

Plaintiff tendered the signatures on November 5, 2018, while defendants' offices were open, before 5:00 pm. They were in 47 numbered boxes, and summed to approximately 270,962 signatures.

The complaint of November 6 sought an immediate same-day writ of mandamus, or alternatively injunctive or similar relief within the court’s discretion under MCR 7.216(7). Attached to the complaint was an emergency motion for same-day *ex parte* relief or a show-cause hearing. The motion alleged that defendants' action was unlawful and capricious, and particularly noted that filing of signatures on any date later than November 6 – as defendants well knew – would be prohibited by MCL 168.473b.

The court having declined to act on November 6, the relief originally sought is now moot. Meanwhile plaintiff has served the defendants.

Accordingly plaintiff now asks the court to hold that plaintiff's action on November 5 did in fact constitute filing. Plaintiff, which has no office in the Lansing area, is undertaking the considerable expense of obtaining secure storage space for the 47 boxes near the defendants. Plaintiff asks the court to order defendants to travel with plaintiff to the storage space, take possession of the signatures there, and commence the canvassing process.

**Parties, jurisdiction, general allegations, and count for mandamus**

Plaintiff re-alleges the 23 paragraphs of the emergency complaint and motion (with the exception of statements that “today” is November 6), and supplements them as follows:

24. To elaborate on the events of November 5 noted in complaint ¶¶ 12-13: CBFM's director LuAnne Kozma, as a courtesy, informed defendants' staff in multiple phone calls during the day that she would be arriving to file signatures. Staff stated no objection. The last call was at 4:36 pm as she was arriving at the building with 47 boxes. Kozma and three volunteers entered the building. A conversation ensued which included two of plaintiff's legal counsel, one being on the phone. Defendants themselves were not present and plaintiff had no opportunity to address them directly. Defendants' agent Melissa Malerman asked the approximate number of boxes, sheets, and signatures and Kozma answered. Malerman asked to see one of the petitions and Kozma produced one. Malerman asked if all the other petitions were in the same format, and Kozma answered “yes.” Malerman then stated defendants would refuse to take possession of the signatures, citing a caption on the petition sheets that stated it would be voted in the November 2016 election and MCL 168.471, which requires filing “at least 160 days before the election at which the proposed law is to be voted on.” Colloquy lasted about 20 minutes. To no avail, Kozma and counsel made several

arguments including that this petition was for the 2020 election (both the 2016 and 2018 elections having already passed), defendants had promised this court that CBFM would be able to file signatures using this very petition, and in any event by statute it would be the board of canvassers not defendants who would decide the sufficiency of a petition. In the end Malerman provided a note signed by defendant Williams (exhibit 2) that approximately 270,962 signatures in 47 boxes had been tendered and rejected.

25. MCL 168.471 et seq (“Initiative and Referendum”) has no definition of the word “filing” of initiative signatures. Plaintiff contends that its action of tendering the 47 boxes on November 5 constituted “filing” them within the meaning of the statute.

26. Since November 5 plaintiff has maintained the 47 boxes with Kozma in the Lansing area. Plaintiff has no office near Lansing, and is confronted with the unexpected logistical problem of protecting and preserving the boxes and signatures as this litigation proceeds. After inquiries and negotiations with several storage facilities, on November 8 plaintiff contracted with Kent Record Management Inc of Grand Rapids to store the 47 boxes in a secure location. Pending the litigation plaintiff will not retrieve or review the boxes or their contents without the express consent of defendants, and without being in the company of defendants or their agents. A copy of the storage contract will be provided to defendants on request.

### **Request for relief**

Wherefore plaintiff respectfully requests that this court (1) hold that plaintiff's tendering of signatures on November 5 constituted "filing" them within the meaning of MCL 168.471 et seq, (2) order defendants in company with plaintiff to take possession of the signatures at the secure location and commence the canvassing process, and (3) provide injunctive or any other similar relief within the court's discretion pursuant to MCR 7.216(7).

Respectfully submitted,

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