

STATE OF MICHIGAN
IN THE SUPREME COURT

CITIZENS PROTECTING MICHIGAN'S
CONSTITUTION, JOSEPH SPYKE, and JEANNE
DAUNT,

Plaintiffs-Appellants,

v.

SECRETARY OF STATE, and
MICHIGAN BOARD OF
STATE CANVASSERS,

Defendants/Cross-Defendants-Appellees,

and

VOTERS NOT POLITICIANS BALLOT
COMMITTEE, d/b/a VOTERS NOT
POLITICIANS, COUNT MI VOTE, a Michigan
Non-Profit Corporation, d/b/a VOTERS NOT
POLITICIANS, KATHRYN A. FAHEY,
WILLIAM R. BOBIER and DAVIA C. DOWNEY,

Intervening Defendants/Cross-Plaintiffs-
Appellees.

Supreme Court Case No. _____
Court of Appeals Case No. 343517

**PLAINTIFFS CITIZENS
PROTECTING MICHIGAN'S
CONSTITUTION, JOSEPH SPYKE
AND JEANNE DAUNT'S
MOTION FOR STAY**

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**PLAINTIFFS CITIZENS PROTECTING MICHIGAN'S
CONSTITUTION, JOSEPH SPYKE AND JEANNE DAUNT'S
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Plaintiffs-Appellants, Citizens Protecting Michigan's Constitution, Joseph Spyke and Daunt, for their Motion for Stay state:

1. Plaintiff-Appellant Citizens Protecting Michigan's Constitution ("CPMC") is a ballot question committee organized for the purpose, among others, of opposing a ballot proposal circulated by the Intervening Defendant Voters Not Politicians Ballot Committee ("VNP")—such proposal is referenced as the "VNP Proposal" and the associated petition is referenced as the "Petition."¹

2. The VNP Proposal seeks to "amend" the Constitution through an initiated petition, and it proposes to amend provisions specifying the manner in which the decennial apportionment used to elect members of the Michigan House, Michigan Senate, and U.S. Representatives is conducted. Such changes include the establishment of an "independent" redistricting commission and a revision of Michigan's constitutional and statutory criteria to be used in redistricting. The VNP Proposal would affect every branch of government and would effect fundamental changes to the usual operation of state government.

3. On April 25, 2018, CPMC filed, with the Court of Appeals, a complaint for mandamus against Defendants the Secretary of State ("Secretary") and the Board of State Canvassers ("Board").

4. In general, CPMC sought a writ of mandamus directed to the Secretary and the Board requiring them to reject the Petition and directing them to take no further action to place the VNP Proposal on the 2018 General Election ballot for two cardinal reasons:

¹ For purposes of this Motion, other named plaintiffs and intervening defendants are encompassed within the terms CPMC and VNP, respectively.

5. *First*, the VNP Proposal is too broad in scope and it works revisions of such significance to the fundamental operation of state government that it cannot be accomplished through an initiated amendment; instead, it constitutes a general revision which can only be accomplished by calling a constitutional convention.

6. *Second*, the Petition, as circulated, fails as required by law to republish—and thus to advise persons signing the Petition—each of the sections of the existing Constitution that would be abrogated if the VNP Proposal is approved. See Complaint, ¶ 10.

7. VNP moved to intervene on May 10, 2018, and by order issued May 11, 2018, the Court of Appeals granted the motion, directed an expedited proceeding, required all answers to the complaint and cross-complaint, briefs, motions, and amicus briefs to be filed by May 22, 2018, required responses to those pleadings/briefs to be filed by May 31, 2018 at 1:00 pm, and directed that the case would be submitted on the briefs without oral argument.

8. CPMC moved for additional time in which to respond and for oral argument on May 17, 2018; the Court of Appeals summarily denied the motion on May 18, 2018 without discussion.

9. On June 7, 2018, the Court of Appeals (Cavanagh, P.J., and Kelly and Fort Hood, JJ.) issued a 28-page published opinion denying the mandamus relief sought by CPMC, and, by separate order, directed the Secretary and the Board “to take all necessary measures to place the proposal on the November 2018 general election ballot.”

10. Concurrently with this Motion, CPMC has filed an Emergency Application for Leave to Appeal and a Motion for Immediate Consideration (of this Motion) and to Expedite Appeal.

11. CPMC seeks an immediate stay of the order of the Court of Appeals directing the Secretary and the Board undertake steps to place the VNP Proposal on the ballot.

12. In its Emergency Application, CPMC has raised significant constitutional issues. The VNP Proposal and CPMC's complaint pertain to core issues of how citizens may effect fundamental change to government. CPMC's Emergency Application plainly meets the requirements specified by court rule for granting leave to appeal. These issues include (in summary form): 1) the VNP Proposal would abrogate four sections of the existing constitution, and such sections were not republished in the Petition as required by law; 2) the Court of Appeals misapplied extant precedent established by this Court concerning the test for abrogation; 3) the Court of Appeals ignored established precedent that amendments are confined to a "mere correction of detail," and that amendments may not include fundamental or wholesale changes to the operation of state government (such changes may be sought only by a constitutional convention called pursuant to Const 1963, art 12, § 3); and 4) the VNP Proposal implicates and includes fundamental changes such as who will pick Michigan's legislature, what criteria are to be utilized in redistricting, when and how the constitution may be amended, and a limitation of this Court's review authority on core issues.

13. CPMC alleged that the issues raised in its Complaint for Mandamus were issues to be resolved by the courts. (Complaint, ¶ 21.) The other parties concurred. (See VNP Answer to Complaint, ¶ 21 ("[T]he Intervening Defendants agree that the Board of State Canvassers is not empowered to review substantive issues concerning the sufficiency of the language included in a petition. . . ."); VNP 5/10/18 Cross-Claim, ¶ 26 ("Intervening Defendants . . . agree that the issues raised in Plaintiffs' Complaint for Mandamus . . . are within the jurisdiction of the courts, and that the Board of State Canvassers does not have jurisdiction to consider those issues."); Secretary/Board's 5/22/18 Brief in Response to Complaint for Mandamus, p 1 ("CPMC contends that the petition is defective because it constitutes an improper revision of the Constitution . . . [and] also argues that the petition fails to set forth provisions of the Constitution that would be

altered or abrogated by the amendment. . . . These are legal questions the resolution of which lie outside the purview of the Secretary of State and the Board.”.)

14. Thus the claims asserted by CPMC are (and admittedly so) squarely within the province of the courts.

15. There is sufficient time for orderly decision-making. There is no need to need to engage the panoply of election-related decisions (by the Board and the Secretary) necessary for placement on the ballot prior to a determination of whether the VNP Proposal is eligible for the ballot in the first instance. Resolution of the claims asserted by CPMC should be resolved by this Court (one way or another) prior to further action by the Board and the Secretary.

16. Moreover, if this matter is not stayed pending this Court’s resolution of CPMC’s Emergency Application, the Board and the Secretary will proceed to place the VNP Proposal on the ballot creating an expectation among electors that it will proceed to a vote. Should the Court later determine that the VNP Proposal is ineligible for the ballot in the first instance, expectations created by having allowed the VNP Proposal to move forward will be disrupted. There will also be additional voter confusion caused by the non-use of the numerical designation assigned by the Board pursuant to MCL 168.474a, those designations being assigned in the order in which proposals are certified.

17. As set forth in CPMC’s Motion for Immediate Consideration and to Expedite Appeal, the Board is not required certify the VNP Petition until September 6, 2018. MCL 168.477(1).

18. Nonetheless, by order given immediate effect, the Court of Appeals directed the Secretary and the Board “to take all necessary measures to place the proposal on the November 2018 general election ballot.” (6/7/18 COA Order.)

19. Further action by the Board and the Secretary should await review of ballot eligibility issues that are now within the sole purview of this Court.

20. The Board has not yet set a time for a meeting at which to consider and act on the order of the Court of Appeals, but undersigned counsel believes that a meeting will be scheduled as early as June 14, 2018.

WHEREFORE, Plaintiffs-Appellants respectfully request that this Court stay the order of the Court of Appeals issued June 7, 2018 pending review and resolution of CPMC's application.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: June 11, 2018

By: /s/ Peter H. Ellsworth

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