

**STATE OF MICHIGAN  
COURT OF CLAIMS**

Committee To Ban Fracking In  
Michigan and LuAnne Kozma,

Plaintiffs,

No. 18-000-274-MM  
Hon. Stephen L. Borrello  
Filed 12-27-18

v

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

Defendants.

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**Motion and Brief to Allow Filing of a Sur-Reply to  
Defendants' Reply on their  
March 7, 2019, Motion for Summary Disposition**

Plaintiffs responded to Defendants' motion on April 4, and Defendants replied on April 22, each being timely.

In reply at pages 2-3 Defendants essay a new constitutional defense – “Plaintiffs' petition cannot be placed on the ballot in 2020” – chiefly arguing from *Hamilton v Deland*.<sup>1</sup> *Hamilton* is a case not heretofore cited or discussed by the parties. Reliance on it violated a court rule: “Reply briefs must be confined to rebuttal of the arguments in the nonmoving party or parties’ response brief...”<sup>2</sup>

Also, in footnote 4 Defendants newly cite an online February 2018 video prepared by plaintiff Kozma. Defendants are attempting to undercut Plaintiffs' assertions in complaint ¶ 58 and Kozma affidavit ¶¶ 26-27, which under a different court rule<sup>3</sup> is improper.

Wherefore, Plaintiffs ask the Court to allow filing of the attached 5-page sur-reply solely to address the new issues.

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1 221 Mich 541 (1923).

2 MCR 2.116(G)(1)(a)(iii).

3 MCR 2.116(C)(10).

Respectfully submitted,

/s/ Ellis Boal

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