

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES STUDENT
ASSOCIATION FOUNDATION, as an
organization and representative of its
members, AMERICAN CIVIL LIBERTIES
UNION FUND OF MICHIGAN, as an
organization and representative of its
members, AMERICAN CIVIL LIBERTIES
UNION OF MICHIGAN, as an organization
and representative of its members,

FILE NO. 2:08 CV 14019

Hon. Stephen J. Murphy, III

Plaintiff,

v

DEFENDANT McMULLAN'S ANSWER
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

TERRI LYNN LAND, Michigan Secretary of
State and CHRISTOPHER M. THOMAS,
Michigan Director of Elections, FRANCES
McMULLAN, City Clerk of the City of
Ypsilanti, Michigan, in their official capacities,

Defendant.

BARR, ANHUT & ASSOCIATES, P.C.

MATTHEW J. LUND P-48632
MARY K. DEON P-63019
DEBORAH KOVSKY-APAP P-68258
BRADLEY E. HEARD
MEREDITH BELL-PLATTS
NEIL BRADLEY
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KARY L. MOSS P-43759
Attorneys for Plaintiff

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Plaintiffs' request that the court issue a Preliminary Injunction, request expedited consideration, and allege in support that some possible qualified voters will be disenfranchised in the November, 2008 election because defendants are violating Michigan and federal law.

The claimed violations are:

1. Purging voters from the electronic "Michigan Qualified Voter File" (MQVF) when

the Michigan Secretary of State receives information that the voter has a new foreign driver's license.

2. Removing voters from the electronic "Michigan Qualified Voter File" when voter identification cards are returned in the mail.

Defendant Ypsilanti City Clerk McMullan denies the need for an injunction because:

1. Defendant Ypsilanti City Clerk does not purge names from the MQVF when the voter obtains a foreign driver's license. If the name is purged it is done by the Michigan Secretary of State.

2. Defendant McMullan does remove names from the MQVF when directed to do so by the Michigan Secretary of State, but keeps a separate paper file for reference and if needed, future investigation.

3. Defendant McMullan has not removed voters from the MQVF when cards are returned in the mail.

4. Defendant McMullan does not intend to remove voters from the MQVF list when cards are returned in the mail until after the November, 2008, election.

5. The Ypsilanti City Clerk has safeguards in place to insure that no voter is disenfranchised. The safeguards include paper records with audit trail and the use of provisional ballots.

6. The Plaintiffs have made no showing of any voter ever being disenfranchised in the City of Ypsilanti.

7. The Plaintiffs are guilty of laches and had a number of years to file their

complaint and waited until 8 weeks before the November, 2008 election. If there is any emergency it has been caused by Plaintiffs' late filing.

Thus, there is no showing of any irreparable harm. There is no showing of any emergency. There is no showing (Other than speculation) of any voter being disenfranchised. There is no showing of any hardship as provisional ballots are in use. It is thus unlikely that Plaintiffs will prevail on the merits.


Therefore Defendant Ypsilanti City Clerk Frances McMullan requests that the Plaintiffs motion for Preliminary Injunction be denied.



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Dated: September 25, 2008

I certify that on September 26, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification on such filing to the Plaintiff attorneys as listed above.



JOHN M. BARR P-10475
Ypsilanti City Attorneys for McMullan

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FILE NO. 2:08 CV 14019

Hon. Stephen J. Murphy, III

Plaintiff,

v

DEFENDANT McMULLAN'S BRIEF IN
OPPOSITION TO PLAINTIFF'S BRIEF
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

TERRI LYNN LAND, Michigan Secretary of
State and CHRISTOPHER M. THOMAS,
Michigan Director of Elections, FRANCES
McMULLAN, City Clerk of the City of
Ypsilanti, Michigan, in their official capacities,

Defendant.

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<p>MATTHEW J. LUND P-48632 MARY K. DEON P-63019 DEBORAH KOVSKY-APAP P-68258 BRADLEY E. HEARD MEREDITH BELL-PLATTS NEIL BRADLEY MICHAEL J. STEINBERG P-43085 KARY L. MOSS P-43759 Attorneys for Plaintiff</p>	<p>JOHN M. BARR P-10475 KARL A. BARR P-57467 Ypsilanti City Attorneys for McMullan 105 Pearl Street Ypsilanti MI 48197 (734) 481-1234; fax 483-3871 email: jmbarr@barrlawfirm.com</p>
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STATEMENT OF ISSUES

Plaintiff public interest groups bring this suit against the Michigan Secretary of State, Michigan Director of Elections and the Ypsilanti City Clerk for alleged state and federal election law violations. Plaintiffs claim that the alleged violations will disenfranchise qualified voters in the coming November, 2008 elections.

Plaintiff's claims are that in violation of state and federal law:

1) Names are removed from the Michigan Qualified Voter File (MQVF) when the voter obtains a driver's license in a foreign state; and

2) Names are removed from the MQVF when a voter identification card is returned in the mail.

Defendant Ypsilanti City Clerk McMullan denies any violation of law or qualified voter disenfranchisement.

Plaintiffs ask for an immediate Preliminary Injunction because the election is only seven weeks away.

Defendant McMullan denies the need for a Preliminary Injunction because there has been no showing that any voter would be disenfranchised, Plaintiffs have the facts wrong as to the City of Ypsilanti and, in the City of Ypsilanti, all qualified voters will have the opportunity to vote. Plaintiff ignores the fact of the use of Provisional Ballots which insure all qualified voters can vote. Defendant also pleads laches – the plaintiffs sat on their rights for several years.

ARGUMENT

Plaintiffs argue that qualified voters will be disqualified because of the removal of voter's names from the Michigan Qualified Voter File by the Michigan Secretary of State and Ypsilanti City Clerk.

It is true that the Ypsilanti City Clerk removes names from the MQVF when directed by the Michigan Secretary of State.

Assuming for argument that the Michigan Secretary of State has removed names from the MQVF because of a foreign driver's license, and the voter really intends to reside in Ypsilanti, there is no harm to the Ypsilanti voter because the Ypsilanti City Clerk still has paper

records of all active registered voters before the removal, and if the qualified voter shows up at the polls the Ypsilanti City Clerk can and will check the records to determine if the voter is qualified.

Plaintiffs also claim that qualified voters are removed from the MQVF when an identification card is returned in the mail to the clerk.

Defendant McMullan disputes this allegation because she has not removed names from the list because of cards returned in the mail, and does not intend to remove names from the list for the reason of card returns prior to the November 2008 election. All these names are still on the MQVF for the city of Ypsilanti.

And in the worst case scenario the Ypsilanti City Clerk uses a provisional ballot as authorized by law (MCL 168.813) to insure the rights of the voter are not compromised. The use of a provisional ballot insures that all proper votes can be counted.

Plaintiffs have not shown even one case of a disenfranchised voter by the process they complain of. Even assuming that some mistakes could happen, the use of the provisional ballot is sufficient safeguard to protect the rights of the voters.

Since there is no harm shown, Plaintiffs have no proper standing to bring this suit.

Plaintiffs waited until 8 weeks before an election to complain of a process that has been going on for years and now claim an emergency because of the short time. Any "emergency" was of Plaintiffs making and the court should not grant relief.

Wherefore, Defendant McMullan, Ypsilanti City Clerk, by John M. Barr, Ypsilanti City Attorney requests that the request for injunction be denied.




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Dated: September 25, 2008

I certify that on September 26, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification on such filing to the Plaintiff attorneys as listed above.



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Ypsilanti City Attorneys for McMullan

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responsibilities of the city of Ypsilanti in regard to the Michigan Qualified Voter File. I report to the Ypsilanti City Clerk Frances McMullan.

2. I am a graduate of Eastern Michigan University and hold a BA in business.
3. I am familiar with Michigan election law.
4. My experience in Michigan elections began in September of 2004. I worked on elections for Pittsfield Township, Michigan. In 2007 I was hired by the City of Ypsilanti to work in the elections division of the city clerk's office.
5. Ypsilanti is a small Michigan Home Rule City of approximately 22,000 residents. There are approximately 13,000 active registered voters in the City of Ypsilanti.
6. Although the City of Ypsilanti is financially solvent it is struggling with finances and has been cutting its budget in the past several years. Part of the budget cuts have included closing or drastically curtailing city facilities such as the Recreation Department, Freight House and Swimming Pool. There has been almost a 100 % turnover in city department head positions, including the City Clerk, in the past 4 years.
7. The staff of the Ypsilanti City Clerk has been reduced from 4 full time positions in 2004 to two full time positions, and a full time equivalent just for the August and November election seasons in 2008.
8. In 2007 the Washtenaw County Clerk requested that the Ypsilanti City Clerk ensure that all registered voters were made aware of their voting precinct and polling locations. In response a mailing was sent to all registered Ypsilanti City voters with a new voter identification card.

9. Some cards were returned in the mail to the Ypsilanti City Clerk. These cards have been placed in a separate file and will be reviewed after the next general election in 2008. No action will be taken on these cards before that time because of lack of personnel and funds.
10. The City of Ypsilanti maintains, in addition to the MQVF, a separate paper file on each registered voter. If a voter's name is removed from the MQVF the removal is noted on the paper file. The paper file is available if there is a question of voter eligibility at the polls.
11. The City of Ypsilanti employs provisional ballots under the authority of MCL 168.813 in every case of any voter challenge or dispute of qualifications that cannot be solved at the polls. The challenged or disputed person is allowed to cast a provisional ballot and the requirements of the provisional ballot law are followed to insure that a qualified voter is not disenfranchised.
12. I worked on elections in Pittsfield Township including the November, 2004 general election up to and including the election in May, 2007, and then moved to the City of Ypsilanti. I have worked on all elections in the City of Ypsilanti since May of 2007. I have worked 12 elections not counting the November 2008 election. In all those elections I am not aware of any person in either Pittsfield Township or the City of Ypsilanti that has not been able to cast a ballot, either regular or provisional, because of their name being removed from the MQVF by either the Michigan Secretary of State or

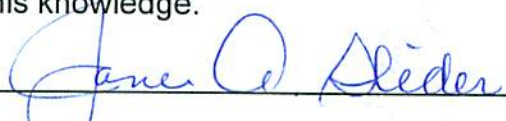
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the Ypsilanti City Clerk.

This is the end of my affidavit.


Edward Golembiewski

Subscribed and sworn to before me a Notary Public on this 26th day of September, 2008, by the above named EDWARD GOLEMBIEWSKI who has read the foregoing and says it is true to the best of his knowledge.


_____, Notary Public
Washtenaw County, Michigan
My commission expires: _____

JANE A. SLIDER
Notary Public, State of Michigan, County of Washtenaw
My Commission Expires October 12, 2008
Acting in the County of Washtenaw



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