

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ERIC ESSHAKI, as candidate for United States Congress and in his individual capacity,

Plaintiff,  
and

MATT SAVICH and DEANA BEARD,

Intervenors-Plaintiffs,  
v

GRETCHEN WHITMER, Governor of Michigan, JOCELYN BENSON, Secretary of state of Michigan, and JONATHAN BRATER, Director of the Michigan Bureau of Elections, in their official capacities,

Defendants.

No. 2:20-cv-10831  
HON. TERRENCE G. BERG  
MAG. ELIZABETH A. STAFFORD

**DEFENDANTS'  
SUPPLEMENTAL BRIEF IN  
SUPPORT OF EMERGENCY  
MOTION UNDER RULE 60(B)  
FOR LIMITED RELIEF FROM  
THE COURT'S ORDER  
GRANTING A PRELIMINARY  
INJUNCTION, OR  
ALTERNATIVELY FOR A STAY  
PENDING EMERGENCY  
APPEAL**

**RESPONSE REQUESTED AS  
SOON AS POSSIBLE BUT NO  
LATER THAN FRIDAY APRIL  
24, 2020 GIVEN THE NEED TO  
EXPEDITE DEFENDANTS'  
APPEAL**

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Gregory J. Rohl (P39185)  
Attorney for Plaintiff  
41850 W. Eleven Mile Road, Suite 110  
Novi, Michigan 48375  
248.380.9404

Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendants  
PO Box 30736  
Lansing, Michigan 48909  
517.335.7659

Michael S. Cafferty (P36613)  
Attorney for Intervenor-Plaintiff Savich  
333 West Fort Street, Suite 1400  
Detroit, Michigan 48226  
313.964.3070

Deana Beard, *In Pro Per*  
Intervenor-Plaintiff  
2885 South Trenton Drive  
Trenton, Michigan 48183  
734.502.7411

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**DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF  
EMERGENCY MOTION UNDER RULE 60(B) FOR LIMITED RELIEF  
FROM THE COURT'S ORDER GRANTING A PRELIMINARY  
INJUNCTION, OR ALTERNATIVELY FOR A STAY PENDING  
EMERGENCY APPEAL**

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## **CONCISE STATEMENT OF ISSUES PRESENTED**

1. Whether the Court's order granting preliminary injunctive relief should be amended to exclude the requirement that the signature thresholds be reduced by fifty percent.
2. Whether the portion of the Court's preliminary injunction ordering that signature requirements be reduced by fifty percent should be stayed pending the State Defendants' emergency appeal.

## ARGUMENT

The State Defendants filed a narrow motion for relief from judgment or alternatively for a stay pending appeal on April 22, 2020. (R. 26, Defs Mtn, Page ID # 365.) On April 23, 2020, the Court held a hearing regarding the motion in which the parties, the intervening parties, and the amici participated. The Court requested that the State Defendants provide additional information and permitted Defendants to address issues raised during the hearing.

### A. Review of Plaintiff's petition signatures

The Court asked Defendants to review Plaintiff's nominating petition sheets, filed April 21, 2020, to determine how many signatures Plaintiff had collected by April 15, 2020. A review shows that 1,014 people had *signed* petition sheets by April 15. (Ex 1, Malerman Dec., ¶ 4, Table.) Of that number, 939 signatures were on petition sheets in which circulation had been completed, i.e., both the signers *and* the circulators had signed by April 15. (*Id.*, ¶ 4, Table.) Thus, Plaintiff Esshaki had collected just over the minimum number of signatures by April 15, 2020, the date of the injunction hearing.

### B. Intervening Plaintiffs

Both Intervening Plaintiffs are judicial candidates. Judicial candidates file “non-partisan” nominating petitions. (Ex 1, Malerman Dec, ¶ 20.) Like Esshaki, the Intervening Plaintiffs were not restricted to collecting signatures within a 180-day timeframe. (*Id.*, ¶¶ 22-23.) Indeed, the earliest date a candidate may begin

circulating nominating petitions is the day the current term of office commenced. (*Id.*, ¶ 23). With respect to the offices sought by Beard and Savich, the earliest date for starting signature collection was January 1, 2015. (*Id.*)

Intervening Plaintiff Savich was required to file at least 400 valid signatures by the April 21, 2020, filing deadline. (R. 11, Savich Mtn, Page ID #170, ¶ 1-2.) At the time he filed his motion to intervene, he had collected “roughly 200 petition signatures.” (*Id.*, ¶ 2). He asserted that “[d]ue to the COVID-19 shutdown, [he] has been stymied in gathering the requisite signatures by the present permitted methods[.]” (*Id.*, Page ID #171, ¶ 9.) For relief, he requested that the Court order Defendants to extend the deadline or place his name on the ballot “with fewer than the required number of signatures,” or extend the deadline and permit electronic signature gathering. (R. 11-1, Savich Compl., Page ID # 191.) Savich confirmed in his declaration he did not attempt to collect signatures by mail. (R. 31, Savich Dec, Pg ID # 452.) Savich filed his nominating petitions on April 21, he filed approximately 300 signatures, (*id.*, Page ID # 451), or 25% less than the required minimum.<sup>1</sup>

Intervening Plaintiff Beard was required to file at least 4,000 valid signatures by the April 21, 2020, filing deadline. (R. 17, Beard Mtn, Page ID #

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<sup>1</sup> See August 4, 2020, Primary Candidate listing, [https://miboecfr.nictusa.com/election/candlist/2020PRI\\_CANDLIST.html#15022000](https://miboecfr.nictusa.com/election/candlist/2020PRI_CANDLIST.html#15022000).

293.) She asserted that she began collecting signatures in January 2020, and in fifty days had collected 3,557 signatures. (*Id.*)<sup>2</sup> But that after social distancing and the Governor’s Executive Order, her ability to obtain signatures declined. (*Id.*, Page ID #293-294.) Beard stated at the April 23 hearing that she had not made any effort to collect signatures by mail. She filed approximately 3,610 signatures on April 21, or 10% less than the required minimum.<sup>3</sup>

At the hearing, there was discussion about the “cushion” of signatures candidates need to file over the required minimum to account for potentially invalid signatures. (*See, e.g.*, R. 31, Savich Dec, Page ID 451-452.) It is difficult to say with any certainty the cushion a candidate may need. This is because the number of excess signatures candidates tend to file varies greatly depending on the office sought, the candidate’s prior campaign experience (if any), the diligence of the candidate and his or her campaign volunteers in gathering signatures, the competence of petition circulators, the amount of time devoted to signature collection, etc. (Ex 1, Malerman Dec, ¶ 14.)

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<sup>2</sup> In her motion and at the hearing, Beard indicated that petition form questions had delayed her ability to circulate. But the State Defendants are not aware of any petition form issues that would have delayed her ability to circulate earlier than January 2020. (Ex 1, Malerman Dec, ¶¶ 24-27.)

<sup>3</sup> (*Id.*)



In 2016, 40 candidates filed petitions for U.S. Representative in Congress. Only two candidates were disqualified for failing to file a minimum of 1,000 valid signatures: a candidate who filed 1,030 signatures (3% cushion) and another who filed 1,200 signatures (20% cushion). (*Id.*, ¶ 15.) Regarding judicial candidates, in 2016, 22 candidates sought the office of Circuit Court Judge in the 3<sup>rd</sup> Judicial Circuit, the office sought by Beard. The sole candidate who was disqualified submitted 7,013 signatures, a 75% cushion, but over half of the signatures submitted were of dubious validity. (*Id.*, ¶ 16.) And 36 non-incumbent candidates sought the office of district court judge in 2016, and while there was no race in the 47<sup>th</sup> District Court, no district court candidate was disqualified. (*Id.*, ¶ 17.)

Under the terms of the injunction, both Savich and Beard may supplement their filings through 5:00 p.m. on May 8. The arguments at the hearing by Esshaki, suggested that some form of in-person collection could be safely maintained under the Stay-at-Home Orders. And the ACLU's amicus brief had included the declaration of a city council candidate, in which she stated that she and her volunteers had continued to collect signatures in-person in a safe manner, although the measures taken did make collection difficult. (R. 15-2, Bannister Dec, Page ID #277, ¶¶ 32-34). Regardless, candidates have the opportunity to collect by mail, which can be effective as demonstrated not only by Esshaki's petitions, but also by the petitions filed by one judicial candidate, over half of which appear to have been

collected by mail. (Ex 1, Malerman Dec, ¶ 28.) Although it is true that mailing comes at a cost, candidates should expect some incidental expenses. *See, e.g., Libertarian Party of Ky v. Grimes*, 835 F.3d 570, 577 (6th Cir. 2016); *Green Party of Arkansas v. Martin*, 649 F.3d 675, 683 (8th Cir. 2011).<sup>4</sup> Moreover, pursuant to the Court's order, Plaintiffs and other candidates have the additional option of collecting and filing signatures electronically via email.<sup>5</sup> There should be little to no cost to the candidate associated with this process. It could be accomplished simply through getting the word out and distributing an electronic version of the petition to friends, family, and supporters through email, social media platforms like Facebook, posting on a website, etc.

To warrant enjoining the operation of the statutory signature thresholds, a Plaintiff in this case—whether it is Esshaki as the movant, or the Intervenors as joiners in the relief requested—had or have the burden of demonstrating they are entitled to injunctive relief. *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978). But here the record, such as it is, does not show that any Plaintiff required a 50% reduction in their minimum signature threshold.

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<sup>4</sup> During the April 23 hearing, Plaintiff Esshaki indicated his 1,000 piece mailing may have cost \$2,000 or a little more. But Esshaki has fairly significant funds at his disposal, see <https://www.fec.gov/data/committee/C00725259/?cycle=2020>, and that amount can certainly be considered incidental.

<sup>5</sup> That process has been implemented. *See* the Bureau of Elections' website at <https://www.michigan.gov/sos/0,4670,7-127-1633---,00.html>.

### C. The limiting language as to candidates

The terms of the injunction were limited to “all candidates”:

(i) who *filed* a statement of organization under the Federal Election Campaign Act of 1971, 52 U.S.C. §§ 30101 *et seq.*, or *established* a candidate committee under the Michigan Campaign Finance Law, Mich. Comp. Laws §§ 169.201 *et seq.*, before March 10, 2020[.] [R. 23, Injunction Order, Page ID # 359-360 (emphasis added).]

This language was originally proposed by the State Defendants. At the video hearing, amici raised the issue of how this language should be interpreted.

Under the Federal Election Campaign Act, a person running for a seat in the House or Senate becomes a candidate when he or she raises or spends more than \$5,000 in contributions or expenditures. 52 U.S.C. § 30101(2). All such candidates must register with a statement of candidacy and designate a principal campaign committee within 15 days of becoming a candidate. 52 U.S.C. § 30102(e)(1). Within 10 days of that the candidate’s committee must file a statement of organization. 52 U.S.C. § 30103(a).<sup>6</sup>

Under the Michigan Campaign Finance Act (MCFA), a person becomes a candidate in a number of ways, including when he or she first receives a contribution or makes an expenditure, of any amount, “with a view to bringing about the individual’s nomination or election to an elective office[.]” Mich. Comp.

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<sup>6</sup> See Plaintiff Esshaki’s filings by way of example, <https://www.fec.gov/data/committee/C00725259/?cycle=2020>.

Laws § 169.203(1)(c). Once an individual becomes a candidate, he or she “shall form” a candidate committee within 10 days. Mich. Comp. Laws § 169.221(1). And the candidate committee “shall file a statement of organization within 10 days after the committee is formed.” Mich. Comp. Laws § 169.224(1). (*See also*, Ex 1, Malerman Dec, ¶¶ 9-12.)

Thus, under the MCFA a candidate has a 20-day grace period after becoming a candidate to file his or her candidate committee’s statement of organization. During the grace period, a candidate must establish an official depository and designate a person who is registered to vote in Michigan as the committee’s treasurer; the candidate himself or herself may serve as the committee treasurer. Mich. Comp. Laws § 169.221. (Ex 1, Malerman Dec, ¶ 13.)

The purpose of the limiting language in the injunction is to prevent people who had no intent to run for office before March 10, 2020, from taking advantage of the state of emergency and the significant relief provided by the injunction—the 50% signature reduction and the extension.<sup>7</sup> And the simplest, most concrete way to do that is to refer to a candidate’s committee filing at the Federal Election Commission, at the Michigan Bureau of Elections, or at the county clerk’s office.

The injunction language clearly states that it only applies to federal candidates whose candidate committees “filed” their statements of organization on

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<sup>7</sup> The ACLU proposed a similar limitation. (R. 15, ACLU Brf, Page ID # 268.)

or before March 10, 2020. The intent was to provide for the same result as to state candidates under the MCFA, meaning it would apply to candidates whose candidate committees had filed their statement of organization on or before March 10. Thus, the use of the word “established” as to state candidates was intended to have the same meaning as the word “filed” used in the reference to federal candidates. There was no intent to treat state candidates more favorably than federal candidates.

### **CONCLUSION AND RELIEF REQUESTED**

For the reasons stated above, the State Defendants respectfully request that this Honorable Court grant their motion for limited relief from the Court’s order under Fed. R. Civ. P. 60(b), or alternatively to stay that portion of the injunction reducing the signature thresholds by 50% pending appeal.

Respectfully submitted,

DANA NESSEL  
Attorney General

*s/Heather S. Meingast*  
\_\_\_\_\_  
Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendants  
P.O. Box 30736  
Lansing, Michigan 48909  
517.335.7659  
Email: [meingasth@michigan.gov](mailto:meingasth@michigan.gov)  
P55439

Dated: April 24, 2020

## CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2020, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

*s/Heather S. Meingast*  
Heather S. Meingast (P55439)  
Assistant Attorney General  
P.O. Box 30736  
Lansing, Michigan 48909  
517.335.7659  
Email: [meingasth@michigan.gov](mailto:meingasth@michigan.gov)  
P55439

UNITED STATES DISTRICT COURT  
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SOUTHERN DIVISION

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**EXHIBIT LIST**

A. Declaration of Melissa Malerman

# EXHIBIT A



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ERIC ESSHAKI, as candidate for  
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Gregory J. Rohl (P39185)  
Attorney for Plaintiff  
41850 W. Eleven Mile Road, Suite 110  
Novi, Michigan 48375  
248.380.9404

Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendants  
PO Box 30736  
Lansing, Michigan 48909  
517.335.7659

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HON. TERRENCE G. BERG

MAG. ELIZABETH A.  
STAFFORD

Michael S. Cafferty (P36613)  
Attorney for Intervenor-Plaintiff Savich  
333 West Fort Street, Suite 1400  
Detroit, Michigan 48226  
313.964.3070

Deana Beard, *In Pro Per*  
Intervenor-Plaintiff  
2885 South Trenton Drive  
Trenton, Michigan 48183  
734.502.7411

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**DECLARATION OF MELISSA MALERMAN**

I, Melissa Malerman, state as follows:

1. I am the Director of the Disclosure, Filings and Compliance Division and a licensed Michigan attorney, (P58884), with the Michigan Department of State, Bureau of Elections. In this capacity, I manage and administer the ballot access and challenge processes for congressional and judicial candidates who are required to file nominating petitions with the Secretary of State. In addition, I supervise the campaign finance program for candidates who are required by the Michigan Campaign Finance Act, 1976 PA 388, Mich. Comp. Laws §§ 169.201 *et seq.*, to register their candidate committees and file periodic disclosure reports with the Secretary of State.

2. I bring this declaration in response to the Court's request for additional information regarding the nominating petition filed by Plaintiff Eric Esshaki, to provide citations to state statutes regarding the formation of candidate committees, and to address other questions posed by the Court during the hearing held on April 23, 2020.

Plaintiff Esshaki's Nominating Petition

3. In response to the Court's request for information regarding the number of signatures Plaintiff's campaign collected on or before April 15, 2020, I personally re-reviewed petition sheets that were filed on April 21, 2020.

4. In the following table, the term "mail-in" refers to petition sheets that tend to show distinctive indications of having been sent and/or received by mail,<sup>1</sup> and "traditional" refers to petition sheets that do not tend to indicate mailing.<sup>2</sup> My findings are as follows:

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<sup>1</sup> Mail-in petition sheets share the following characteristics: (1) Every circulator of a mailed-in sheet also signed the same sheet as a petition signer; (2) The petition sheets usually contain 1-2 and up to 4 signatures of individuals residing at the same address; and (3) Unlike any of the other petition sheets filed by Plaintiff, the mail-in sheets are creased with a double-parallel fold for ease of mailing.

<sup>2</sup> These petition sheets share the following characteristics: (1) In nearly every case, the circulator of the traditional sheet did not sign the same sheet as a petition signer; (2) The petition sheets tend to contain the

<b>Category</b>	<b>Number of Petition Signatures dated 4/15 or earlier</b>
1. Number of signatures on “traditional” sheets that were signed by voters <i>and</i> circulators on or before 4/15	832
2. Number of signatures on “mail-in” sheets that were signed by voters <i>and</i> circulators on or before 4/15	107
<i>Subtotal: Number of signatures on complete petition sheets signed by both voters and circulators by 4/15</i>	939
3. Number of signatures on “traditional” sheets containing a combination of signatures gathered before and after 4/15	35
4. Number of signatures on “mail-in” sheets containing a combination of signatures gathered before and after 4/15	40
<b>Total: All signatures gathered on or before 4/15</b>	<b>1,014</b>

5. Categories 1 and 2 above include petition sheets where circulation was completed on or before April 15, 2020, meaning sheets in these categories were signed by voters and circulators by that date.

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signatures of individuals who provide different residence addresses; and (3) The majority of these petition sheets contain between 12 and 14 signatures. Most of the traditional petition sheets were signed by petition circulators on or before March 10, 2020.

6. Categories 3 and 4 above include petition sheets where circulation was in progress on April 15, 2020, as evidenced by petition signers' signatures dated April 15 or earlier and a circulator date that is later than April 15.
7. The total number of signatures filed irrespective of voters' dates of signing is 1,263, signifying that Plaintiff's campaign gathered 249 signatures between April 16 and 20, 2020. No voters' or circulators' signatures were dated after April 20.
8. Additionally, I observed that all of Plaintiff's petition sheets included an identical pre-printed heading:

INSTRUCTIONS ON REVERSE SIDE	<b>NOMINATING PETITION</b> (COUNTYWIDE PARTISAN)	* The "Countywide" Partisan Petition form may be used by any partisan candidate. Exception: the form may not be used by a partisan candidate who seeks the office of County Commissioner; such candidates must use the "City/Township" Partisan Petition form.
We, the undersigned, registered and qualified voters of the County of <u>Oakland</u> , and State of Michigan, nominate <u>Eric Esshaki</u> , <u>1731 Hazel St.</u> <u>Birmingham</u> , as a candidate of the <u>Republican</u> Party for the office of * <u>Representative in Congress</u> <u>11th</u> <small>(City or Township)</small> <small>(Title of Office/Term Expiration Date)</small> <small>(Street Address or Rural Route)</small> <small>(District, if Any)</small> to be voted for at the Primary Election to be held on the <u>4th</u> day of <u>August</u> , 20 <u>20</u> .		

Establishing a Candidate Committee pursuant to  
the Michigan Campaign Finance Act

9. The Court's order issued April 20, 2020 applies to "all candidates who ... established a candidate committee under the Michigan Campaign Finance Law, Mich. Comp. Laws §§ 169.201 *et seq.*, before March 10, 2020[.]"

10. Mich. Comp. Laws § 169.203(1) defines the term “candidate” to include:

(1) . . . an individual who meets 1 or more of the following criteria:

(a) Files a fee, an affidavit of incumbency, or a nominating petition for an elective office.

\*\*\*

(c) Receives a contribution, makes an expenditure,<sup>3</sup> or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual’s nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made.

. . .

11. Once an individual becomes a candidate, he or she “shall form” a candidate committee within 10 days. Mich. Comp. Laws § 169.221(1).

12. The candidate committee “shall file a statement of organization within 10 days after the committee is formed.” Mich. Comp. Laws § 169.224(1).

13. Thus, under the Michigan Campaign Finance Act a candidate has a 20-day grace period after becoming a candidate to file his or her

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<sup>3</sup> The term “contribution” is defined in Mich. Comp. Laws § 169.204, and the term “expenditure” in Mich. Comp. Laws § 169.206.

candidate committee's statement of organization. During the grace period, a candidate must establish an official depository and designate a person who is registered to vote in Michigan as the committee's treasurer; the candidate himself or herself may serve as the committee treasurer. Mich. Comp. Laws § 169.221.

#### Cushion of Excess Signatures

14. The number of excess signatures candidates tend to file varies greatly depending on the office sought, the candidate's prior campaign experience (if any), the diligence of the candidate and his or her campaign volunteers in gathering signatures, the competence of petition circulators, the amount of time devoted to signature collection, and so on.
15. In 2016,<sup>4</sup> 40 candidates filed petitions for the office of U. S. Representative in Congress ranging from 1,030 to 2,000 signatures each. Only two candidates were disqualified for failing to file a minimum of 1,000 valid signatures: a candidate who filed 1,030

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<sup>4</sup> 2016 Michigan Candidate Listing, [https://miboecfr.nictusa.com/election/candlist/16PRI/16PRI\\_CL.HTM](https://miboecfr.nictusa.com/election/candlist/16PRI/16PRI_CL.HTM).

signatures (3% cushion) and another who filed 1,200 signatures (20% cushion).<sup>5</sup>

16. In 2016,<sup>6</sup> 22 candidates sought the office of Circuit Court Judge in the 3<sup>rd</sup> Judicial Circuit. The sole candidate who was disqualified submitted 7,013 signatures, a 75% cushion, but over half of the signatures she submitted were “of dubious authenticity where the signature on the petition did not match the voter’s signature on file, was written in handwriting that was substantially the same as handwriting for other petition entries, or both.” See Exhibit 1.

17. In 2016, no nominating petitions were filed for the office of District Court Judge in the 47<sup>th</sup> District. However, 36 candidates for District Court Judge sought election in other judicial districts in 2016.<sup>7</sup> No candidate who sought election to the office of District Court Judge was disqualified in 2016.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



18. Given the variety of outcomes described above, the Bureau of Elections does not provide advice to candidates regarding a standard number or percentage of excess signatures.

Petition Circulation Period for Judicial Candidates

19. During the April 23 hearing, it was suggested that judicial candidates are limited to a petition circulation period of 180 days. That is incorrect.

20. Judicial candidates file “non-partisan” nominating petitions, which are used for elective offices that do not include political party labels on the ballot. Mich. Comp. Laws §§ 168.412, 413. This form requirement is explained in the publication, “Filing Requirements for Non-Incumbent Judicial Candidates”:<sup>8</sup>

**PETITION FORM:** All non-incumbent judicial candidates are required to use the *nonpartisan nominating petition form* prescribed by the Secretary of State when collecting signatures. There are two versions of the form: 1.) A “city/township” version and 2.) a “countywide” version. The “city/township” version of the form is designed for circulation within a single city or township; the “countywide” version of the form can be signed by anyone registered to vote in a city or township that falls within the boundaries of the listed county. All judicial candidates may use the “city/township” nonpartisan nominating petition form or the “countywide” nonpartisan nominating petition form as convenient.

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<sup>8</sup> Filing Requirements for Non-Incumbent Judicial Candidates, [https://www.michigan.gov/documents/sos/Web\\_Memo\\_January\\_31\\_2020\\_680045\\_7.pdf](https://www.michigan.gov/documents/sos/Web_Memo_January_31_2020_680045_7.pdf).

21. The “non-partisan nominating petition” is separate and distinct from the “qualifying petition” form, which is used by candidates without political party affiliation who are seeking a partisan office. Colloquially, these are sometimes known as “independent” candidates.
22. Candidates seeking a partisan office without affiliating themselves with one of the ballot-eligible political parties must file “qualifying petitions” containing signatures dated within 180 days of the date of filing. Mich. Comp. Laws §§ 168.590a, 590b, 590c.
23. As candidates seeking election to a non-partisan office, neither Intervenor Beard nor Intervenor Savich were restricted to collecting signatures within the 180-day timeframe. Indeed, the earliest date a candidate may begin circulating nominating petitions is the day the current term of office commenced. Op. Atty. Gen. No. 6495 (February 8, 1988).<sup>9</sup> With respect to the office of Circuit Court Judge, 3<sup>rd</sup> Judicial Circuit, that date was January 1, 2015, and for the office of District Court Judge, 47<sup>th</sup> District, that date was January 1, 2015.

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<sup>9</sup> <https://www.ag.state.mi.us/opinion/datafiles/1980s/op06495.htm>.

Recent Petition Form Changes

24. The Bureau of Elections recently adopted an *optional*, revised countywide petition format for use during the 2020 election cycle. The new format is designed to reduce the number of disqualifying signature errors made by petition signers, as explained in the publication, “Circulating Countywide Nominating and Qualifying Petition Forms,”<sup>10</sup>

Column headings have also been reordered to make the signer’s entry more intuitive. Rather than leading with the signer’s local jurisdiction as the first data point (where some signers mistakenly wrote their county name or entered their signature), the new petition form utilizes the more familiar order beginning with the person’s signature followed by his or her printed name, street address, city or township, zip code and date of signing.

**Old format, all petition forms circulated countywide:**  
(Revision date: 2015)

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	1.						
CITY OF <input type="checkbox"/> TOWNSHIP OF <input type="checkbox"/>	2.						

**Optional NEW format, all petition forms circulated countywide:**  
(Revision date: 2019)

SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	NAME OF CITY OR TOWNSHIP	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
1.							
2.							

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<sup>10</sup> Circulating Countywide Nominating and Qualifying Petition Forms, p. 2:  
[https://www.michigan.gov/documents/SOS\\_ED105\\_County\\_Pet\\_Form\\_77019\\_7.pdf](https://www.michigan.gov/documents/SOS_ED105_County_Pet_Form_77019_7.pdf)

25. Importantly, use of the new format is entirely optional during the 2020 election cycle. Considering candidates seeking election in 2020 may have begun circulating nominating petitions years ago, it would be unfair to impose a mandatory form change in the midst of the election cycle.

26. Instead, written guidance issued by the Bureau of Elections makes clear that candidates may file nominating petitions bearing the 2015 revision date, 2019 revision date, or any combination thereof:

**Important Note:** Use of countywide forms bearing a 2019 revision date is *optional* for the 2019-2020 election cycle. While the Bureau of Elections encourages clerks and candidates to use the new petition forms, please note that the adoption of the new format does not require clerks or candidates to discard old forms.

Candidates may file countywide petition forms using the 2015 format, 2019 format or a combination of both.

**For the 2019-2020 election cycle, candidates may, but are not required to, use the new format** of the Nominating Petition (Countywide Partisan), Nominating Petition (Countywide Non-Partisan), or Qualifying Petition (Countywide) forms. If the form was prepared by an election forms print vendor or obtained from a clerk's office, a revision date will appear at or near the bottom of the petition form. Examples include but are not limited to "Rev. \_\_/15," "Rev. \_\_/19," and similar. Candidates may also prepare their own petition forms as long as they comply with the 2015 or 2019 format.

*Id.* at 3.

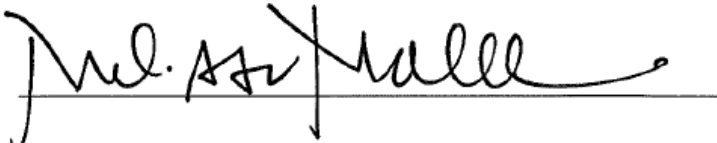
27. There was no change in the countywide nominating petition form that would have prevented Intervenor Beard from circulating nominating petitions earlier in the election cycle.

Mail-in Petition Sheets Filed by Another Candidate

28. On April 21, 2020, Judge Kathleen Feeney of the 17<sup>th</sup> Circuit Court filed 954 nominating petition sheets containing approximately 4,000 signatures.<sup>11</sup> Over half of the petition sheets (541 of 954, 57%) submitted by Judge Feeney appeared to be mail-in petitions. The earliest signature date observed on the mail-in sheets was April 5, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/24/20

  
Melissa Malerman

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<sup>11</sup> An incumbent Judge is not required to file nominating petitions unless he or she does not file an Affidavit of Candidacy indicating an intention to seek re-election by March 23, 2020.



STATE OF MICHIGAN  
 RUTH JOHNSON, SECRETARY OF STATE  
 DEPARTMENT OF STATE  
 LANSING

May 23, 2016

**REVIEW OF NOMINATING PETITION**

**Darnella Denise Williams**  
**Candidate for Judge of the 3<sup>rd</sup> Circuit Court**  
**Regular Term, Non-Incumbent Position**

**NUMBER OF VALID SIGNATURES REQUIRED:** 4,000 signatures.

**TOTAL FILING:** 7,004 signatures.

**RESULT OF PETITION REVIEW:** 2,613 valid signatures; 4,391 invalid signatures.

Total number of signatures filed:		7,004
Address and jurisdiction errors by signers (incomplete or incorrect address, dual jurisdiction entry, etc.):		196
Date errors by signers (dated after circulator, invalid date such as date of birth):		23
Other signature errors (incomplete or omitted signatures, duplicates):		18
Illegible entries (Note – the <i>entire entry</i> is illegible) <sup>1</sup> :		58
Signer not registered to vote or not registered in district:		457
Signature did not match signature on file:		3,630
Circulator errors (date omitted, etc.):		9
Valid signatures:		2,613

The staff review indicated that Ms. Williams’ nominating petition contained 3,630 signatures of dubious authenticity where the signature on the petition did not match the voter’s signature on file, was written in handwriting that was substantially the same as handwriting for other petition entries, or both. These signatures were discounted in the “signature did not match signature on file” category above.

**FINAL RESULT:** 2,613 valid signatures.

**STAFF RECOMMENDATION:** Determine petition insufficient.

<sup>1</sup> Entries are *not* invalidated merely because the signature alone is illegible; the basis for discounting these signatures is that *all* of the following fields are illegible, making it impossible to search for and locate a matching record for these individuals within the QVF: signature and printed name and street address/rural route.