

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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

Plaintiff,

Case no. 2:20-cv-10831-TGB-EAS

Hon Judge: Terrence G. Berg

Hon Magistrate: Elizabeth A. Stafford

VS.

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.

DANIEL FINLEY'S RESPONSE TO MOTION FOR TRO - #51

For his RESPONSE, Daniel P. Finley states:

1. Finley concurs with Plaintiff Hawkins' motion for a TRO, because there presently is no signature or March 10th requirement for the reasons more fully stated herein.
2. There has been much briefing and discussion regarding this Court's initial ruling and the ruling from the Sixth Circuit. Both this Court and the Sixth Circuit held that the Defendant's signature requirement was unconstitutional given the pandemic. Despite discussions of dates and amounts of signatures and how to get the signatures, it is indisputable that the signature requirement is unconstitutional.

3. As it relates to the parties and others that have appeared in this case, there is no signature requirement, nor a March 10th cutoff requirement.
4. What is needed now is clear and unambiguous order from the Court as it relates to the parties, amicus curiae, others that have been referenced herein, that there is no signature requirement and that all persons that have submitted themselves as candidates herein be placed upon their respective ballots.
5. The Sixth Circuit, entered a May 5, 2020 Order upholding the core of the injunction, which enjoins the State from enforcing the statute's two ballot-access provisions at issue unless the State provides some reasonable accommodation to aggrieved candidates. The State (which would be the Legislative branch) has done nothing, and the Defendants do not have the power or authority to modify any of the requirements; therefore, the statute as applied herein remains unconstitutional; hence, no signature requirement.
6. Just as the Sixth Circuit indicated that it was improper for this Court to re-write the Michigan statute, so too is it improper for Defendant Michigan Secretary of State, an administrative body, to re-write the Michigan ballot access provisions – only the Michigan legislature can re-write the statute.
7. The ballot-access provision at-issue, that were declared unconstitutional as applied under the circumstances, MCL 168.33, and 168.544f, do not contain any express provision that would permit the Secretary of State to re-write those statutes.
8. Likewise, Defendant Governor does not have the authority to re-write the ballot access provisions of the statute under her emergency powers, either under Article 5 Section 1 of the Michigan Constitution nor under the Emergency Management Act of 1976, MCL

30.403, because the unconstitutional application of the ballot access provisions under the present circumstances is not necessary to preserve life and property.

9. For these reasons Finley recommends that the Court enter an Order, as it relates to the parties, amicus curiae, others that have been referenced herein, that there is no signature requirement and that all persons that have submitted themselves as candidates herein be placed upon their respective ballots.

Date: May 14, 2020

Respectfully submitted,
FINLEY LAW FIRM
By: /s/ Daniel P. Finley
Daniel P. Finley (P65454)
Attorney for and Amicus Curiae
300 N. Main St, Ste 6
Chelsea, MI 48118
Ph. (734) 475-4659; Fx. (734) 475-4672
dpfinleyesq@comcast.net

CERTIFICATE OF SERVICE

On May 14, 2020, this paper was filed electronically through the Court's CM/ECF filing system, which will give notice and copy all parties or attorneys of record. There does not appear to be any non-ECF filers on this case.

Date: May 14, 2020

Respectfully submitted,
FINLEY LAW FIRM
By: /s/ Daniel P. Finley
Daniel P. Finley (P65454)
Attorney for and Amicus Curiae
300 N. Main St, Ste 6
Chelsea, MI 48118
Ph. (734) 475-4659; Fx. (734) 475-4672
dpfinleyesq@comcast.net