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State of Michigan
Supreme Court

MAMIE GRAZIANO, GEORGE LUIS CORSETTI, JIM WEST, and STEVE BABSON,

Plaintiffs-Appellants

v

Docket # 164763
Court of Appeals # 358913
Court of Claims LC # 21-000108-MZ

JONATHAN BRATER, in his official capacity Director of Elections and Secretary of the Board of State Canvassers,

Defendant-Appellee

Brief of Amicus
Committee to Ban Fracking in Michigan
In Support Of Application For Leave To Appeal

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Dated: April 26, 2023

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Table of Contents

I. Jurisdiction....................1

II. Statement of Questions....................1

III. The Committee to Ban Fracking in Michigan distinguished from the Signers............2

IV. Statement of facts and proceedings....................3

V. Leave should be granted because the Signers have an absolute right to test the constitutionality of the Director's refusal to review their signatures, and count them if they are good and give them legal effect, but not if they are bad....................3

VI. Conclusion....................6

Table of Authorities

Cases

Bauserman v Unemployment Insurance Agency, 330 Mich App 545 (2019)................3
Brand v Hinchman, 68 Mich 590 (1888)..5
City of Pontiac v Carter, 32 Mich 164 (1875)...5
Friedman v Dozorc, 412 Mich 1 (1981)..5
Harvey v Harvey, 239 Mich 142 (1927)..5
League of Women Voters of Ohio v Brunner, 548 F3d 463 (6th Cir 2008)..................4
Marbury v Madison, 5 US (1 Cranch) 137 (1803)...4
US v Mosley, 238 US 383 (1915)..4

Constitution

Const 1963 art 1 § 17...2
Const 1963 art 2 § 9..2
Const 1963 art 3 § 2..2
Const 1963 art 6 § 28...2
Const 1963 art 6 § 4..2
Const 1963 art 6 § 5..2

Court Rules

MCR 7.303(B)(1)...1

Other Authorities

3 William Blackstone, Commentaries on the Laws of England 23...............................4

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Wesley Ward -- 2021...6

Statutes

MCL 168.472a..2, 4
MCL 168.479..1
MCL 168.479(2)...1
MCL 600.6419(1)..3
MCL 600.6419(1)(a)...3

Website

Michigan Voter Information, https://mvic.sos.state.mi.us/Voter/Index 4

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I. Jurisdiction[1]

This Court has jurisdiction under MCR 7.303(B)(1).

II. Statement of Questions

1. Whether the lower courts correctly interpreted MCL 168.479 as divesting the Court of Claims of subject matter jurisdiction over a challenge to a "determination made by the board of state canvassers regarding the sufficiency or insufficiency of an initiative petition."

   The Court of Appeals says: Yes.
   Plaintiffs-Appellants say: No.
   Defendants-Appellees say: Yes.
   Amicus Committee says: No

2. Whether the Court of Claims erred by reframing Count I of Plaintiffs-Appellants' complaint as a challenge that is subject to MCL 168.479(2).

   The Court of Appeals says: No.
   Plaintiffs-Appellants say: Yes.
   Defendants-Appellees say: No.
   Amicus Committee says: Yes.

3. If MCL 168.479 does divest the Court of Claims of subject matter jurisdiction over Count I of plaintiffs' complaint, whether the Court of Appeals erred by declining to review the Court of Claims' determination that it retained jurisdiction over Count II of the complaint and its resolution of plaintiffs' constitutional challenge to the application of MCL 168.479;

   The Court of Appeals says:No.
   Plaintiffs-Appellants say: Yes.
   Defendants Appellees say:No.
   Amicus Committee says: Yes.

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1 No counsel for a party authored this brief in whole or part and no party or counsel for such party made a monetary contribution to fund its preparation or submission.

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4. If MCL 168.479 does divest the Court of Claims of subject matter jurisdiction, whether the statute contravenes the separation of powers under Const 1963, art 3, § 2, the exclusive powers of this Court under Const 1963, art 6, §§ 4-5, or the due process protections afforded by Const 1963, art 1, § 17 and art 6, § 28.
   The Court of Appeals says: Did not Answer.
   Plaintiffs-Appellants say: Yes.
   Defendants-Appellees say: No.
   Amicus Committee says: Yes.

III. The Committee to Ban Fracking in Michigan distinguished from the Signers

The history of the Committee to Ban Fracking in Michigan (the Committee) was elaborated at length in its motion to appear as an Amicus.[2]

The Committee is a ballot question committee headquartered in Charlevoix and registered with Defendant-Appellee Brater.[3] It sponsored a statutory initiative petition and filed 271,000+ vetted signatures with Defendant-Appellee on November 5, 2018. The filing was more than 180 days after Plaintiffs-Appellants (the Signers) had signed. Their signatures, and many others, were held uncountable under MCL 168.472a (the 180-day statute) because of the timing. The Signers contend the 180-day statute violates the Michigan Constitution.[4] The Committee agrees.

Fecklessly for nearly seven years, the Committee failed to convince the lower courts to take up the question. However the Signers have a much more limited interest than the Committee. The Defendant-Appellee chosen by the Committee in the past, and the Defendant-Appellee chosen by the Signers today are different. And the relief sought

2 Filed 4-22-23.
3 Registration # 515957.
4 Const 1963 art 2 § 9.

by the Committee and the Signers is different.

The Committee and the Signers are in solidarity but not in privity.

Solidarity is not agency. And the Committee can hardly stand by, idle and indifferent to the Signers' battle.

IV. Statement of facts and proceedings

The Committee adopts the Statement of Material Proceedings and Facts of the Signers in their filings.

V. Leave should be granted because the Signers have an absolute right to test the constitutionality of the Director's refusal to review their signatures, and count them if they are good and give them legal effect, but not if they are bad.

Anyone has the right to test the constitutional basis of a state official's action which affects him or her.

This is so as to torts.[5] As to equitable constitutional claims, with limited exceptions the Court of Claims takes such cases,[6] and it is the only court allowed to.[7]

Boiled to its simplest terms, the Signers are just asking the Court to tell the Director to do for them what he does for everyone: Review their signatures, and give them legal effect if they are good but not if they are bad.

Similarly, every voter has a right to know if his/her ballot was either counted or properly rejected.[8] For example a Michigan voter has a right to track his/her absentee

5 *Cf Bauserman v Unemployment Insurance Agency*, 330 Mich App 545 (2019).
6 MCL 600.6419(1)(a).
7 MCL 600.6419(1).
8 *League of Women Voters of Ohio v Brunner*, 548 F3d 463, 479 (6th Cir, 2008); *US v Mosley*, 238 US 383 (1915).

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ballot to make sure it was received.[9]

The Director won't review the signatures because of 472a. But the Signers contend 472a is itself bad under our Constitution. If the Signers are right, their signatures should not be denied review. They have come here asking the Court to decide. This is what Courts do.

If the Signers' signatures do turn out to be bad – say because someone else signed their names or because they signed in the wrong county or because they didn't enter the correct date of signing – ok. But they have a right to know that and know why. If the decision turns out to be wrong they could contest it.

That is all they want. But the bottom line, the lower courts have said in effect, is they have a right and no remedy.

This is wrong in so many ways. An ancient maxim holds that whenever there is a right there is a remedy. "*Ubi jus, ibi remedium.*" The maxim has been handed down from the days of Blackstone[10] and *Marbury v Madison* which quotes him:

> "In all other cases," he says, "it is a general and indisputable rule, that *where there is a legal right, there is also a legal remedy* by suit or action at law whenever that right is invaded."[11]

Like every other state, Michigan follows the principle. See:

9 Michigan Voter Information, https://mvic.sos.state.mi.us/Voter/Index
10 3 William Blackstone, *Commentaries on the Laws of England* 23.
11 5 US (1 Cranch) 137, 163 (1803) (emphasis added).

- *City of Pontiac v Carter*:

> It is manifest that none of these cases is in point, and they must have been cited only as illustrations of the legal maxim that *where there is a right there is a remedy*; a maxim that certainly is not in dispute here.[12]

- *Brand v Hinchman*:

> The common law declares that *for every injury there is a remedy.*[13]

- *Harvey v Harvey*:

> 'In regard to the very ancient maxim that wherever there is a right there is a remedy, it is said in 1 Cooley on Torts (3d Ed.) p. 22: '* * * A right cannot be recognized until the principle is found which supports it. But *when a right is found, a remedy must follow of course*.'[14]

- *Friedman v Dozorc*:

> The common law declares that *for every injury there is a remedy.*[15]

12 32 Mich 164, 169 (1875) (emphasis added).
13 68 Mich 590, 597-98 (1888) (emphasis added).
14 239 Mich 142 (1927) (quoting a Virginia case, emphasis added).
15 412 Mich 1, 36 (1981) (quoting *Brand*, emphasis added)

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VI. Conclusion

Ubi jus, ibi remedium -- Hutchins Hall -- UM Law School

Respectfully submitted,

s/______________________________
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