

STATE OF MICHIGAN
COURT OF APPEALS

COMMITTEE TO BAN FRACKING
IN MICHIGAN,

Plaintiff-Appellant,

v

Court of Appeals No. 354270
Court of Claims No. 20-000125-MM

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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MOTION TO PERMIT ORAL ARGUMENT

Plaintiff-Appellant Committee to Ban Fracking in Michigan (“the Committee”) hereby moves this Honorable Court to permit oral argument at the case call scheduled for December 8, 2020 based on the following:

1. In light of the then-onrushing November 2020 election, the Committee processed this appeal with extraordinary speed, filing its brief on the merits on the same day as the claim of appeal, July 22, 2020. This was just two days after the appealed-from July 20 dismissal by the Court of Claims, which held it lacked jurisdiction.

2. That same day, the Committee moved to expedite the appeal and sought an order requiring Defendant-Appellee Board of State Canvassers to respond “this week.”

3. Because the Committee then held hope of resolving the appeal on a sufficiently expedited basis to enable the placement of their proposed initiative on the 2020 November election ballot, it did not request oral argument at the time of filing its appellate brief and concurrent motion.

4. On July 24, 2020, this Court denied the Committee’s motion to expedite “in light of the totality of circumstances,” which included “failure of the motion to specify the date by which a decision is needed or to *detail how this Court may properly and reasonably be expected to provide relief in an appropriate timeframe before the November 3, 2020 general election* (italics added).”

5. Consequently, the appeal was not disposed of in advance of the 2020 November election and thus the timing considerations underlying the Committee's initial decision to waive oral argument are no longer applicable.

6. Accordingly, in order to aid the Court's reach of a fully considered and just resolution, the Committee requests the opportunity to address questions and finer points regarding (1) the Court of Claims' jurisdiction over the claims; (2) the constitutionality of MCL 168.472a as applied to statutory initiatives (should the Court find fit to reach the merits); and (3) appropriate relief at the present stage.

7. By email of October 30, 2020, the Court provided the parties a link to the case call schedule. The email named the Panel and said the case would be called on December 8. Unfortunately, the link in the email went to the Court's November schedule, not the December schedule. Committee counsel misunderstood the email and believed the Court had decided it had its own questions for the parties and was ordering oral argument in this case on December 8, 2020.

8. It was not until an email from the Court of November 18, which attached a list of the December 8 cases endorsed for oral argument and those not, that Committee Counsel realized the Committee was not endorsed for oral argument.

9. Yesterday the Canvassers' counsel were provided a draft of this motion and an offer to to amend it to provide for oral argument not just for the Committee but

for both sides, and asked if they objected.

10. Today they objected.

REQUEST FOR RELIEF

Wherefore the Committee respectfully requests that the Court permit counsel to participate in oral argument at the case call scheduled for December 8, 2020.

Respectfully submitted,

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Dated: November 24, 2020.