

Parties, Jurisdiction, and Venue

1. Fran Heibel, Mike Heibel, George Bosas, Donna Bosas, Janet VanArtsen, Tony Wick, Carrie Luben, Theresa Vinson, and Ellie Skora (collectively “the Plaintiffs”) are each registered voters residing within New Buffalo Township, in Berrien County, Michigan.

2. Roland Oselka (“the Township Clerk”) is the Clerk of New Buffalo Township in Berrien County, Michigan, and is named herein in his official capacity.

3. Pursuant to MCR 3.305(A)(2), mandamus actions must be brought in Circuit Court.

4. Venue is proper in Berrien County inasmuch as all parties involved in this action resided in Berrien County, and all actions giving rise to this matter occurred in Berrien County, Michigan.

General Allegations

5. On November 1, 2007, the New Buffalo Township Planning Commission was presented with the issue of whether to change the zoning of two large rural parcels of property from agricultural to high density residential use. The Commission voted 3-2 against changing the zoning.

6. On November 13, 2007, the Berrien County Planning Commission considered the same issue and voted 9-0 against any change in zoning.

7. On November 15, 2007, the New Buffalo Township Board took up the same issue, and voted 3-2 to approve a change to zoning for high density residential use. The zoning change was published thereafter.

8. On November 27, 2007, pursuant to MCL 125.3402(1), the Plaintiffs filed a timely notice of intent to circulate a petition to bring the change in zoning before the electors of the New Buffalo Township zoning jurisdiction.

9. The Plaintiffs circulated a petition for referendum within New Buffalo Township and on December 27, 2008, filed 190 signatures with the New Buffalo Township Clerk. (Exhibit 1)

10. The Plaintiffs needed to collect signatures representing “not less than 15% of the total vote cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected.” MCL 125.3402(2)

11. The New Buffalo Township zoning jurisdiction excludes voters living in the villages of Michiana Shores and Grand Beach, as those villages have their own zoning mechanism.

12. According to the Township Clerk, voter records maintained by the Township of New Buffalo indicate that 793 votes were cast for all candidates for governor at the preceding general election at which a governor was elected. (Exhibit 2)

13. Because 15% of 793 equals 118.9, by the township’s records the Plaintiffs required no fewer than 119 valid signatures.

14. On February 13, 2008, the Township Clerk advised Plaintiffs that they had collected an insufficient number of signatures and that the matter would not be set for referendum.

15. By the Township Clerk’s analysis, after disregarding signatures that he considered suspect or invalid for various reasons, there were only 117 valid signatures on the petition—two too few to meet the threshold of 119 votes needed for referendum.

16. The Township Clerk and the Township counsel met on March 19 with Plaintiffs’ Attorney to review the petition and to describe the analysis used to determine whether signatures on the petition should be counted.

17. The Township Clerk advised that he had disregarded 73 signatures on the petition for various reasons including: his concern about what appeared to him to be redating of some of the circulators’ signatures on the lower right hand corner of some petition pages; his concern that

some signatures did not belong to voters registered in the New Buffalo zoning jurisdiction; his observation that one individual had signed the same petition twice; and, finally, his observation that the dates on signatures were out of order on one page.

18. On information and belief, 54 of those signatures were incorrectly disqualified solely due to the Township Clerk's concern about the apparent redating of some circulators' affidavits, located in the lower right hand corner of each page.

19. On information and belief, the Township Clerk's stated concern about the apparent redating of petition circulators' signatures, and subsequent disqualification of signatures dated after the apparent original date on the petition, likely stemmed from the warning against undated or petition pages dated prior to obtaining signatures, as set forth at MCL 168.544c(4).

20. The Township Clerk's conclusion that the circulator's signature was in fact dated prior to obtaining signatures, and that those signatures should therefore be disregarded, exceeds the Clerk's ministerial mandate under the law.

21. Likewise, the Township Clerk's conclusion that two additional signatures that are listed out of order by date should be disregarded exceeds his ministerial mandate under the law. (See Exhibit 1, at the page designated by the letter "Q" on the lower left corner.)

22. The Clerk has no discretion under the law to evaluate the validity of petition signatures using anything other than the signers' address and voter registration status. His duties are entirely ministerial and are confined to whether the petitions, on their face, contain the requisite number of signatures with the appropriate identifying address information. *Karwick v. Grajewski*, 253 Mich. 110, 234 N.W. 168 (1931); *People v. Kelly*, 294 Mich. 503, 293 N.W. 865 (1940).

23. The Township Clerk may not conduct any independent investigation to determine the genuineness of signatures appearing on a petition for referendum. *People v. Kelly*, 294 Mich. 503, 293 N.W. 865 (1940).

24. There is nothing on the face of the circulator's redated signatures and petition to suggest that any apparent redating is fraudulent or should invalidate the signatures or petition.

Count I: Mandamus – Plaintiffs Have Gathered a Sufficient Number of Signatures After Improperly Disqualified Signatures are Credited.

25. Paragraphs 1 – 24 are incorporated by reference.

26. Plaintiffs have a clear legal right to the canvassing of their petition by the Township Clerk.

27. The Township Clerk had a clear legal duty to canvass Plaintiffs' petition and to act upon it.

28. The act of canvassing the petitions is ministerial in nature.

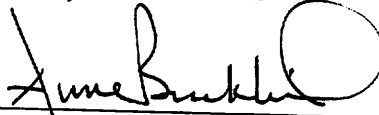
29. Plaintiffs have no other adequate legal or equitable remedy to obtain public referendum of the underlying matter.

30. After the 56 incorrectly disregarded signatures as set forth above in paragraphs 18 and 21 are properly credited, Plaintiffs have collected a sufficient number of signatures pursuant to MCL 125.3402(2).

WHEREFORE, Plaintiffs respectfully request that this court find that they have gathered a sufficient number of signatures under MCL 125.3402 and remand their petition to the

Township Clerk with the direction that the matter be included on the ballot at the next appropriate election in New Buffalo Township.

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