

STATE OF MICHIGAN
COURT OF APPEALS

COMMITTEE TO BAN FRACKING IN
MICHIGAN,

Plaintiff-Appellant,

Court of Appeals # 354270
Court of Claims # 20-000125-MM

v

BOARD OF STATE CANVASSERS,

Defendant-Appellee.

The appeal involves a ruling that a provision of the constitution, a statute, rule or regulation, or other state governmental action is invalid.

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Plaintiff's Motion to Strike Defendant's Brief

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On July 20, 2020, the Court of Claims held itself without jurisdiction to hear this case.

Two days later on July 22 the Committee filed a Claim Of Appeal, Brief on Appeal, and associated documents here. On August 26, 35 days later, the date passed within which Defendant could file an opposing brief had it wished to. That day this case became a “calendar case” and the Court issued a notice.

Then on August 28 Defendant moved untimely for a 28-day extension, claiming need because of “the heavy volume of elections cases and the press of other business.”

The same day the Committee filed a detailed 6-page opposition to the extension, for being untimely, unspecific about the “other business,” and emblematic of the “unlawful,” “punishing,” and non-“first-in-first-out” delays (17 months + 39 days) which have characterized the Canvassers' attitude toward the Committee.

Without replying to the Committee's opposition, on September 2 Defendant filed a brief, thereby showing it didn't need 28 days at all.

Filing the brief in these circumstances without the Court's permission puts the Committee in an impossible and unfair position, on the one hand expecting the Court will reject the Canvasser brief, and on the other hand possibly having to reply to errors in the brief if the Court did allow late filing.

Because of the oncoming November election, and because like the committee in *Ferency v Secretary of State*¹ this Committee has done “everything the constitution requires of it,” and because of Defendant's delays this Court may bend tomorrow's September 4 deadline² for actions by election officials.

For the reasons stated in its July 28 opposition, the Committee asks the Court to reject Defendant's brief, and decide this case based on the strength of its own research and reasoning.

Respectfully submitted,

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1 *Ferency v Secretary of State*, 409 Mich 569, 598-602 (1980).
2 MCL 168.474a, 168.480, 168.648.