

STATE OF MICHIGAN
MICHIGAN COURT OF APPEALS

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

Case No. 343517

v.

SECRETARY OF STATE, and
MICHIGAN BOARD OF
STATE CANVASSERS,
Defendants/Cross Defendants,

**PLAINTIFFS' MOTION FOR
ADDITIONAL TIME TO RESPOND
AND FOR ORAL ARGUMENT**

And

VOTERS NOT POLITICIANS BALLOT
COMMITTEE, d/b/a/ VOTERS NOT
POLITICIANS, COUNT MI VOTE, d/b/a
VOTERS NOT POLITICIANS, KATHRYN
A. FAHEY, WILLIAM R. BOBIER and
DAVIA C. DOWNEY
Intervening Defendants/Cross-Plaintiffs

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**PLAINTIFFS' MOTION FOR ADDITIONAL TIME
TO RESPOND AND FOR ORAL ARGUMENT**

Plaintiffs, Citizens Protecting Michigan's Constitution, Joseph Spyke, and Jeanne Daunt ("Plaintiffs"), through counsel, respectfully move for additional time to respond to VNP's May 22, 2018 brief and renew their request for oral argument. In support, Plaintiffs state as follows:

General Background

1. Plaintiffs filed this original action seeking a writ of mandamus directing the Defendant Secretary of State and Board of State Canvassers to reject a ballot proposal supported by Intervening Defendants including Voters Not Politicians (collectively, Intervening Defendants are referred to as "VNP").

2. Pursuant to MCL 168.477(1), Defendant Board of State Canvassers need not act on the petition at issue until September 6, 2018.

3. No party has requested expedited handling of this case.

VNP's Intervention

4. Plaintiffs stipulated to the intervention of VNP in this matter as a party defendant; on May 10, 2018, VNP filed a motion for intervention and attached a cross-claim seeking a writ ordering the opposite of the relief sought by Plaintiffs—i.e., a writ directing Defendants to certify the petition at issue and place the relevant proposal on the 2018 general election ballot.

5. Like Plaintiffs in their original filing, VNP repeatedly requested an opportunity to present oral argument to the panel in this action. (Motion for Intervention, ¶ 9, 19.)

6. VNP's answer also raises new issues not presented by the original complaint or brief filed by Plaintiffs, including an allegation by VNP that the republication requirements of MCL 168.482(3)—i.e., that petitions circulating proposed constitutional amendments republish sections of the existing Constitution that the proposal would alter or abrogate—are

unconstitutionally burdensome. VNP thus seeks to have this Court declare state law unconstitutional.

MCR 7.206 and the Court’s May 11, 2018 Order

7. Pursuant to MCR 7.206(D)(1), an original action is initiated by a party filing *both* a complaint and a supporting brief. On May 10, VNP filed a proposed cross-complaint but no supporting brief as required by the specified court rule.

8. In their motion for intervention, VNP stated they intend to file on May 22, 2018 a joint brief that will respond to Plaintiffs’ opening brief and also will support their cross claim. (Motion for Intervention, ¶ 18.). VNP further stated that “The Prospective Intervening Defendants understand and acknowledge that the opposing parties must be afforded the opportunity that the court rule allows for response to their Cross-Claim.” (*Id.*)

9. Under MCR 7.206(D)(2), Plaintiffs would ordinarily be entitled to 21 days to respond to VNP’s arguments in support of their cross-claim.

10. On May 11, 2018, this Court issued an Order requiring Plaintiffs to respond to VNP’s May 22 filing by May 31, 2018. Instead of the 21 days afforded for responses under MCR 7.206, the Court’s May 11, 2018 Order thus affords Plaintiffs only 9 days to respond, 3 of which fall on a holiday weekend.

VNP’s Request to file 75 page brief

11. On May 16, 2018, VNP filed a request to exceed page limitations and file a brief on May 22, 2018 of up to 75 pages.

12. In their May 16, 2018 motion, VNP states that they “intend to present arguments that the statutory requirement of MCL 168.482(3) ... is unconstitutional ...” and states further that

these challenges “present questions of first impression which require careful briefing and consideration.” (Motion to Exceed, p. 3.)

13. VNP further stated that they did not believe 50 pages afforded them adequate space “without eliminating essential discussion of the material facts and/or substantive content addressing the important legal issues presented.” (Motion to Exceed, p. 4.)

Plaintiff’s Request for Additional Time and for Oral Argument

14. As stated above, there is no urgency or impending deadline that requires this panel’s immediate action. Defendant Board need not certify petitions until September 6, 2018. MCL 168.477(1).

15. Both Plaintiffs and VNP acknowledge that this case involves complex matters requiring substantial and adequate briefing.

16. Both Plaintiffs and VNP have requested oral argument before this panel.

17. Plaintiffs believe the panel would benefit from an opportunity to hear the parties’ presentation of oral argument in this matter, including addressing questions the panel may have concerning the issues raised by the parties’ respective pleadings.

18. Plaintiffs should further be afforded adequate time to prepare and brief their response to VNP’s brief, regardless of length, and should not be deprived of the 21 days typically afforded for such response by MCR 7.206; there is no compelling need to abbreviate Plaintiffs’ response period.

WHEREFORE, Plaintiffs respectfully request that their motion be granted, that Plaintiffs be afforded 21 days for filing a response to VNP’s May 22 brief (as specified in MCR 7.206(D)(2)), with Plaintiffs’ response being due June 12, 2018, and that the Court hold oral argument following the submission of briefing in this matter.

Respectfully submitted,

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