

**STATE OF MICHIGAN
SUPREME COURT**

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Petitioner,

v

Case # _____

BOARD OF STATE CANVASSERS,

Respondent.

_____ /

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MOTION FOR EXPEDITED PROCEEDINGS

Plaintiff Committee to Ban Fracking in Michigan (“the Committee”) moves this Court under MCR 7.311(E) for expedited proceedings of its complaint for review of the Board of State Canvassers’ (“the Canvassers”) declaration of insufficiency to its statutory initiative petition under Const 1963, art 2, § 9.

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Two days ago, on June 8, 2020, the Canvassers entered a declaration of insufficiency to the Committee's statutory initiative petition on the basis of the Bureau of Elections' staff report concluding that approximately 241,629 of the Committee's 271,021 filed petition signatures are dated more than 180 days before the date of filing and are thus barred from being counted under the restriction set forth by MCL 168.472a. In response, the Committee has filed the accompanying complaint for review of the Canvassers' determination under MCL 168.479, seeking to challenge the constitutionality of 472a as applied to statutory initiative petitions.

As provided by the statute under which the Committee brings its petition, review of this type is to receive "highest priority and shall be advanced on the supreme court docket so as to provide for the earliest possible disposition."¹

High priority is particularly necessary in this case, as it concerns an initiative whose signatures must be canvassed in time for potential legislative consideration and ballot placement for the election upcoming on November 3, 2020.

There would be no need for prioritized treatment, but for the unlawful actions of the Secretary of State, Director of Elections, and the Canvassers, in initially refusing to accept the filing of the Committee's signatures on November 5, 2018.

1 MCL 168.479(2).

Only on April 23, 2020, three weeks after the Court of Appeals² mandated those officials' acceptance of the Committee's November 2018 petition filing, did they decide not seek review of the Court of Appeals decision.

Though the Canvassers did not commission the refusal to accept the Committee's petition filing in 2018, they took no action to overrule the Secretary's refusal when requested and informed of their power to do so.³ The suit named the Canvassers as a defendant and the order of the Court of Appeals ran against them.

After April 23, serious negotiations began for an appointment to deliver the signatures. They involved the Director of Elections, Kent Records (the professional facility hired by the Committee to store the signatures pending the litigation), and volunteers to assist with physical retrieval and delivery of the signatures. A delivery appointment was finally settled for May 1 and the delivery was completed that day.

Though delivery was on May 1, the order of the Court of Appeals required that the signatures be treated as having been filed on November 5, 2018, observing that

[t]o hold otherwise would punish petition sponsors and the electorate for unlawful actions taken by election officials.

² *Comm to Ban Fracking in Mich v Secretary of State*, unpublished per curiam opinion of the Court of Appeals, issued April 2, 2020 (Docket No. 350161), 2020 Mich. App. LEXIS 2563.

³ *Id.*; Exhibit A: Letter to Canvassers, (Nov. 15, 2018), Appellants' Appendix 039 in COA Case # 350161 (attachments omitted).

The Bureau of Elections and Canvassers then delayed 38 more days to act, till June 8, despite the Committee's plea,⁴ that they needed to act quickly for the initiative to be in time for potential action by the Legislature and voters in 2020.

Under the terms of Michigan's election law statute, the Canvassers' ultimate determination as to the sufficiency or insufficiency of the Committee's petition must be made no later than Sunday, July 26, 2020, the 100th day preceding the November election.⁵ Because a considerable span of time will be needed to conduct the canvassing process ahead of that date, it will surely be necessary for the process to begin very soon in order to enable a final determination by the statute's July deadline.

WHEREFORE, Plaintiff respectfully requests that this Court expedite proceedings of its petition for review of the Canvassers' June 8, 2020, declaration so as to enable sufficient time for the canvass of Plaintiff's initiative petition signatures to be completed by the statutory deadline of July 26, 2020.

4 Exhibit B: Kozma Letter to Canvassers (May 1, 2020).

5 MCL 168.477(1) (requiring the Canvassers' declaration, as to initiative petitions, to be made no later than 100 days before the election at which the proposal is to be submitted).

Respectfully submitted,

/s/ Matthew Erard

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