

MICHIGAN SUPREME COURT



Office of Public Information

contact: Marcia McBrien | (517) 373-0129

FOR IMMEDIATE RELEASE

PETITION TO OVERTURN EMERGENCY MANAGER LAW AT ISSUE IN CASE MICHIGAN SUPREME COURT WILL HEAR JULY 25

Petition's opponents claim type size in heading violated statutory requirement, but Michigan Court of Appeals found "substantial compliance" with type size rules

LANSING, MI, July 23, 2012 – A petition to overturn Michigan's emergency manager law – and whether that petition will appear as a referendum on the November 2012 ballot – is at issue in a case that the Michigan Supreme Court will hear argued this week.

In *Stand Up for Democracy v Secretary of State*, the Michigan Court of Appeals ordered the Board of State Canvassers, which had deadlocked 2-2 on whether to certify the petition, to place the measure on the November 2012 ballot. If successful, the referendum would overturn 2011 PA 4, the Local Government and School District Fiscal Accountability Act (MCL 14.1501 *et seq.*), the state's emergency manager law.

Citizens for Fiscal Responsibility, a group that opposes the referendum, argues that the petition signature forms did not comply with a statutory requirement for the petition headings to be in 14-point type. Stand Up for Democracy, the group that seeks to have the measure placed on the ballot, contends that the petition does comply with the statute. Even if the heading type is smaller than 14 point, the group argues, the petition is in "substantial compliance" with statutory requirements. The Michigan Court of Appeals, while finding that the petition "contains a fatal formatting defect," nevertheless ordered the Board of State Canvassers to place the measure on the ballot, finding that the petition did substantially comply with the heading type size requirement. The appeals court added that it would reach a different conclusion if the panel were not bound by an earlier Court of Appeals decision, *Bloomfield Charter Township v Oakland County Clerk*, 253 Mich App 1 (2002), which states that "substantial compliance" with statutory referenda requirements is sufficient.

The Supreme Court will hear the oral argument in its courtroom on the sixth floor of the Michigan Hall of Justice on **July 25** starting at **10 a.m.** The Court's oral arguments are open to the public. The arguments will also be broadcast live on Michigan Government Television (mgvtv.org).

Please note: The summary that follows is a brief account of the case and may not reflect the way some or all of the Court's seven Justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. Briefs are available at <http://courts.michigan.gov/supremecourt/Clerk/07-12/145378/145387-Index.html>. For further details about the case, please contact the attorneys.

STAND UP FOR DEMOCRACY v SECRETARY OF STATE, et al. (case no. 145387)

Attorney for plaintiff Stand Up for Democracy: Herbert A. Sanders/(313) 962-0099

Attorney for defendants Secretary of State and Board of State Canvassers: Heather S. Meingast/(517) 373-6434

Attorney for intervening defendant Citizens for Fiscal Responsibility: John D. Pirich/(517) 377-0712

Attorney for amicus curiae Governor Richard Snyder and Attorney General Bill Schuette: John J. Bursch/(517) 373-4875

Attorney for amicus curiae American Civil Liberties Union Fund of Michigan: Mark P. Fancher/(313) 578-6822

Lower tribunal: Michigan Court of Appeals

At issue: The plaintiff seeks to have a referendum placed on the ballot to overturn the state's emergency financial manager law, 2011 PA 4. Did the plaintiff's petitions comply with a statutory requirement for the petition heading to be in 14-point type? If the heading petition is smaller than 14-point type, does the petition nevertheless "substantially comply" with the statute, and if so, must the measure then be certified for the ballot? Was *Bloomfield Charter Township v Oakland County Clerk*, 253 Mich App 1 (2002) – the Court of Appeals decision which states that "substantial compliance" with statutory referenda requirements is sufficient – wrongly decided?

Background: In 2011, the Legislature passed 2011 PA 4, the Local Government and School District Fiscal Accountability Act (MCL 14.1501 *et seq.*), which provides for management and control of local governments' finances in financial emergencies. PA 4 replaced 1990 PA 72, the Local Government Fiscal Responsibility Act (MCL 141.1201 *et seq.*). PA 4 granted broader powers to emergency managers than PA 72 did.

Stand Up for Democracy, a citizens' group and the plaintiff in this case, filed a petition with the Secretary of State seeking a referendum of the emergency financial manager law. The group's ballot proposal would repeal PA 4 and reinstate PA 72. At issue is whether Stand Up for Democracy's petition signature forms complied with a requirement for the petition heading to be in 14-point type.

MCL 168.544d provides in part that petitions circulated countywide "shall be on a form prescribed by the secretary of state" In memos issued in January and June 2011, the Secretary of State prescribed that any petition form include a heading with the words "REFERENDUM OF LEGISLATION PROPOSED BY INITIATIVE PETITION," and that the heading "shall be printed in capital letters in 14-point type on the left margin of the signature side of the sheet or at the top of the signature sheet. (MCL 168.482(2))." The Secretary of State memos also require the filing of a printer's affidavit to accompany referenda petitions submitted for Board of State Canvassers approval. The June memo included a sample printer's affidavit; the Secretary of State also urged proponents to submit a proof copy of their petition to the Board of State Canvassers for approval as to form before circulating the petition.

On February 29, 2012, Stand Up for Democracy filed its petition with the Secretary of State. The group had not previously submitted the petition to the Board of State Canvassers for

approval as to form. Stand Up for Democracy also did not include a printer's affidavit with the February 29 filing; the group later submitted a letter from Bruce Hack of Inland Press, stating that "to the best of our knowledge, we did not make any changes to the document and printed it as provided." The Bureau of Elections ultimately concluded that plaintiff had submitted over 203,000 valid signatures and reported this result to the Board of State Canvassers. The bureau rejected the printer's letter; on March 14, Stand Up for Democracy submitted a printer's affidavit, which included a statement that the petition heading was in 14-point type.

On April 9, 2012, Citizens for Fiscal Responsibility, the intervening defendant in this case, challenged the certification of the petition before the Board of State Canvassers, contending, among other matters, that the type size of the petition heading was too small. Citizens submitted affidavits from commercial printers attesting that the type size was too small. Stand Up for Democracy countered with its own printer's affidavit that the heading was in 14-point type; the group also argued that the petition form substantially complied with the statutory requirements and must be certified for the November 2012 ballot.

The Board of State Canvassers heard Citizens' challenge on April 26, 2012. The hearing included statements from Bruce Hack, whose company printed the petitions, and printer Michael Migrin; both opined that the petition's heading met the 14-point size requirement. Hack indicated that Calibri was the font used for the petition, and that he used a program called PDF Suite, rather than a ruler, to determine whether the text was in 14-point type. Migrin used a printer's "cell" and a magnifying glass to measure the type size: "So I would invite anybody to take this cell and have a ten-power magnifying glass and to lay this cell onto this typeface here and compare if it is 14-point or not." Ultimately, the board split 2-2 over the type size issue; because of the tie vote, the petition was not certified.

On May 3, Stand Up for Democracy filed a complaint for mandamus in the Court of Appeals, asking the appeals court to order the Board of State Canvassers to certify the petition for the November ballot. The Board of State Canvassers had a clear legal duty to certify the petition because the petition was in 14-point type as required by MCL 168.482(1), the plaintiff argued. In the alternative, the group maintained that it had substantially complied with the type-size requirement, and that substantial compliance is legally sufficient for the petition to be certified for the ballot. There was no evidence that the type-size in the heading was confusing or misleading to petition signers, the group stated.

In a unanimous published opinion, the Court of Appeals held that the petition substantially complied with the statutory requirements, although the panel concluded that the petition headings were not in the proper type size. "Type" and "font" are two different things, the Court of Appeals explained:

It is clear from the record evidence that plaintiff's petition heading is printed in Calibri, the current default family in Microsoft software. It is further undisputed that the font was categorized by the Microsoft software as "14-point." However, as conceded by the printers and by plaintiff in this case, the actual size of text varies depending on the font family chosen. In other words, "14-point" Calibri font measures in a different *type size* than "14-point" Arial font. Therefore, text in a so-called 14-point *font* may not necessarily meet the 14-point

type standard of 14/72 inches. Because a heading of 14-point type is plainly and unambiguously prescribed by the Secretary and MCL 168.482(2), text that does not measure 14 point, or 14/72 inches, is insufficient under the statute. Here, the Calibri font utilized in plaintiff's petition heading is smaller than the prescribed 14-point type measurement of 14/72 inches. In fact, the heading on plaintiff's petition only measures 12 point on an E-scale ruler. Thus, plaintiff's petition contains a fatal formatting defect, and the petitions are invalid under the Secretary's prescribed format and § 482.

But despite the defect, the Court of Appeals ordered the petition to be placed on the November 2012 ballot. The panel said it was bound by an earlier Court of Appeals opinion, *Bloomfield Charter Township v Oakland County Clerk*, 253 Mich App 1 (2002), which held that substantial compliance with the statutory referenda requirements is sufficient. In *Bloomfield*, the annexation petition at issue did not comply with a statutory requirement to have petition warnings in 12-point type. Although the *Bloomfield* court acknowledged that the "annexation petitions indisputably contained several variations from the statutorily prescribed language," the court upheld certification of the petition. The *Bloomfield* court said that, "As a general principle, all doubts as to technical deficiencies or failure to comply with the exact letter of procedural requirements are resolved in favor of permitting the people to vote and express their will on any proposal subject to election." *Bloomfield* also calls for courts to determine whether language on the petition "appears in sufficiently clear terms so that those signing the petition can be assumed to have understood to what it was they were appending their signatures."

The Court of Appeals in *Stand Up for Democracy* said that *Bloomfield* was binding precedent which the *Stand Up* panel was bound to follow. But *Bloomfield* was wrongly decided, the panel said:

The *Bloomfield* Court's conclusion that initiating petitions need not "exactly match the Michigan Election Law requirements for form and content" ignored the Legislature's use of the term "shall," a clear expression of its intent that the form of an initiating petition be in a specified type, and constituted an improper failure to recognize and defer to a legislative mandate In the instant case, the expression of legislative intent is even clearer. As we earlier mentioned, the Legislature amended § 482(2) in 1965 by striking the language permitting the petition heading to be in "type of the approximate size set forth" and replaced it with the mandatory language, "shall be . . . in 14-point boldfaced type." The inescapable conclusion to be derived from this amendment is that the Legislature no longer wished to permit heading type of an indefinite size, but instead intended to require the heading to be a uniform, standardized dimension – that of 14-point type, or 14/72 inches Thus, but for MCR 7.215(J)(1), which requires us to follow the holding in *Bloomfield*, we would conclude that the petition heading is fatally defective, that plaintiff has no clear legal right to certification of the referendum for placement on the November 2012 ballot, and that the Board is mandated to reject the petitions as invalid.

The panel called for the convening of a special conflict panel of the Court of Appeals. Under MCR 7.215(J), where a Court of Appeals panel indicates that it disagrees with, but is bound by, a prior published Court of Appeals ruling, "the chief judge must poll the judges of the

Court of Appeals” to determine whether a special seven-judge panel should be convened to rehear the case and potentially revisit the earlier ruling. In an order issued June 14, 2012, the Court of Appeals stated that a special panel would not be convened.

Citizens for Fiscal Responsibility seeks leave to appeal to the Supreme Court, asking the Court to reverse the judgment of the Court of Appeals and to overrule the *Bloomfield Twp* decision. In an order dated July 11, 2012, the Supreme Court stated that it would hear oral argument on July 25 “on whether to grant the application or take other action.” The Court directed the parties to address “(1) whether plaintiff actually complied with the 14-point type requirement in MCL 168.482(2), specifically given the terms ‘point’ and ‘type;’ and (2) if not, whether substantial compliance with the 14-point type requirement in § 482(2) is sufficient to give plaintiff a clear legal right to certification of the petition.”

-- MSC --