

State of Michigan  
Court of Claims

Committee to Ban Fracking in Michigan  
and LuAnne Kozma,

Plaintiffs,

v

Case # 18-000274-MM  
Hon. Stephen L. Borrello  
Filed: 12-27-18

Secretary Of State Ruth Johnson,  
Director Of Elections Sally  
Williams, in their official capacities, and  
Board Of State Canvassers,

Defendants.

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**Affidavit of LuAnne Kozma**

0. This affidavit line-by-line repeats the 25-paragraph affidavit I gave in # 16-000122-MM on July 8, 2016, with these exceptions:

- a. Since then I collected some 7500 more signatures than the 5000 I estimated in ¶ 22.

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COURT OF CLAIMS

- b. All footnote citations and exhibits are omitted, except for the footnote citation in ¶ 23 to exhibit 21, the petition sheet I signed as a voter on February 29, 2016.
- c. My anticipation in ¶¶ 21 and 24 that the campaign would collect enough signatures by the May 30 deadline for the November 6, 2018, ballot proved to be optimistic; we had collected the minimum number by then but not yet an adequate cushion.
- d. I have added ¶¶ 26-29.

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. 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 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, 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 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. We particularly highlighted the supreme court's 1971 decision in *Wolverine Golf Club v Secretary of State*. 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 with no specific disagreement from defendants or the gas-oil industry about the implications of *Wolverine Golf Club*.

19. On April 27 we testified again, this time to the Michigan house election committee. 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.

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>1</sup> Unless the court strikes down the 180-day statute (as it is worded today), my signature will become 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, as well as statewide Michigan polls commissioned by CBFM and posted on our website, 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

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1 Exhibit 21.

resources starting over again, as unfortunately CBFM did after 2013.

26. I have read the new complaint in this case filed last December 27, and personally attest to the facts in ¶¶ 28-34 regarding CBFM's change of our target election from 2018 to 2020, and the events of November 5, 2018, at the office of the Bureau of Elections. I would add that, prior to arrival at the election bureau that day, as a courtesy I phoned several times to say CBFM would be arriving at the office with signatures, the last phone call being at 4:36 pm. In this last call, we were outside the office and since we had many boxes I asked if there was a different entrance we should use. The receptionist, whose name I didn't take down, said she had been told to tell me to bring in just one box.

27. Being that we were just one day before the governor election when we expected the number of required signatures would change, I told the receptionist “No, we need to bring in all our boxes.” When we arrived Melissa Malerman, the director's agent, again said not to bring in all the boxes. We unloaded several inside the office, and opened one for Ms. Malerman to inspect. She noted the election date, and asked if all the sheets bore the same date. I said yes. She asked the number of boxes and approximate numbers of sheets and signatures. I checked my records and opened the last box to make sure my answers were accurate, and then answered her questions. I also stated CBFM's new target election was November 2020.

28. Ms. Malerman said the director would not accept all 270,962 signatures, and gave us the letter marked as exhibit 2 to our complaint in this case explaining the

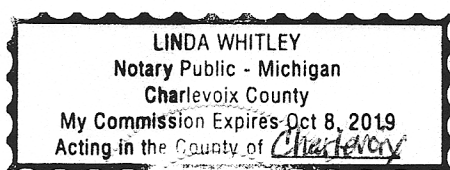
reasoning, a supposed defect regarding an election date on the face of each sheet. Our legal counsel reminded her that defendants had told the courts and us in 2016-17 we could file all our signatures including the "additional" ones collected since June 2016; when they said that they had the same sheets before them as illustrated by exhibit 21.

29. Since my affidavit in #16-000122-MM, I continued to manage the activities of the circulators, which over the course of our collecting, now numbered over 950. My previous affidavit also noted that collecting in winter conditions is difficult. Because of that I have found that circulators were always more productive during the warm months compared to the cold months of the year. Were the court to agree with defendants that, even disregarding the facial defect which they assert was on our sheets, no statutory initiative signatures could ever be filed during the 160 days before a <sup>gubernatorial</sup> ~~general~~ election, (LK) that would cut a large hole during ideal summer-fall collecting times for every statutory initiative campaign.

LuAnne Kozma  
LuAnne Kozma

Subscribed and sworn to before me this  
3 day of April 2019

Linda Whitley  
Notary Public Charlevoix County  
My commission expires: 10-8-19





## Exhibit 21

INITIATION OF LEGISLATION

An initiation of legislation to prohibit the use of horizontal hydraulic fracturing or “fracking” and acid completion treatments of horizontal gas and oil wells; to prohibit emission, production, storage, disposal, and processing of frack and acidizing wastes created by gas and oil well operations; to eliminate the state’s policy favoring ultimate recovery of maximum production of oil and gas; to protect water resources, land, air, climate, and public health; and to allow residents to enforce the provisions of this ballot language, by amending Public Act 451 of 1994 entitled “Natural Resources and Environmental Protection Act,” by amending section 61502 and by adding sections 61528, 61529 and 61530. This proposal is to be voted on in the November 8, 2016 General Election. THE FULL TEXT OF THE LEGISLATION TO BE INITIATED APPEARS ON THE REVERSE SIDE OF THIS PETITION.

We, the undersigned qualified and registered electors, residents in the county of Charlevoix, State of Michigan, respectively petition for initiation of legislation.

**WARNING – A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.**

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE		SIGNATURE		PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
CITY OF <input checked="" type="checkbox"/>	Hayes	1. <u>LuAnne Kozma</u>		<u>LuAnne Kozma</u>	<u>9330 Woods Road</u>	<u>49720</u>	<u>2</u>	<u>29</u>	<u>16</u>
TOWNSHIP OF <input type="checkbox"/>		2. <u>C. Hayes</u>		<u>Ellis Bos</u>	<u>9330 Woods Rd</u>	<u>49720</u>	<u>2</u>	<u>29</u>	<u>16</u>
CITY OF <input type="checkbox"/>		3. <u>Bay</u>		<u>Rachel Cross</u>	<u>02661 Camp Sherwood Rd</u>	<u>49712</u>	<u>3</u>	<u>4</u>	<u>16</u>
TOWNSHIP OF <input type="checkbox"/>		4. <u>Hayes</u>		<u>Evan Keller</u>	<u>8384 Pinetree Rd</u>	<u>49720</u>	<u>3</u>	<u>4</u>	<u>16</u>
CITY OF <input checked="" type="checkbox"/>	Bay	5. <u>Bay</u>		<u>Ethan Kietf</u>	<u>321 Freeman Rd</u>	<u>49712</u>	<u>3</u>	<u>13</u>	<u>16</u>
TOWNSHIP OF <input type="checkbox"/>		6. <u>Hayes</u>		<u>Richard Grosberg</u>	<u>09134 Burgess Rd</u>	<u>49720</u>	<u>3</u>	<u>26</u>	<u>16</u>
CITY OF <input type="checkbox"/>	South Arm	7. <u>Nickole Johnson</u>		<u>Nickole Johnson</u>	<u>6791 Behling Rd.</u>	<u>49727</u>	<u>3</u>	<u>26</u>	<u>16</u>
TOWNSHIP OF <input type="checkbox"/>		8. <u>Hayes</u>							
CITY OF <input type="checkbox"/>		9. <u>Hayes</u>							
TOWNSHIP OF <input type="checkbox"/>		10. <u>Hayes</u>							

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the secretary of state or a designated agent of the secretary of state has the same effect as if personally served on the circulator.

**WARNING – A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.**

Paid for with regulated funds by the Committee to Ban Fracking in Michigan, P.O. Box 490, Charlevoix, MI 49720

CIRCULATOR – Do not sign or date certificate until after circulating petition.

[Signature]  
(Signature of Circulator)

Ellis Bos  
(Printed Name of Circulator)

9330 Woods Rd  
(Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box

Hayes MI 49720  
(City or Township, State, Zip Code)

3, 31, 16  
(Date)

[Signature]  
(Signature of Circulator)

Ellis Bos  
(Printed Name of Circulator)

9330 Woods Rd  
(Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box

Hayes MI 49720  
(City or Township, State, Zip Code)

3, 31, 16  
(Date)