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COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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P.O. Box 380286 • Clinton Township, MI 48038 • (810) 447-2392

July 22, 1996

Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

To Whom It May Concern:

The Heintz for Congress Committee hereby requests an expedited opinion on the following subject:

The nominating petitions for candidate Susy Heintz were challenged prior to certification by the Michigan Democratic Party as well as by one of the other Republican candidates for Congress in the 10th Congressional District. The Michigan Court of Appeals, in a unanimous 3-0 ruling, rejected the challenge to the petitions and ruled that Susy Heintz be placed on the primary election ballot.

This situation resulted in the accrual of major legal fees, and the committee requests:

1. a ruling as to whether a separate account can be legally set up to pay for these legal expenses;
2. if a separate legal defense fund is indeed permissible, whether corporate monies can be accepted by the fund to defray these costs.

Thank you for your consideration, and the committee looks forward to a reply at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Shoha", written over a white background.

HEINTZ FOR CONGRESS  
Jennifer Shoha  
Finance Director



P.O. Box 380286 • Clinton Township, MI 48038 • (810) 447-2392

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RECEIVED  
FEDERAL ELECTION  
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COUNSEL

To Whom It May Concern:

Attached please find our original request of July 22, 1996. In response you requested a copy of the pleadings and please find them enclosed.

Our requests remain unchanged, and we look forward to an expedited opinion.

Thank you for your consideration, and the committee looks forward to a reply at your earliest convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Shoha", written in black ink.

Jennifer Shoha  
Heintz for Congress  
Finance Director

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ,

Plaintiff,

Court of Appeals  
Docket No. 195290

-v-

MICHIGAN STATE BOARD  
OF CANVASSERS, a constitutional board,  
and CANDICE MILLER, Secretary of State,  
in her official capacity,

Defendants,

---

**PLEADINGS VOLUME I**

- |    |                  |         |   |
|----|------------------|---------|---|
| 1. | Plaintiff        | 6/6/96  | Complaint for Mandamus.   |
| 2. | Plaintiff        | 6/6/96  | Brief in Support of Complaint for Mandamus.   |
| 3. | Plaintiff        | 6/6/96  | Motion for Emergency Preliminary Hearing and Order to Show Cause on Complaint for Mandamus and For Immediate Consideration and Affidavit in Support of said Motion. |
| 4. | Plaintiff        | 6/6/96  | Notice of Hearing and Proof of Service.   |
| 5. | Defendants       | 6/7/96  | Answer to Complaint for Mandamus and Proof of Service.  |
| 6. | Intervening Def. | 6/7/96  | Brief of Intervening Defendant Mark Brewer  |
| 7. | Plaintiff        | 6/11/96 | Plaintiff Susy Heintz's Reply Brief in Support of Complaint for Mandamus  |
| 8. | Court            | 6/11/96 | Order placing Plaintiff's name on the ballot.   |



STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ,

Plaintiff,

Court of Appeals

-v-

Docket No. \_\_\_\_\_

MICHIGAN STATE BOARD  
OF CANVASSERS,  
a constitutional board, and  
CANDICE MILLER,  
Secretary of State,  
in her official capacity,

**COMPLAINT FOR MANDAMUS**

Defendants.

\_\_\_\_\_  
John D. Pirich (P23204)  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
Honigman Miller Schwartz & Cohn  
Attorney for Plaintiff Susy Heintz  
222 N. Washington Square  
Suite 400  
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(517) 484-8282

HONIGMAN MILLER SCHWARTZ AND COHN

NOW COMES Plaintiff, Susy Heintz, by and through her attorneys, Honigman Miller Schwartz & Cohn, and states as follows:

**PARTIES**

1. Plaintiff, Susy Heintz, is a candidate for the Republican Party's nomination to run for United States Congress in the 10th District, State of Michigan.
2. Defendant Candice Miller is the elected Secretary of State for the State of Michigan and is the Chief Election Officer of the State, with supervisory control over all state and local elections officials in the performance of their duties under the provisions of the

Michigan Election Law. See MCL 168.21; MSA 6.1020. Secretary of State Miller discharges these duties through the Department of State, Bureau of Elections.

3. Defendant, Michigan State Board of Canvassers, is a constitutional board created by Mich Const 1963, art. 2, § 7. Among other duties, the Board is responsible for making an "official declaration of the sufficiency or insufficiency of a nomination petition ... not less than 9 weeks before the primary election at which candidates are to be nominated". MCL 168.558(9); MSA 6.1558(9).

### **JURISDICTION**

4. This Court has jurisdiction to consider original Complaints for Mandamus pursuant to, among others, §§ 479 and 878 of the Michigan Election Law, MCL 168.479; MSA 6.1479, MCL 168.879; MSA 6.1878, § 4401 of the Revised Judicature Act, MCL 600.4401; MSA 27A.4401 and MCR 3.305.

### **GENERAL ALLEGATIONS**

5. Plaintiff Heintz submitted 1,549 signatures in support of her candidacy for the Republican nomination for U.S. Representative in Congress, 10th District of the State of Michigan. There were 1,460 signatures timely submitted in an original filing, and 89 signatures timely submitted in a supplemental filing.

6. Challenges to the validity of certain petition signatures were filed by Mark Brewer, Chairperson of the State Democratic party and Gilbert DiNello, one of Plaintiff Heintz's Republican primary opponents.

7. At the time they filed their challenges, neither Mr. Brewer nor Mr. DiNello had the 89 signatures submitted through the supplemental filing for the reason that the Bureau of

Elections could not locate the originals of these petition sheets, said sheets being lost, misplaced or stolen once in the possession of the Bureau.

8. Once aware of the Bureau's evident mishandling of the petition, the Heintz campaign submitted photocopies of the nine petition sheets containing the 89 signatures. In addition, the Heintz campaign has produced an official receipt, showing that the petition sheets were, in fact, presented to the Bureau of Elections *Exhibit A*. Furthermore, each of the circulators of the nine supplemental sheets -- William Froberg, Natalie Mytnyk and Greg Brock -- filed Affidavits (*Exhibits B, C and D*) stating that they had, in fact, circulated the originals of each petition sheet each had signed as circulator on the dates set forth on those petition sheets. Plaintiff also filed the Affidavit of Ryan Boeskool (*Exhibit E*), indicating that he had delivered the nine petition sheets to the Bureau of Elections, and left the Bureau with out the petition sheets, but with the official filing receipt. Finally, the substance of Mr. Boeskool's affidavit was confirmed by Dortha Blair, an elections specialist with the Bureau, who accepted the nine supplemental sheets for filing. *Exhibit F*.

9. The Bureau of Elections canvassed the signatures submitted on behalf of Susy Heintz , including the 89 signatures submitted under the supplemental filing.

10. The Canvass of the Bureau of Elections concluded that Susy Heintz had submitted 1,274 valid signatures or 50 more than the 1,224 signatures required to be placed on the ballot. *Exhibit G*.

11. The issue of Susy Heintz's nominating petition was considered by the Defendant Board of State Canvassers on Monday, June 3 and Tuesday, June 4, 1996.

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12. During the meeting of the Board of State Canvassers on Monday, June 3, 1996, counsel for Mr. Brewer made the following arguments as to why Ms. Heintz nominating petition should be deemed insufficient:

- A. The 89 signatures submitted via the supplemental filing should not be considered;
- B. Gregory Brock is not qualified to vote from his address in Shelby Township but, rather, is allegedly a resident of Clinton Township, who must vote from Clinton Township; and
- C. Gregory Brock, who was the major gatherer of petition signatures for Susy Heintz allegedly did not collect all of the signatures on each petition sheet that bears his signature as circulator.

13. On June 4, 1996, the Defendant Board considered a motion to certify as sufficient Susy Heintz's nominating petition. This motion failed on a partisan 2 to 2 vote of the Board, Republican members of the Board voting in favor of the certification, and the Democrat members of the Board voting against the certification.

#### **The Missing Original Petition Sheets**

14. With respect to the petition sheets containing the 89 petition signatures, these were appropriately considered by the Bureau in its canvass of Plaintiff Heintz's nominating petition. Apart from the fact that it is unusual for the Bureau of Elections to lose petition sheets, there was no evidence adduced indicating that the signatures were not timely filed as indicated by the Supplemental Filing Receipt. Plaintiff Heintz could have done nothing further to prevent the mishandling of the petition sheets. having had the supplemental petition sheets

timely filed with the Bureau of Elections, and accepting an official receipt, acknowledging that they were received by the Bureau. Plaintiff's constitutional right to run for U.S. Congress cannot be denied as a consequence of a filing error on the part of the Bureau of Elections or the theft of petition sheets.

15. In this regard, the Michigan Supreme Court said in Wojcinski v State Board of Canvassers, 347 Mich 573 at 577-578; 81 NW2d 390 (1952):

"The right to seek public office is, however, basic to the proper operation of our democratic form of government. Where there is affirmative proof, as here, of the filing of sufficient petitions to qualify for the ballot, denial of such a right should not rest under this statute upon rebuttal testimony of an indefinite or vague character".

**Mr. Brock is a Resident of Shelby Township**

16. Mr. Brock's Affidavit of May 31, 1996, together with his supplemental Affidavit of June 3, 1996, *Exhibit H* -- both of which are attached hereto -- establish that Mr. Brock is a legally registered voter who was well within his legal rights to register to vote in Shelby Township.

17. Assuming, *arguendo*, that Mr. Brock should be registered in Clinton Township as asserted by Mr. Brewer, the signatures Brock collected must nonetheless be considered because Mr. Brock is, in fact, a registered voter in Michigan and he correctly recorded the Shelby Township address from which he is registered in the Circulator's Certificate of each petition sheet he circulated.

HONIGMAN MILLER SCHWARTZ AND COHN

18. Mr. Brock grew up in Shelby Township, where he continues to serve as a precinct delegate to the Macomb County Republican convention and is active in various other community affairs.

19. Although the challengers argue that Mr. Brock is not properly registered to vote in Shelby Township because he allegedly does not reside in Shelby Township, Mr. Brock is registered to vote in Shelby Township, and the Michigan Supreme Court has held that this fact, in itself, creates a presumption of residency. Harbaugh v Cicott, 33 Mich 241 (1876).

20. In connection with a job that he does not consider to be permanent, Mr. Brock occasionally stays in an apartment in Clinton Township. This apartment is rented by a friend. Mr. Brock is not the lessee of this apartment, and all utilities, including gas, electricity, and phone are in the name of another, not Mr. Brock.

21. Although Mr. Brock's driver's license contains a Clinton Township address, this was not because he intended to change his residence but, rather, to satisfy a representative to the Secretary of State's office. In August, 1994, Mr. Brock purchased a vehicle and visited a Secretary of State's office to obtain an automobile registration. In connection with this visit, a representative of the Secretary of State wanted to see Mr. Brock's driver's license. Mr. Brock complied with this request. The driver's license contained his Shelby Township address; however, the proof of insurance for the vehicle contained the Clinton Township address. The representative of the Secretary of State said that the driver's license had to be the same address that is on the proof of insurance of title. Consequently, to avoid delays with this transaction, Mr. Brock changed his driver's license address to Clinton Township. *Exhibit H.*

22. At the same time Mr. Brock sought to register his vehicle and changed his driver's license address, he was also asked by a representative of the Secretary of State whether he wanted to change his voter registration. Mr. Block declined to do so as he desired to maintain his residence in Shelby Township. *Exhibit H.*

24. Since the early days of Michigan statehood, an individual's residence for purposes of voting has been deemed to be largely a matter of intention. *See, e.g., Harbaugh v Cicott*, 33 Mich 241 (1876); *Warren v Board of Registration*, 72 Mich 398 (1881); 1930-32 OAG, p 134 (February 26, 1931), 1938-40 OAG p 10 (September 15, 1938), 1975-76 OAG No. 4931, p 332 (March 22, 1976). In this regard, the Supreme Court stated in *Warren* at 402:

**Mere bodily presence or absence can have no effect in determining residence, when once existing. There is probably not a precinct in any city which is not resident and qualified voters who spend most of their time in pursuits out of the ward or State; and persons who travel for pleasure or business, for long or short periods, do not lose their residence by such absence. Senators and Representatives and other persons often occupy residences in Washington, but they are not disenfranchised for doing so. As explained in *Harbaugh v Cicott*, a person cannot lose his residence, unless he voluntarily renounces it for another. (Emphasis added).**

25. Mr. Brock has voted in person in every election held in Shelby Township since he first became registered to vote in 1988, except one, when his grandfather died on election day.

26. Mr. Brock continues to possess a bedroom at his home in Shelby Township and keeps most of his personal effects in his Shelby Township home, where he spends more of his off duty hours than in Clinton Township.

27. Mr. Brock has clearly established a residence in Shelby Township, and he has never voluntarily renounced this residence.

28. Accompanying this complaint as *Exhibit I* is the affidavit of Karen Schultz, Township Clerk for the Charter Township of Shelby. Based upon virtually the same information presented to the Defendant Board, Ms. Schultz has concluded that Mr. Brock is properly registered to vote in Shelby Township, which is a decision for Ms. Schultz to render under MCL 168.500c; MSA 6.1500(3), and MCL 168.500d; MSA 6.1500(4).

#### **Circulation of Petition Sheets by Greg Brock**

29. With respect to the mere allegation that Mr. Brock did not actually circulate all of the petition sheets he signed as circulator, on the record, on June 3, 1996, counsel for Mr. Brewer and challenger Gilbert DiNello, both admitted that they had no factual evidence that Mr. Brock had not circulated all of the petition sheets he signed as circulator. Instead, Mr. Brock's Affidavit of May 31, 1996, that he had, in fact, circulated all of the petition sheets that bore his signature as circulator was unrebutted.

30. On June 4, 1996, Mr. Brock testified before the State Board of Canvassers that he had gathered all of the signatures on the petition sheets he signed as circulator. Again, no facts or evidence were produced by counsel for Mr. Brewer or Mr. DiNello to rebut Mr. Brock's sworn statements.

31. Defendant Board of State Canvassers has a clear legal duty to certify the sufficiency of the Susy Heintz nominating petition because it did, in fact, contain valid signatures of more than 1,224 registered voters within the 10th Congressional District as found by the Bureau of Elections, *see Exhibit A*; there is no basis for determining that Mr. Brock's

intention is other than he has indicated -- to remain a resident of Shelby Township; and there is no evidence that these signatures were collected illegally.

32. Defendant Secretary of State has a clear legal duty to prepare primary ballots which include the name of Susy Heintz as a candidate for the Republican nomination to Congress from the 10th Congressional District of Michigan.

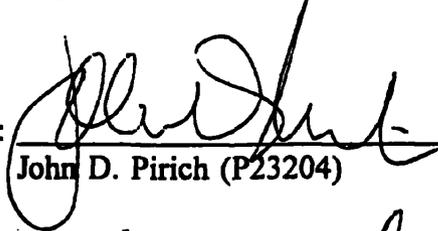
WHEREFORE, Plaintiff Heintz respectfully requests that this Court issue a Writ of Mandamus directing the Board of State Canvassers to certify the sufficiency of her nominating petition for the Republican nomination to Congress from the 10th Congressional District of Michigan and requiring the Defendant Secretary of State to prepare ballots which contain the name of Susy Heintz as a candidate for the Republican nomination to Congress from the 10th District. In addition, Plaintiff requests this Honorable Court to retain jurisdiction over this matter to insure compliance with its Order and to provide such further relief as may be necessary.

Respectfully submitted,

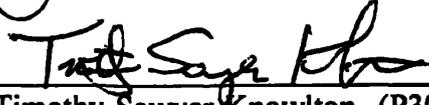
HONIGMAN MILLER SCHWARTZ AND COHN

Attorneys for Plaintiff Susy Heintz

Date: June 6, 1996

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LNS01/36402.1  
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STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ,

Plaintiff,

Court of Appeals  
Docket No. \_\_\_\_\_

-v-

MICHIGAN STATE BOARD  
OF CANVASSERS,  
a constitutional board, and  
CANDICE MILLER,  
Secretary of State,  
in her official capacity,

Defendants.

---

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HONIGMAN MILLER SCHWARTZ & COHN

ELLA WILLIAMS

**BRIEF IN SUPPORT OF COMPLAINT FOR MANDAMUS**

**\*\*Oral Argument Requested\*\***

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ALBERT H. MILLER SCHWARTZ ATTORNEY

## STATEMENT OF FACTS

### A. Introduction

Plaintiff Susy Heintz is a candidate for the Republican nomination for U.S. Congress from Michigan's 10th Congressional District. To secure a spot on the August 6th primary ballot, Plaintiff collected nominating signatures. As determined by the staff of the Secretary of State, Bureau of Elections, Ms. Heintz submitted 1,274 valid signatures of registered electors within the 10th District, while 1,224 signatures were needed to secure a ballot position. *Exhibit A.* Nonetheless, based on a challenge brought by Mark Brewer -- Chairperson of the Michigan Democratic Party -- the Defendant State Board of Canvassers (the "Board") refused to certify the sufficiency of the nominating petition. In a now all too familiar scenario, the partisan Board neither declared the sufficiency or insufficiency of Ms. Heintz's nominating petition, deadlocking along party lines on 2 to 2 vote with respect to the sufficiency of the petition. Because the Board must certify the sufficiency or insufficiency of the petition, it has failed to fulfill its legal duty. MCL 168.552(9); MSA 6.1552(9).

Challenges to Ms. Heintz's petition were submitted by both Mr. Brewer and Gilbert DiNello, a primary opponent of Ms. Heintz. Both Messrs. Brewer and DiNello challenged the validity of a number of the signatures on the Heintz petition for lack of registration, registration of signatories outside the District, previous signing of an opponent's petition, and similar grounds. The non-partisan staff of the Board, the Department of State, Bureau of Elections (the "Bureau") then conducted its own canvass and concluded that Ms. Heintz had submitted enough valid signatures to appear on the ballot.

In addition to his challenge to particular signatures, Mr. Brewer, through counsel, argued before the Board that:

1. It should not consider 89 signatures appearing on 9 petition sheets that were misplaced by the staff of the Board or, possibly removed by a political opponent of Plaintiff, even though the Heintz campaign has an official Supplemental Filing Receipt (*Exhibit B*), showing that the sheets were timely filed and the staff acknowledges they were filed;

2. Gregory Brock, Ms. Heintz's campaign manager, and who also collected a large percentage of the signatures on her nominating petition, was allegedly improperly registered in Shelby Township; should be deemed a resident of Clinton Township, and, consequently, the signatures he collected should not be considered valid; and

3. With no real evidence, that Mr. Brock had committed criminal violations of the election law, arguing that he did not personally gather all of the signature on the sheets he had signed as circulator.

**B. The Missing Petition Sheets**

Petition sheets were filed on behalf of Ms. Heintz on May 10, 1996, and May 14, 1996. The usually competent and professional staff of the Board apparently misplaced the nine petition sheets that constituted the supplemental filing and for which an official Supplemental Filing Receipt had been given by Dorothea Blair, who accepted the sheets for filing on behalf of the Bureau.<sup>1</sup> In connection with the lost petition sheets, Ms. Blair executed an affidavit

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<sup>1</sup>Alternatively, it is possible that the petition sheets were stolen.

(*Exhibit C*) stating that she did, in fact, issue the Supplemental Filing Receipt, and has a specific recollection of receiving the sheets.<sup>2</sup>

Plaintiff Heintz did not require the Bureau or the Board to rely solely on the official receipt and Ms. Blair's affidavit. In addition, the Heintz campaign provided the Bureau with copies of the nine petition sheets, and affidavits in support of their authenticity. In a sworn statement, Ryan Boeskool stated that he had personally delivered the sheets to the Bureau, leaving the sheets there, and departing with the official filing receipt. (*Exhibit D.*) The three circulators of the nine sheets -- William Froberg, Natalie Mytynk, and Gregory Brock -- each indicated by Affidavit (*Exhibits E, F, and G, ¶ 15*) that he or she had circulated the original of each sheet, bearing his/her name as circulator on the dates each signed the petition.

During the Board's proceedings, Christopher Thomas, Director of the Bureau, acknowledged that the nine petition sheets had been timely filed on behalf of Susy Heintz. Consequently, the Bureau undertook a canvass of the signatures contained on the nine petition sheets, concluding that out of the 89 signatures, some 73 were valid.

Although Mr. Dinello and counsel for Mr. Brewer argued that the nine petition sheets were never filed, they presented absolutely nothing in support of this contention, other than the fact that it is unusual for the Bureau to lose petition sheets. To accept the desperate assertion that the petition sheets were not filed requires this Court to conclude that these was

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<sup>2</sup>Ms. Blair also testified before the Board to this effect on June 3, 1996. Mr. Brock gave testimony before the Board on June 4, 1996. As of this writing, copies of the transcripts of the Board proceedings are unavailable, and because of the urgent need for resolution of this matter, Plaintiff Heintz has not waited for the transcript of the Board proceedings before filing this lawsuit. Plaintiff Heintz is satisfied that if any unintended misstatements are made in the brief or if there are any allegedly material omissions, these will be corrected by counsel for the Board, the Secretary of State, or Mr. Brewer.

a grand conspiracy between the Heintz campaign and representatives of the Bureau and that Mr. Boeskool and Ms. Blair lied in sworn statements. Obviously, no such conduct was established by the challengers.

**C. Mr. Brock's Status as a Registered Voter of Shelby Township**

Mr. Brewer also challenged Mr. Brock's qualifications to be a registered voter in Shelby Township, asserting that his [Brock's] real residence, was in Clinton Township. As discussed in the Argument section of this Brief, even were this true (and it is not), the valid signatures gathered by Mr. Brock should nonetheless be counted because he is, in fact, a registered voter in Shelby Township and used his Shelby Township address in completing the circulator's certificate on each petition sheet in full compliance with MCL 168.544c(3): MSA 6.1544(3). Nonetheless, analysis of Mr. Brock's connections to each of Shelby Township and Clinton Township demonstrate that he is fully within his rights to register as a voter from his Shelby Township residence.

Gregory Brock is 26 years of age. He grew up in Shelby Township, and has voted in every election except one since becoming eligible to vote in December, 1987. *Exhibit G*, ¶ 10.<sup>3</sup> While a student at Hillsdale College,<sup>3</sup> he continued to use his Shelby Township address because he considers that this is his permanent residence and home. *Id.*, ¶ 11.

Commencing in December, 1993, Mr. Brock started to stay sometimes in an apartment in Clinton Township. *Id.*, ¶ 3. Mr. Brock is not, and has never been, the lessee of the Clinton Township apartment. *Id.*, ¶ 12. None of the utilities at the apartment are in his name. *Id.*

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<sup>3</sup>After signing his affidavit on May 31, 1996, stating he had voted in every election since he became eligible to vote, Mr. Brock recalled that, in fact, he had missed one election due to the death of his grandfather on election day.

Mr. Brock sometimes stays at the Clinton Township apartment because it cuts the commuting time to his job in Detroit, *Id.* -- a job which he does not consider permanent. *Exhibit H*, ¶ 7.

Mr. Brock testified before the Board that his only possessions in the Clinton Township apartment are a bed and work clothes. In contrast, at his Shelby Township home, Mr. Brock has his own bedroom, a bed, bookcase, books, clothes, personal effects, and a computer. Mr. Brock receives mail at both addresses; while working on the staff of Governor Engler, his paycheck was mailed to his Clinton Township address. His checking account statement is mailed to Clinton Township, while his savings account statement goes to the Shelby Township address.

Mr. Brock is active in Shelby Township community affairs. Since 1988, he has been a precinct delegate to the Macomb County Republican Convention from his Shelby Township home, and also serves as a member of the Shelby Township Selective Service Board. *Exhibit G*, ¶ 13. In contrast, Mr. Brock testified that he is not involved in Clinton Township community affairs.

In his original affidavit, Mr. Brock stated that he spent substantial time, including nights, at his Shelby Township home. *Exhibit G*, ¶ 14. Mr. Brock testified that since he began sometimes using the Clinton Township apartment, depending on the specific time period, he spent 40% to 60% of his off-duty time in his Shelby Township home. He estimated that in early 1996, he began spending about 60% of his off-duty time in Shelby Township as a consequence of his activities in connection with the Heintz campaign, which resulted in a need to spend more time closer to his Shelby Township home.

Before the Board, counsel for Mr. Brewer asserted that because Mr. Brock's drivers license uses the Clinton Township address, he also had to use the Clinton Township address for voting purposes. The Supplemental Affidavit of Mr. Brock (*Exhibit H*), explains how he came to use the Clinton Township address on his driver's license, and he also testified on this question before the Board.<sup>4</sup>

In August, 1994, after Mr. Brock had sometimes been using the Clinton Township apartment for eight or nine months, he went to the Secretary of State's office to register a vehicle he purchased. *Exhibit H*, ¶ 4. His proof of insurance utilized the Clinton Township address.<sup>5</sup> Mr. Brock explained that his insurance agent asked him about the number of miles he drove to and from work, and, at this time, he was usually commuting from the Clinton Township apartment. By using the Clinton Township address, his insurance premiums were lower than if he used his Shelby Township home.

In any event, the representative of the Secretary of State asked to see Mr. Brock's driver's license when he sought the vehicle registration. *Exhibit H*, ¶ 5. The driver's license used Mr. Brock's Shelby Township home as his address, and the representative of the Secretary of State told him that the address on his driver's license had to be the same as on his proof of insurance. *Id.* While the representative of the Secretary of State did not tell him he had to use the Clinton Township address on the driver's license, Mr. Brock testified that

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<sup>4</sup>Of course, as noted in the Argument section of this Brief, it is entirely permissible to have different voting and drivers license addresses.

<sup>5</sup>The Supplemental Affidavit states that either his proof of insurance or title used the Clinton Township address; however, during his Board testimony, he stated he was fairly sure that the proof of insurance bore the Clinton Township address, and the title had not and, indeed, that he was seeking to obtain both a title in his name and to register the vehicle.

if he had not, the transaction with the Secretary of State would have been delayed while he obtained a new proof of insurance.

Mr. Brock was also asked if he wanted to change his voter registration, but declined to do so because his permanent residence is in Shelby Township. Mr. Brock has consistently maintained in his testimony and affidavits (*Exhibit G*, ¶ 11, 14; *Exhibit H*, ¶ 6,7) that his intent is to be a permanent resident of Shelby Township.

Essentially the same facts concerning Mr. Brock's residency that were presented to the Board were subsequently reviewed by Karen Schultz, the Clerk for the Charter Township of Shelby. Based upon these facts, Ms. Schultz concluded that Mr. Brock's voter registration in Shelby Township was valid. *Exhibit I*, ¶ 7.

As discussed in the Argument section, under the existing law, because Mr. Brock intends his permanent residence to be Shelby Township where he also has a physical presence, it is entirely proper for him to declare that his Shelby Township home is his residence for electoral purposes.

**D. Mr. Brock's Statements that he Circulated all of the Petition Sheets Bearing His Signature as Circulator were Unrebutted.**

Mr. Brewer also asserted in his challenge that, on "information and belief", Mr. Brock had not circulated all of the petitions he signed as circulator. In his original affidavit, Mr. Brock denied this assertion and described his circulation activities. *Exhibit G*, ¶ 3, to ¶ 8. Mr. Brock also affirmed in his testimony before the Board that he had collected all of the signatures on the petition sheets he had signed as circulator and further described his acts in circulating the nominating petition.

Mr. Brewer and his counsel were unable to offer any "information" that Mr. Brock had not circulated the petition sheets he had signed as circulator, but, instead, offered only "belief". The assertion was made that Mr. Brock could not possibly have collected, on a single day, the number of signatures he claimed to have gathered, although he never obtained more than 124 signatures on any given day, and no evidence was offered that it would be impossible, or even unlikely, to collect the number of signatures he gathered on any given day.

In addition, counsel for Mr. Brewer claimed before the Board that the petition sheets Mr. Brock had signed as circulator were suspicious because: (1) several of the sheets contained only one signature: (2) Mr. Brock's own alleged pattern in the handling of the petition sheets changed between the earliest circulation of the nominating petition and the circulation occurring on May 13th, and (3) Mr. Brock would have allegedly caught certain post office errors had he truly been the circulator. Mr. Brock fully answered questions before the Board on each of these points, and never strayed from his testimony that he had circulated each and every petition sheet that bears his signature as circulator.

**E. The Board Refuses to Certify the Sufficiency of Plaintiff's Nominating Petition.**

Following Mr. Brock's testimony, on June 4, 1996, the Board deadlocked 2 to 2 on certifying Plaintiff's nominating petition. As a consequence of the deadlock, the Board has taken no position on the sufficiency of the petition. As set forth below, Plaintiff Heintz is clearly entitled to appear on the ballot for the Republican nomination to Congress from the 10th District, and an Order of Mandamus requiring the Board to certify her nominating petition as sufficient should issue.

Defendant. Secretary of State Miller. is a named party because she, through the Bureau. is responsible for determining what petition sheets to accept as part of the canvass. In addition, Secretary of State Miller is ultimately responsible for the creation of the ballots, and should be instructed to place Ms. Heintz on the ballot for the Republican nomination to Congress from the 10th District.

### ARGUMENT

#### I. MANDAMUS IS THE APPROPRIATE REMEDY FOR THE BOARD OF CANVASSER'S FAILURE TO CERTIFY THE HEINTZ PETITION.

The Board of State Canvassers has a clear legal duty to declare either the legal sufficiency or insufficiency of a nominating petition nine weeks before the primary election. MCL 168.552(9); MSA 6.1552(9). The Board has failed to make the required declaration and has clearly failed to do that which it is legally obligated to do.<sup>6</sup>

This Court stated the general standard applicable to mandamus actions in Lundberg v Corrections Comm., 57 Mich App 327, 329; 225 NW2d 752 (1975):

Mandamus is a discretionary writ and will issue against a public official only to compel the enforcement of a clear legal duty. . . . Ordinarily, the act requested must be of a ministerial nature. However, the execution thereof may involve some measure of discretion. . . . If the act requires some discretion but is mandated by statute and the officer failed to carry out the provisions of the statute, the courts may order him to do so. [Citations omitted].

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<sup>6</sup>According to the Director of the Bureau of Elections. if a decision is not rendered on or before June 13. 1996. that Plaintiff Heintz's name be placed on the ballot. it will likely be too late to prepare ballots and comply with other pertinent provisions of law. As such. in this case justice delayed is literally justice denied.

See also Wayne County v State Treasurer, 105 Mich App 249, 251; 306 NW2d 468 (1981), lv den, 412 Mich 915 (1982) (same).

A writ of mandamus is the most appropriate remedy for an aggrieved party to use in seeking to compel action by either the Secretary of the State or the Board of State Canvassers. For example, in Wolverine Golf Club v Secretary of State, 24 Mich App 711; 180 NW2d 820 (1970), aff'd 384 Mich 461 (1971), this Court granted a writ of mandamus ordering the Secretary of State "to accept an initiative petition for canvass and immediate submission to the present session of the legislature." Wolverine, 24 Mich App at 714. As the court wrote: "[M]andamus is clearly the proper remedy if plaintiffs are entitled to relief." See Wolverine, 24 Mich App at 716. Similarly, in McCleod v State Board of Canvassers, 304 Mich 120, 124-25; 391 NW2d 504 (1942):

The Board of State Canvassers is a State agency with duties to perform in accordance with State statute law and conceivably there might be circumstances under which the State Board might arbitrarily refuse to certify an election where it was the clear legal duty of the State Board so to do. This court has jurisdiction to issue a writ of mandamus commanding performance of a clear legal duty by a State agency. Cf. Gram v Board of Supervisors, 190 Mich 162, 169; 156 NW 344 (1916) ("As the duty of the Board appears to be plain and the Board adjourned without performing it, the writ must now issue directing the Board to reconvene and make the required and necessary determination.")

In Santia v Board of State Canvassers, 152 Mich App 1; 391 NW2d 504 (1986), this Court again upheld a writ of mandamus as a proper remedy against the Board, and in Kadans v Wayne County Clerk, 363 Mich 306, 309; 109 NW2d 788 (1961), the Michigan Supreme Court issued a writ to compel the defendant clerk to accept and file plaintiff's nominating petitions.

In this case. Plaintiff Heintz filed a nominating petition which contained sufficient valid signatures for her placement on the ballot, and a writ of mandamus must be issued, compelling the Board to certify the sufficiency of her nominating petition.

**II. THE MISSING PETITION SHEETS MUST BE CONSIDERED IN DETERMINING THE SUFFICIENCY OF SUSY HEINTZ'S NOMINATING PETITION**

As noted in the Statement of Facts, the Heintz campaign filed nine petition sheets, containing 89 signatures, approximately 73 of which were determined to be valid. That the petition sheets were, in fact, timely received by the Bureau is amply demonstrated by the time-stamped Supplemental Filing Receipt (*Exhibit B*), Dorothea Blair's affidavit, acknowledging the filing (*Exhibit C*), and Ryan Boeskool's affidavit, stating that he delivered the nine petition sheets to the Bureau. (*Exhibit D*). The Bureau, itself, admits that the petition sheets were filed. That the copies of the nine sheets given to the Bureau were authentic is established by the affidavits of William Froberg (*Exhibit E*), Natalie Mytnyk (*Exhibit F*), and Gregory Brock (*Exhibit G*, ¶ 15). Despite this overwhelming evidence, Messrs. Brewer and DiNello would have this Court reject the consideration of the nine petition sheets based on unsupported conspiracy theories.

Little more need be said in support of the propriety of counting the valid signatures on the nine petition sheets. That the nine sheets must be considered in determining the sufficiency of the nominating petition is controlled by Wojcinski v State Board of Canvassers, 347 Mich 573; 81 NW2d 390 (1957). There, petition sheets were apparently misplaced by the Secretary of State's office. Testimony was taken, and the factfinder concluded that the petition sheets had been filed. Rebuttal evidence offered by defendants did nothing to refute that the

petition sheets were filed.<sup>7</sup> In determining in Wojcinski that plaintiff's name must appear on the ballot, the Supreme Court said:

The right to seek public office is, however, basic to the proper operation of our democratic form of government. Where there is affirmative proof, as here, of the filing of sufficient petitions to qualify for the ballot, denial of such a right should not rest under this statute upon rebuttal testimony of an indefinite or vague character.

In the current instance plaintiff testified to the filing of several hundreds more signatures (on incompletd sheets of petitions) than the Secretary of State subsequently found on hand. The testimony offered by defendants denies possession of these disputed sheets, but does not deny that they were filed nor that they might have been lost. Defendants admit no count of either sheets or signature was made by them until after the filing of this suit.

It would have been simple enough for the Secretary of State to have counted each of the petition sheets submitted, in the presence of the person filing, and issued a duplicate receipt therefor in order to eliminate any such question of alleged loss of sheets as is currently before us.

347 Mich at 577-578.

Before the Board, counsel for Mr. Brewer asserted that Wojcinski was not controlling because, now, the Bureau does, in fact, have better procedures in place for accepting petition sheets. In fact, the Bureau now issues filing receipts, and such a receipt was, in fact, issued to the Heintz campaign. Obviously, the purpose of issuing the receipt is "to eliminate any such question of alleged loss of sheets". Before the Board, counsel for Mr. Brewer argued circularly, namely, that because the Bureau now issues receipts, when petition sheets cannot be found in the Bureau's files, it must be presumed that no filing actually occurred. Under

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<sup>7</sup>Here, of course, the Bureau concedes that the petition sheets were filed.

this argument. issuance of a filing receipt provides no protection at all to the filer and totally defeats the purpose of issuing a receipt.

Counsel also asserted that the petition sheets should not be considered because the Bureau could not find its copy of the filing receipt. As Dorothea Blair testified before the Board, however, the Bureau's copy of the filing receipt would have been attached to the missing petition sheets so that if the petition sheets were lost, the receipt would also be missing.

Mr. Brewer has offered nothing but speculation of "an indefinite or vague character." It is the Bureau's decision which petition sheets are to be canvassed. Here, the Bureau determined the nine supplemental sheets must be considered and that with these sheets, Plaintiff Heintz submitted sufficient valid signature for certification of her nominating petition.

**III. ASSUMING, ARGUENDO, GREGORY BROCK IS NOT QUALIFIED TO VOTE IN SHELBY TOWNSHIP, BECAUSE HE IS NONETHELESS A REGISTERED VOTER IN SHELBY TOWNSHIP, THE SIGNATURES HE GATHERED ON SUSY HEINTZ'S PETITION MUST BE COUNTED.**

As detailed below, in full compliance with the longstanding Michigan law that governs residency for purposes of voting, Gregory Brock is unquestionably entitled to be a registered voter in Shelby Township, where he first registered to vote when he became eligible and has voted in every election since with one exception.<sup>8</sup> Even if Mr. Brock did not qualify as a resident of Shelby Township, however, under a 1990 amendment to the state election law, because Mr. Brock is nonetheless registered at the Shelby Township address he used as circulator of the Susy Heintz nominating petition sheets, the signatures must be counted.

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<sup>8</sup>On the date of one election. Mr. Brock's grandfather died, and he failed to vote.

Section 544c of the election law. MCL 168.544c; MSA 6.1544(3), currently provides in pertinent part:

(3) At the time of circulation, the circulator of a petition shall be a registered elector of this state. At the time of executing the certificate of circulator, the circulator shall be registered in the city or township indicated in the certificate of circulator on the petition.

This version of § 544c(3) became effective December 21, 1990, and was part of the amendments wrought by 1990 PA 329. Prior to the enactment of 1990 PA 329, the provision governing the status of circulators of petitions was MCL 168.544c(2); MSA 6.1544(3)(2), which provided:

The circulator of a petition shall be a **qualified** and registered elector of this state (emphasis provided).

Significantly, 1990 PA 329 eliminated the requirement that the circulator be a "qualified" elector, mandating only that the circulator be a registered elector. Of course, when the Legislature changes statutory language, it is presumed that it also intended a change in the law. *Inter alia*, Lawrence Baking Co v Unemployment Compensation Comm, 308 Mich 198, 205; 13 NW2d 260 (1944), Wright v Vos Steel Co, 205 Mich App 679, 684; 517 NW2d 880 (1994), English v Saginaw County Treasurer, 81 Mich App 626, 631; 265 NW2d 775 (1978).

In this case, however, there is no need to rely upon a presumption concerning legislative intent, because the Senate Fiscal Agency performed a Bill Analysis of S.B. 1060, (*Exhibit J*), which became 1990 PA 329, shows that it was precisely the intent of the Legislature to eliminate the possibility that qualified voters would sign a nominating petition, only to have their expressed intentions ignored as a consequence of an *ad hoc* determination

that the petition circulator, although a registered elector, should have been registered from another address. In this regard, the Bill Analysis states:

Another situation that arose during the 1990 election concerns the registration requirements for petition circulators. Under Section 554c(2) of the Election Law, the circulator of a petition must be a "qualified and registered elector of the state"; however, in Section 544c(1), which describes the form of the nominating petition and the "certificate of circulator" that must accompany the petition, the certificate contains a line that requires the circulator to reveal the city or township where he or she is registered. According to the Secretary of State, a candidate for Congress filed nominating petitions that were circulated by a circulator who was not a registered elector of the city named on the petition. The petitions were challenged, but upon appeal the Court of Appeals ruled that the challenged petitions were "in substantial compliance with the election code" because there was "no legitimate dispute that the circulators in question were at all times qualified and registered electors of the state (Docket # 129867)". It has been suggested that the Election Law be amended to make it clear that at the time a circulator executed a certificate, he or she would have to be registered in the city of township where he or she claimed to be registered.

The case referred to in the Bill Analysis is Robert E. Messerilli v Michigan State Board of Canvassers, Docket No. 129867. In Messerilli, certain circulators were apparently not registered electors at the address used in the circulator's certificates. This Court nonetheless concluded in an Order entered June 21, 1990 (*Exhibit K*):

Pursuant to MCR 7.206(D)(3) and 7.216(A)(7) the determination of the State Board of Canvassers finding plaintiff's nomination petition insufficient based upon rejection of 423 facially valid signatures listed on petition registration at the city listed by the circulator, is VACATED, there being no legitimate dispute that the circulators in question were at all times qualified and registered electors of the state, if not at the city indicated, then at the city or township of previous registration, and thus the challenged petitions are in substantial compliance with the requirements of the election code. See MCL 168.544c(2); MSA

6.1544(3)(2); Kadan v Wayne County Clerk, 360 Mich 610 (1960) [*sic.* should be Kadans v Wayne County Clerk, 363 Mich 306 (1961)].

It is evident that the Legislature agreed with this Court's ruling in Messerilli and amended MCL 500.544c; MSA 6.1544(3), precisely to eliminate issues over a circulator's residence so long as the circulator is registered somewhere within the State of Michigan and signed the circulator's certificate, utilizing his or her address of voter registration. This was clearly the intention of the Legislature, and the task of the judiciary is to determine and implement the legislative intent. *E.g.*, Longstreth v Gensel, 423 Mich 675, 680; 377 NW2d 804 (1985), Nicholson v Birmingham Bd of Review, 191 Mich App 237, 239-240; 477 NW2d 492 (1991).

At a minimum, even, assuming, *arguendo*, that Mr. Brock should be registered in Clinton Township, there has most certainly been substantial compliance with the election code, and this is all that is required. *Inter alia*, Messerilli; *supra*, Kadans v Wayne County Clerk, 363 Mich 306, 308; 109 NW2d 788 (1961), Automobile Club of Michigan Comm for Lower Rates Now v Secretary of State (on Remand), 195 Mich App 613, 621; 491 NW2d 269 (1992), Newsome v Brd of State Canvassers, 69 Mich App 725, 729; 245 NW2d 374 (1976). Here, Mr. Brock was indisputably registered in Shelby Township at the address set forth in his circulator's certificate. The sole issue concerning Mr. Brock's registration is whether he should have been registered in Clinton Township, which is also within the 10th Congressional District. Those electors who signed Plaintiff Heintz's petition should not be disenfranchised simply because of a belief by two members of the Board that one of the petition circulators, Mr. Brock, should have been registered in a different location. Clearly, in the worst case

scenario. there has been substantial compliance with the election code. The writ of mandamus, compelling the Board to certify Plaintiff Heintz's nominating petition should be issued.

#### **IV. MR. BROCK IS CLEARLY ENTITLED TO REGISTER TO VOTE IN SHELBY TOWNSHIP**

Since the early days of Michigan statehood, the law has been that a person's expressed intention in selection of residence is the most important factor in determining an address for voting purposes. The Michigan Supreme Court has held that a person is presumed to be resident where he is registered to vote, and anyone challenging the residency of a registered voter has the burden of proving that such residency was lost or never existed. Harbaugh v Cicott, 35 Mich 241, 251-52 (1876). In Harbaugh, the parties were candidates for the same position in an election where the defendant had received one more vote than the plaintiff. *Id.* at 246. The issue before the Court was whether certain votes cast for either party were illegal. *Id.* In particular, "it was claimed by the [plaintiff] that Robert McClatchey voted for respondent, although he was not legally entitled to vote in the City of Detroit, not being a resident thereof." *Id.* at 249.

The Michigan Supreme Court began its analysis of this issue by holding that Mr. McClatchey's registration in Detroit established a presumption of his residency there, and the party challenging his residency had the burden of proving that he was not a Detroit resident:

It appeared that Robert McClatchey voted in the third ward, and that his name appeared upon the register and poll list. He was therefore *prima facie* a legally qualified voter and entitled to vote in the precinct and ward where he was registered. This presumption covers and includes everything necessary to make him a qualified voter. Residence in Detroit the necessary time is one of the essential requisites to a right to vote. The

presumption covers this, and the burden then of proving such facts as would show that he never was a resident of Detroit, or that if he ever was he has lost his residence, was upon the party asserting the contrary.

*Id.* at 251-52.

The defendant in Harbaugh had argued that Mr. McClatchey's family had lived in another city for several years and regularly visited his family on the weekends, but the Court held that it was error to instruct the jury that if they found those facts to be true, the plaintiff should be deemed to have relinquished his residency in Detroit. *Id.* at 252. The Court rejected defendant's theory because it failed to recognize that "intention of the party is one of the most important inquiries involved in such a question." *Id.* The Court stated that even if both the plaintiff and his family resided elsewhere for several years, that, in itself, did not cause plaintiff to lose his residence for voting purposes. *Id.* Thus, when a person is a registered voter, he is presumed to remain a resident and registered voter unless and until it is shown that he has intentionally abandoned his former residence.

The rule that intent is the touchstone for determining whether an individual relinquishes his or her residency and that a challenger bears the burden of showing an intent to relinquish residency has endured and been amplified over the years by numerous courts. *See, e.g., Warren v Board of Registration*, 72 Mich 398; 40 NW2d 553 (1888); Choike v Detroit, 94 Mich App 703, 708; 290 NW2d 58 (1980). The Michigan Supreme Court, reaffirming this principle in Warren held at 402:

**Mere bodily presence or absence can have no effect in determining residence, when once existing. There is probably not a precinct in any city which has not resident and qualified voters who spend most of their time in pursuits out of the ward or State: and persons who travel for pleasure or business, for**

long or short periods. do not lose their residence by such absence. Senators and Representatives and other persons often occupy residences in Washington. but they are not disfranchised for doing so. As explained in *Harbaugh v. Cicott*, a person cannot lose his residence, unless he voluntarily renounces it for another.

Emphasis supplied.

A number of Attorney General opinions also have recognized these principles and applied them in more fully developed factual contexts. For example, in 1930-32 OAG, at 134 (February 26, 1931), the question was posed by a Township Clerk as to whether a particular individual had the right to vote in her township. The individual in issue owned a residence within the Clerk's jurisdiction, but owned a restaurant elsewhere. The person generally slept in the back of the restaurant, and, relying on a statutory definition of "residence" as where a person "habitually sleeps and has a lodging," the Township Clerk questioned whether the individual was obligated to vote from the restaurant address. In concluding that the person had a right to choose to be registered at either location, the Attorney General said:

[I]f the subject of your inquiry "habitually sleeps and has a lodging" at his restaurant, then he should register and vote in the precinct where the restaurant is located unless there be circumstances such as the maintenance of a home for himself and family in your precinct, with a good faith intention to continue such residence even though absent for a time for the purpose of conducting his restaurant business in which case he should register and vote in your precinct. **He has a right to choose "his domicile and cannot be shut out of it."** [Emphasis added.]

In 1938-40 OAG, at 10 (September 15, 1938), the question posed by the Iron, Michigan, Township Clerk was whether certain unmarried young women who had taken jobs in Illinois where they stayed approximately 11 months a year could lawfully be registered to

vote in Michigan. In concluding that registration in Michigan was lawful, the Attorney General noted:

It might be argued that persons continuously out of the state for eleven months of the year can hardly be deemed members of the community with a common interest in matters pertaining to its Government or likely to exercise their franchise intelligently. On the other hand, our Supreme Court appears to be committed to the principle that a person has the right to choose his own domicile "and cannot be shut out of it." *Warren v. Board of Registration*, supra, p. 406.

It, therefore, is my opinion that the persons in question are not disqualified merely because they do not "habitually sleep and have a lodging" in the township. If they have not acquired another residence and it is their fixed intention to return to live with their parents in case of incapacity through illness or loss of their jobs, then they have never "ceased to reside" in such township, in contemplation of law.

When a justice of the peace and his family moved from Michigan to Illinois, where the justice had employment, but he stated his intent to retain his Michigan residency, the Attorney General determined that the Harbaugh rule applied and the justice's intent to retain his Michigan residence controlled. 1963 OAG, No. 4157 at 124-125 (June 20, 1963).

Finally, in response to a request from former State Senator Richard Allen, current Attorney General Frank J. Kelley issued a formal opinion on the question of residency for voting purposes in 1975-76 OAG, No 4931, at 332 (March 22, 1976). Attorney General Kelley, relying on, among others, OAG 1930-32, at 134, cited above, concluded: "To acquire a new domicile, it is necessary to have *both* physical presence and intent." 1975-76 OAG, No. 4931 at 336 (emphasis in original). See also, E. Scoles & P. Hay, Conflict of Laws §4.21 at 187 ("Since a domicile once acquired continues until displaced by a subsequent domicile of

choice. the acquisition of a second domicile will not disturb the pre-existing domicile unless there is clear and convincing evidence to the contrary) (footnote omitted).

Thus, the governing common law rule may be fairly summarized as follows:

1. There is a presumption that a person is a resident where he or she is registered to vote, and it is the burden of a challenger to rebut that presumption.
2. The key to a challenger meeting this burden is a showing that the individual in question intended to voluntarily change his or her residence.

Applying these rules to the facts of this case compels the conclusion that Mr. Brock always has been and remains a resident of Shelby Township. First and foremost, Mr. Brock is, and always has been since his age of majority, a registered voter in Shelby Township. *Exhibit G*, ¶¶10, 11. This fact presumptively establishes his permanent residency in Shelby Township. In Harbaugh, the fact that the family of an individual in question resided in another city for several years, and during that time, the individual in question spent weekends with his family was insufficient to rebut the presumption of residency in the city where the individual is registered to vote. 35 Mich at 252. Similarly, in this case, there are no facts sufficient to rebut the presumption that Mr. Brock never intended to change his residence from Shelby Township. On the contrary, Plaintiff Heintz has shown numerous facts, in addition to Mr. Brock's sworn affidavit clearly attesting to his permanent residency in Shelby Township and his unwavering intention to maintain that residency, convincingly demonstrating that Mr. Brock is a resident and properly registered voter in Shelby Township.

It is, of course, the duty of the township clerk to determine who is and who is not qualified to vote in the township. MCL 168.500c; MSA 6.1500(3) and MCL 168.500d;

**MSA 6.1500(4). In this regard, Karen Schultz, Clerk of the Charter Township of Shelby, with full knowledge of Mr. Brock's situation has concluded he is a resident of Shelby Township and is validly registered there. Exhibit I, ¶ 7.**

To rebut this presumption of residency and the compelling facts that Mr. Brock has not voluntarily renounced his Shelby Township residence, Mr. Brewer offers only a few relatively insubstantial factors that are overwhelmingly outweighed:

<p>As noted, Mr. Brock is registered to vote in Shelby Township. he has always voted there since he attained the age of majority.</p>	<p>The challengers have not proffered any facts to contradict this. Indeed, Mr. Brock has never been registered to vote or voted anywhere other than Shelby Township. See Exh G. ¶¶10, 11.</p>
<p>Mr. Brock has a permanent address in Shelby Township, where he keeps his personal effects and has a bedroom where he often stays in his free time. He is also involved in various community groups and activities in Shelby Township. Exh G at 10, 13, 14.</p>	<p>Because of his work, Mr. Brock sometimes stays in an apartment that is leased to another in Clinton Township, in order to shorten his commuting time. <i>Id.</i> at ¶12. However, Mr. Brock has given sworn testimony that he has always intended his permanent residence to be in Shelby Township. <i>Id.</i> at ¶¶10, 11, 14.</p>
<p>Mr. Brock receives both personal and business mail at his Shelby Township address. <i>Id.</i> at 10.</p>	<p>Mr. Brock also receives some personal and business mail at the apartment where he sometimes stays in Clinton Township.</p>
<p>When Mr. Brock was required to change his driver's license address to Clinton Township to expedite a certain transaction, he expressly declined to change his voting registration when asked if he wanted to by the Secretary of State clerk, because he continued to consider himself a Shelby Township resident and registered voter. Exh H at ¶6.</p>	<p>Because his automobile proof of insurance indicated Clinton Township address, Mr. Brock was required by a Secretary of State clerk to change his driver's license to conform with his proof of insurance. Exh H at ¶¶ 2, 4, 5.</p>

RECORDED IN MICHIGAN SUPREME COURT

As the Michigan Supreme Court held in Harbaugh and its progeny, Mr. Brock's temporary absence from his permanent residence, when he never intended to abandon his

permanent residence, did not change his residence and invalidate his voter registration. He has always maintained his closest ties to Shelby Township, participating in that community not only by always voting there, but also by involvement in various social and community groups and activities. He keeps his personal effects in his own room in his parent's house in Shelby Township, where, since December, 1993, he has spent 40% to 60% of his free time. Under these circumstances, the Restatement of Conflict of Laws 2d, §20, comment b2 states: "As between two homes, a person's [domicile] is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life." **Home is where the heart is, and Mr. Brock's heart is in Shelby Township. Shelby Township is clearly Mr. Brock's domicile or residence under any rational analysis.**

Mr. Brewer cannot show that Mr. Brock has voluntarily relinquished his residence and voter registration in Shelby Township, and the Board's refusal to acknowledge this failure constitutes a violation of a clear legal duty, as well as an involuntary disenfranchisement in violation of the Michigan constitution.

**V. THERE IS NO EVIDENCE, ONLY SPECULATION, THAT GREG BROCK SIGNED PETITION SHEETS AS CIRCULATOR THAT HE DID NOT, IN FACT, CIRCULATE**

As noted in the Statement of Facts, counsel for Mr. Brewer also asserted that Gregory Brock had signed petition sheets as circulator that he had not, in fact, circulated. This defamatory allegation was made notwithstanding Mr. Brock's repeated sworn statements and testimony that, in fact, he had gathered every signature on those petition sheets he signed as circulator.

It is black letter law that a person contesting the validity of petitions or election contests bears the burden of proof. 26 Am Jur 2d, Elections. § 438 at 232-234. By Mr. Brewer's counsel's admission before the Board, he has no actual facts or evidence that Mr. Brock did not circulate all of the petition sheets he signed as circulator. Mr. Brewer has clearly failed to meet his burden of establishing any impropriety in Mr. Brock's signing of circulator's certificates.

### CONCLUSION AND RELIEF REQUESTED

For the reasons set forth herein, it is manifestly evident that Plaintiff Heintz's nominating petition is entitled to be certified as sufficient. Thus, Plaintiff requests that this Honorable Court enter its Writ of Mandamus, requiring the Board to certify the sufficiency of her nominating petition. In addition, Plaintiff requests that this Honorable Court enter its Writ of Mandamus, requiring the Secretary of State to place Plaintiff Heintz's name on the ballots distributed within the 10th Congressional District.

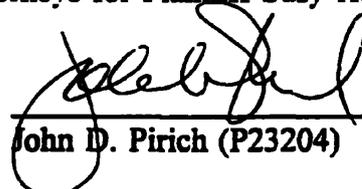
Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN

Attorneys for Plaintiff Susy Heintz

Date: June 6, 1996

By:

  
John D. Pirich (P23204)

Date: June 6, 1996

By:

  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
222 North Washington Square  
Lansing, Michigan 48933-1800  
(517) 377-0711



STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ.

Plaintiff.

Court of Appeals  
Docket No.

-v-

MICHIGAN STATE BOARD  
OF CANVASSERS.  
a constitutional board. and  
CANDICE MILLER.  
Secretary of State.  
in her official capacity,

Defendants.

---

John D. Pirich (P23204)  
Timothy Sawyer Knowiton (P30000)  
John S. Kane (P46132)  
Honigman Miller Schwartz & Cohn  
Attorney for Plaintiff Susy Heintz  
222 N. Washington Square  
Suite 400  
Lansing, MI 48933  
(517) 484-8282

---

**PLAINTIFF'S MOTION FOR EMERGENCY PRELIMINARY  
HEARING AND ORDER TO SHOW CAUSE ON COMPLAINT  
FOR MANDAMUS AND FOR IMMEDIATE CONSIDERATION**

Plaintiff, Susy Heintz, by and through her attorneys, Honigman Miller Schwartz and Cohn, submits this Motion for Immediate Hearing, Emergency Preliminary Hearing and Order to Show Cause on Complaint for Mandamus, pursuant to MCR 7.211(C)(6); MCR 7.206; and MCR 3.305(C) and states as follows in support:

1. On June 4, 1996, the Michigan State Board of Canvassers (the "Board") met to consider certification of nominating petitions to place Plaintiff on the ballot for the primary

election for the Republican nomination as Representative to Congress for Michigan's 10th District. The Board has deadlocked on the certification question and clearly will not certify the petitions without an order from this Court.

2. The primary election in question will occur on August 6, 1996.

3. The undersigned has been informed by Christopher Thomas, Director of the Bureau of Elections, that, in order for Plaintiff's name to appear on the printed ballots, her nominating petition must be certified no later than June 13, 1996. Otherwise, there will be insufficient time to put her on the ballot when she prevails in this case.

4. The Board's failure to certify Plaintiff's petitions threatens her legal right to appear on the ballot and violates the Board's clear legal duty to certify the petition.

5. The failure of the Board to certify Plaintiff's petitions unfairly prejudices Plaintiff by prohibiting her from fully and fairly participating in the primary election campaign. Given the Board's failure, and the consequent uncertainty regarding whether Plaintiff will be able to appear on the ballot, Plaintiff is seriously and irreparably impeded in her ability to campaign as a candidate.

6. On June 6, 1996, Plaintiff filed her Complaint for Mandamus, seeking an order to compel the Board to certify her petitions.

7. This Court has traditionally recognized a Complaint for Mandamus in an election case as valid grounds for immediate consideration, and the only way that Plaintiff's legal rights can be protected is by this Court considering Plaintiff's Mandamus Complaint expeditiously. *See, e.g., Kuhn v Department of Treasury*, 15 Mich App 364, 375; 166 NW2d

INTRIGUANT MILLER SCHWARTZ AND COHN

697 (1968). 384 Mich 378 (1971): modified on other grounds. Shapiro v Ann Arbor School Dist. 14 Mich App 738: 165 NW 2d 919 (1968).

8. This Motion has been personally served on Defendants in conformity with MCR 7.210(C)(6), so that this Court can consider Plaintiff's Complaint immediately.

WHEREFORE. Plaintiff respectfully requests that this Court:

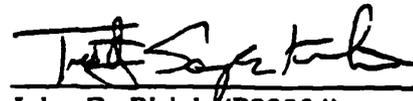
1. Grant her Motion for Immediate Hearing on Complaint for Mandamus;
2. Order Defendants to immediately answer the Complaint. and
3. Set a time and date for a hearing in this matter as expeditiously as possible.

Respectfully submitted.

HONIGMAN MILLER SCHWARTZ AND COHN

Date: June 6, 1996

By:



John D. Pirich (P23204)  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
222 North Washington Square  
Lansing, Michigan 48933-1800  
(517) 377-0711

HONIGMAN MILLER SCHWARTZ AND COHN

LNS01/36523.1

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ.

Plaintiff.

Court of Appeals  
Docket No. \_\_\_\_\_

-v-

MICHIGAN STATE BOARD  
OF CANVASSERS.

a constitutional board. and  
CANDICE MILLER,  
Secretary of State.  
in her official capacity,

Defendants.

\_\_\_\_\_/

John D. Pirich (P23204)  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
Honigman Miller Schwartz & Cohn  
Attorney for Plaintiff Susy Heintz  
222 N. Washington Square  
Suite 400  
Lansing, MI 48933  
(517) 484-8282

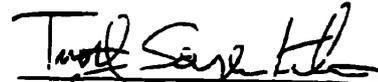
**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION  
FOR EMERGENCY PRELIMINARY HEARING ON COMPLAINT  
FOR MANDAMUS AND FOR IMMEDIATE CONSIDERATION**

Timothy Sawyer Knowlton, being first duly sworn, deposes and says as follows:

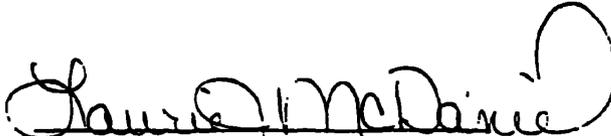
1. I am one of the attorneys representing Susy Heintz, Plaintiff in this action.
2. I have reviewed Plaintiff's Motion for Emergency Preliminary Hearing on Complaint for Mandamus and for Immediate Consideration. The facts set forth in that motion are true to the best of my knowledge, information, and belief.

Further affiant saith not.

Dated: June 6, 1996

  
\_\_\_\_\_  
Timothy Sawyer Knowlton

Subscribed and sworn to before me  
this 6th day of June, 1996.

  
\_\_\_\_\_  
Laurie J. McDaniel, Notary Public  
Clinton County, Michigan  
My Commission Expires: 4/3/98

LNS01/36544.1  
TSK 6/6/96 2:48pm



STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ,

Plaintiff.

Court of Appeals  
Docket No. \_\_\_\_\_

-v-

MICHIGAN STATE BOARD  
OF CANVASSERS,  
a constitutional board, and  
CANDICE MILLER,  
Secretary of State,  
in her official capacity,

Defendants,

---

John D. Pirich (P23204)  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
Honigman Miller Schwartz & Cohn  
Attorney for Plaintiff Susy Heintz  
222 N. Washington Square  
Suite 400  
Lansing, MI 48933

---

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COURT OF APPEALS  
LANSING OFFICE  
ELIA WILLIAMS CLERK

HONIGMAN MILLER SCHWARTZ & COHN

**NOTICE OF HEARING**

Plaintiff, Susy Heintz, through her attorneys Honigman Miller Schwartz and Cohn, hereby gives notice to all parties that her Motion for Emergency Preliminary Hearing and Order to Show Cause on Complaint for Mandamus and for Immediate Consideration is subject to immediate consideration by this Honorable Court, pursuant to MCR 2.711(C)(6) and will come on for hearing at a date and time to be set by the Court.

Respectfully submitted.

HONIGMAN MILLER SCHWARTZ AND COHN

Date: June 6, 1996

By: Timothy Sawyer Knowlton

John D. Pirich (P23204)  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
222 North Washington Square  
Lansing, Michigan 48933-1800  
(517) 377-0711

LNS01/36526.1

HONIGMAN MILLER SCHWARTZ AND COHN

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ.

Plaintiff,

Court of Appeals

-v-

Docket No. \_\_\_\_\_

MICHIGAN STATE BOARD  
OF CANVASSERS,  
a constitutional board, and  
CANDICE MILLER,  
Secretary of State,  
in her official capacity,

**PROOF OF SERVICE**

Defendants.

\_\_\_\_\_  
John D. Pirich (P23204)  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
Honigman Miller Schwartz & Cohn  
Attorney for Plaintiff Susy Heintz  
222 N. Washington Square  
Suite 400  
Lansing, MI 48933  
(517) 484-8282

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COURT OF APPEALS  
LANSING OFFICE

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STATE OF MICHIGAN )  
) ss:  
COUNTY OF INGHAM )

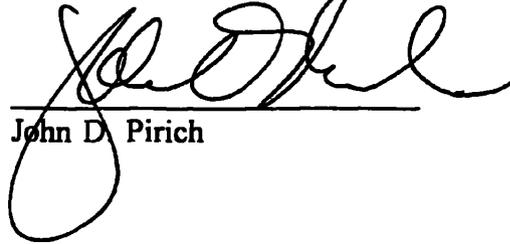
John D. Pirich, being first duly sworn, deposes and says that on the 6th day of June, 1996, he served a copy of Plaintiff's Complaint for Mandamus, Brief in Support of Complaint for Mandamus, Motion for Emergency Preliminary Hearing and Order to Show Cause on Complaint for Mandamus and for Immediate Consideration, Affidavit in Support, Notice of Hearing, and Proof of Service upon:

Honorable Candice Miller  
Secretary of State's Office  
Treasury Bldg., 1st Floor  
430 W. Allegan  
Lansing, MI 48918-9900

Christopher Thomas, Secretary, Michigan State Board of Canvassers  
Bureau of Elections  
Mutual Bldg., 4th Floor  
208 N. Capitol Ave.  
Lansing, MI 48918-1700

Gary Gordon  
Attorney General's Office  
Law Bldg., 7th Floor  
525 West Ottawa  
P.O. Box 30212  
Lansing, MI 48909

by hand delivering said documents to their business addresses listed above.



John D. Pirich

Subscribed and sworn to before me  
this 6th day of June, 1996.



Jennie A. Blake - Notary Public  
Clinton a/i Ingham County, MI  
My commission expires: 11/19/00

LNS01/36542.





STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ,

Plaintiff,

v

Court of Appeals No. 195290

MICHIGAN STATE BOARD OF  
CANVASSERS, a constitutional board,  
and CANDICE MILLER, Secretary of  
State, in her official capacity,

Defendants.

---

ANSWER TO COMPLAINT FOR MANDAMUS

NOW COME Defendants, Michigan Board of State Canvassers and Candice Miller, Secretary of State, by their attorneys, Frank J. Kelley, Attorney General, Thomas L. Casey, Solicitor General, and Gary P. Gordon, Assistant Attorney General, and in answer to Plaintiff's Complaint for Mandamus state as follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit. By way of further answer, Defendants assert that the report of the Bureau of Elections, which included those signatures filed by Gregory Brock (challenged due to his residency) and those signatures in a supplemental filing (challenged due to their disappearance) resulted in a finding of 1,274 valid signatures and 275 invalid signatures. The detail is set forth in the staff report of the review of nominating petitions dated June 3, 1996 attached to Plaintiff's Brief in Support of Complaint for Mandamus as Exhibit A.

6. Admit.

7. Admit.

8. The factual allegations of paragraph 8 are admitted but for the allegation that the Bureau of Elections mishandled petitions filed by the Heintz campaign. Since at least 1982, despite acting as the filing official for thousands and thousands of individual petition sheets, no petitions have been lost or mishandled. The Bureau of Elections followed its normal procedures in the handling of the supplemental filing by the Heintz committee, however, has no explanation for the disappearance of nine petitions containing 89 signatures.

9. Admit.

10. Admit. By way of further answer, Defendants assert that the 1,274 signatures included those contained upon the missing nine petition sheets and those submitted by circulator Brock, which are the subject of the instant challenge.

11. Admit.

12. Defendants believe the statements in paragraph 12 to be factual, however, Defendants rely upon the transcript for a more complete and accurate recitation of arguments made by Mr. Brewer at the Board of State Canvassers meeting of June 3, 1996.

13. Admit.

14. Defendants Michigan Board of State Canvassers, having taken no position as to the validity of the 89 petition signatures which were missing, neither admits nor denies the legal conclusions and factual allegations set forth in paragraph 14. Defendant Secretary of State, however, through the Bureau of Elections, denies that the petition sheets were mishandled and admits that the Bureau of Elections recommended that the 89 signatures be included and accepted by the Board in its canvas.

15. Defendants admit that paragraph 15 is an accurate quote from Wojcinski v State Board of Canvassers, 347 Mich 573, 577-578 (1952).

16. The allegations in this paragraph constitute conclusions of law to which no answer is required and, accordingly, none is provided. By way of further answer, the Michigan Board of State Canvassers took no official position on the acceptability of petitions filed by Mr. Brock nor upon the validity of his voter registration for the reason that the Board deadlocked on a vote to consider the validity of Plaintiff Heintz' petitions.

17. The allegations in this paragraph constitute conclusions of law to which no answer is required and, accordingly, none is provided. By way of further answer, the Michigan Board of State Canvassers took no official position on the acceptability of petitions filed by Mr. Brock nor upon the validity of his voter registration for the reason that the Board deadlocked on a vote to consider the validity of Plaintiff Heintz' petitions.

18. Defendants neither admit nor deny the factual allegations in paragraph 18 and leave Plaintiff to her proofs. By way of further answer, Defendants assert that the affidavits and testimony of Mr. Brock speak for themselves.

19. Defendants neither admit nor deny the factual allegations and legal conclusions set forth in paragraph 19.

20. The factual allegations set forth in paragraph 20 are neither admitted nor denied. By way of further answer, Defendants assert that the affidavits and testimony of Mr. Brock taken before the Board of State Canvassers speak for itself.

21. The factual allegations set forth in paragraph 21 are neither admitted nor denied. By way of further answer, Defendants assert that the affidavits and testimony of Mr. Brock taken before the Board of State Canvassers speak for itself.

22. The factual allegations set forth in paragraph 22 are neither admitted

nor denied. By way of further answer, Defendants assert that the affidavits and testimony of Mr. Brock taken before the Board of State Canvassers speak for itself.

23. (sic) Plaintiff has failed to include a paragraph 23 and accordingly, no answer is provided.

24. The allegations of paragraph 24 constitute conclusions of law to which no answer is required and accordingly, none is provided.

25. Paragraph 25 appears to accurately reflect the testimony of Mr. Brock taken before the Board of State Canvassers on June 4, 1996.

26. The factual allegations set forth in paragraph 26 are neither admitted nor denied. By way of further answer, Defendants assert that the affidavits and testimony of Mr. Brock taken before the Board of State Canvassers speak for itself.

27. The allegations of paragraph 27 constitute a conclusion of law to which no answer is required.

28. The allegations of paragraph 28 appear to be correct, however, to the extent they constitute a conclusion of law no answer is provided.

29. Admit.

30. Admit.

31. The allegations of paragraph 31 constitute conclusions of law to which no answer is required. To the extent the allegations constitute factual allegations, they are neither admitted nor denied inasmuch as the Board of State Canvassers took no official position with regard to the validity of petitions filed by Plaintiff Heintz. By way of further answer, Defendant Board of State Canvassers admits that it does have a duty to canvas petitions submitted by candidates for Congress.

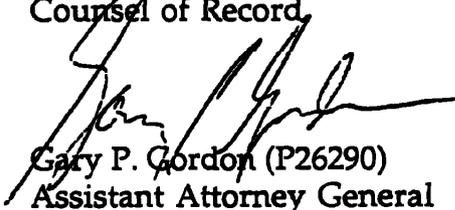
32. The allegations of paragraph 32 constitute conclusions of law to which no answer is required. By way of further answer, Defendant Secretary of State admits only that she has a clear legal duty to prepare primary ballots.

WHEREFORE, the Michigan Board of State Canvassers admits that its vote is deadlocked with regard to the sufficiency of petitions filed by Plaintiff Heintz as a candidate for the Republican nomination to Congress from the 10th Congressional District of Michigan and it is unlikely it will take further action with respect to those petitions absent action by this Court. Defendants Secretary of State and Board of State Canvassers further assert that action, if any, by this Court should be taken in an expeditious fashion based upon the Affidavit of Christopher M. Thomas (attached to Defendants' Brief) which indicates that the ballot printing process must commence by June 13, 1996 unless "stickers" are to be used by the appropriate election officials.

Respectfully submitted,

FRANK J. KELLEY  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record



Gary P. Gordon (P26290)  
Assistant Attorney General  
Public Employment & Elections  
P.O. Box 30212  
Lansing, MI 48909  
(517) 373-6434  
Attorneys for Defendants

Dated: June 7, 1996  
aven/9652083 answer

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

---

SUSY HEINTZ,

Plaintiff,

Court of Appeals No. 195290

v

MICHIGAN STATE BOARD OF CANVASSERS,  
a constitutional board, and CANDICE MILLER,  
Secretary of State, in her official capacity,

Defendants.

---

DEFENDANTS' BRIEF IN RESPONSE TO  
COMPLAINT FOR MANDAMUS

FRANK J. KELLEY  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record

Gary P. Gordon (P26290)  
Assistant Attorney General  
Attorneys for Defendants  
Public Employment & Elections  
P.O. Box 30212  
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(517) 373-6434

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STATEMENT OF JURISDICTION

Defendants agree that jurisdiction of this matter is properly before this Court pursuant to MCR 7.212(C)(4).

STATEMENT OF QUESTION INVOLVED

HAVE DEFENDANTS FULFILLED THEIR CLEAR LEGAL DUTY?

Plaintiff answers "No."

Defendants answer "Yes."

## INTRODUCTION

The instant Complaint for Mandamus was received by Defendants at approximately 4:00 p.m. on June 6, 1996. Counsel for Defendants received contact from the Clerk of the Court indicating that a reply, if any, was to be filed with the Court by 5:00 p.m. June 7, 1996.

The Board of State Canvassers was created by Const 1963, art 2, § 7. The Board is comprised of four members, and a majority of the Board of State Canvassers shall not be composed of members of the same political party. It is this even political party spilt between the Board of State Canvassers, and the resulting deadlock, that has caused the Complaint for Mandamus to be filed with this Court.

The responsibilities of the Board of State Canvassers are detailed within the Michigan Election Law, MCL 168.1 et seq; MSA 6.101 et seq, and MCL 200.301 et seq; MSA 6.2111 et seq. Specifically, with regard to nomination petitions, the Board of State Canvassers is to canvas the petitions to ascertain whether the requisite number of qualified and registered voters have signed the petitions. MCL 168.552(7); MSA 6.1552(7). The Board of State Canvassers may conduct hearings and investigations into the validity of the signatures. Id.

At its June 4, 1996 meeting, the Board of State Canvassers deadlocked along party lines as to whether to certify the name of Susy Heintz to the ballot as a candidate for nomination of the Republican party to the office of Representative to Congress to the 10th District of Michigan.

## STATEMENT OF FACTS

The following Statement of Facts is taken from the attached Affidavit of Christopher M. Thomas and proceedings held before the Michigan Board of State Canvassers on June 3 and 4, 1996. Inasmuch as many of the facts will not be contested by any party, and due to the unavailability of the transcripts at the present time, specific transcript references are omitted.

On May 14, 1996, Plaintiff Heintz filed in two separate filings, petitions totaling 1,549 signatures. (Staff Report, Exhibit A to Plaintiff's Brief). Of these signatures, the staff determined that 1,274 were valid with the inclusion of petitions filed by circulator Brock and with the inclusion of 89 signatures filed as a supplemental filing. A total of 1,224 valid signatures are required for nomination to the office in question. (Staff Report, supra).

### Supplemental Filing

Challenges to the validity of the supplemental filing and to petitions circulated by Gregory Brock were filed by Mark Brewer, Chair of the Michigan Democratic Party.

The staff followed its normal procedures in dealing with the supplemental filing which, since at least 1982, and despite handling thousands and thousands of individual petition sheets containing well over one million signatures, has been without mishap. (Affidavit of Director of Elections, Christopher M. Thomas, attached as Exhibit A). However, the nine petition sheets in the supplemental filing disappeared from the possession of the Bureau of Elections. (Affidavit of Dorothea Blair, Exhibit C to Plaintiff's Brief; testimony of Dorothea Blair, transcript of June 3 Board proceedings).

In response to the fact that these sheets had disappeared, the Plaintiff produced a signed receipt by the staff member indicating that nine sheets with an

estimated 90 signatures had been received on May 14, 1996 as a supplemental filing (Plaintiff's Brief, Exhibit B). The receipt is time stamped with the electronic stamp of the Department of State Bureau of Elections, verifying the date and time of the filing. (Exhibit A). The Plaintiff furthermore provided affidavits of the individual claiming to have delivered the nine sheets to the Secretary of State and also provided copies of what purported to be the nine sheets filed and affidavits of the circulators verifying the authenticity of the petition copies. Plaintiff's Brief, Exhibits B-F.

Despite the fact that the staff of the Bureau of Elections, since at least 1982, has handled thousands upon thousands of petition sheets, without mishap, and despite the fact that the nine petition sheets in question were apparently handled according to the routine and procedures established by the Bureau of Elections, the originals of these petitions cannot now be located. It was the recommendation of the Bureau of Elections that the petitions be considered by the Board of State Canvassers as having been properly filed. (Exhibit A). The Board of State Canvassers took no position in this regard through deadlocking along partisan lines on the vote to certify Plaintiff as a candidate for the Republic nomination to the office of representative in Congress. (Board of State Canvassers Transcript, June 4, 1996).

#### Registration of Circulator, Gregory Brock

The remaining principal issue was to petitions circulated by Gregory Brock. The challenge to the signatures obtained by Mr. Brock was related to the validity of his registration in Shelby Township, based upon allegations and evidence that Mr. Brewer asserted demonstrated that Mr. Brock resided at an address in Clinton Township. Mr. Brock responded through affidavit (Exhibits G and H to Plaintiff's Brief) and testimony before the Board of State Canvassers on June 4, 1996 where several facts were brought forth. Some of them are summarized as follows:

1. He is registered at an address in Shelby Township.
2. He spends nights at both an address in Clinton Township and in Shelby Township.
3. He has personal belongings at each address.
4. His drivers license lists Clinton Township as his residence.
5. Checks received for his employment with the State of Michigan were forwarded to his Clinton Township address.
6. His income tax returns list the Clinton Township address.
7. His vehicle registration and proof of insurance list the Clinton Township address.
8. The lease and utilities at the Clinton Township address are not in Mr. Brock's name.
9. Mr. Brock has stated unequivocally that his intent is to remain as a registered elector at the Shelby Township address.
10. Mr. Brock has indicated that he spends the greater portion of his non-working hours at the Shelby Township address.

The foregoing is not intended as an exhaustive recitation of the affidavit and testimony of Mr. Brock, but is provided as a reference point for the Court's convenience as to several salient points. Both the Plaintiff and proposed Intervening Defendant, Michigan Democratic Party or Mark Brewer, will further develop and argue the relevance of these facts.

The Board deadlocked on the issue of whether the signatures obtained by Mr. Brock were to be considered valid as evidenced by the fact of the 2-2 partisan vote on the issue of certification of Plaintiff Heintz as a candidate.

If this Court is to grant Plaintiff relief, it is respectfully requested to act in an expeditious fashion. In order to conduct this primary election in an orderly fashion, the ballot must be set by June 13, 1996. (Exhibit A, ¶ 9).

## ARGUMENT

### I.

#### DEFENDANTS HAVE PERFORMED THEIR CLEAR LEGAL DUTY.

Mandamus is a discretionary and extraordinary remedy which may be exercised only when a mandatory ministerial duty is present. As stated in Waterman-Waterbury Co v School Dist #4, 183 Mich 168, 174-175; 150 NW 104 (1914):

That if there can be doubt as to what his legal right may be, involving the necessity of litigation to settle it, mandamus must be withheld; that its principal office is not to inquire and investigate, but to command and execute . . . The rule has been stated that mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject of legal controversy. If the right is reasonably in serious doubt, from either cause mentioned, the discretionary power rests with the officer to decide whether or not he will proceed to enforce it, til the rights shall have been established in some proper action; and that discretion, fairly exercised, cannot be controlled by mandamus. (citations omitted).

A writ of mandamus is designed to enforce a plain, positive duty upon the relation of one who has a clear legal right to have it performed, and where there is no other adequate legal remedy. (citations omitted).

Further, in Stein v Director, Bureau of Workmen's Compensation, 77 Mich App 169, 173; 258 NW2d 179 (1977), the conditions which must be met prior to the granting of a writ of mandamus have been specifically set forth by this Court:

It is well-established that mandamus is appropriate only when it clearly appears that the plaintiff has shown that he has a clear legal right to the performance of a specific duty by the defendant, and that the defendant has an uncontrovertible legal duty to act in the manner so requested.

In Bd of County Road Commissioners of the County of Oakland v State Hwy Comm, 79 Mich App 505, 509; 261 NW2d 329 (1977) lv den 402 Mich 907 (1978), the clear legal duty that must be met prior to the grant of mandamus relief was defined by this Court:

...Mandamus lies only where there is a clear legal duty incumbent on the defendant and a clear legal right of the plaintiff to the discharge of such duty. (citations omitted). The specific acts sought to be compelled must be of a ministerial nature, that is, prescribed and defined by law was with such precision and certainty as to leave nothing to the exercise of discretion or judgment. (citations omitted).

The burden of proof in a mandamus action is on the plaintiff to show that a defendant has a clear legal duty to perform in the manner requested. Toan v McGinn, 271 Mich 28, 33; 260 NW2d 108 (1935); Burger King Corp v Detroit, 33 Mich App 382, 384; 189 NW2d 797 (1971).

Based upon the extraordinary nature of this relief and the very stringent requirements, close scrutiny must be given to all procedural and jurisdictional requirements. As set forth above, the Board of State Canvassers is deadlocked as to its responsibility to canvas the petitions to ascertain whether the requisite number of qualified and registered voters have signed the petitions. MCL 168.552(7); MSA 6.1552(7). Unless some direction is afforded to the Board of State Canvassers with regard to the issue of the voter registration address of circulator Gregory Brock and as to the validity of the nine missing petition sheets, no further action with regard to the petitions of Plaintiff Heintz is contemplated.

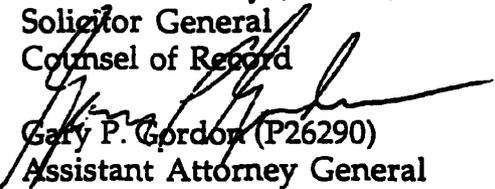
CONCLUSION

WHEREFORE, for the aforementioned reasons, Defendant Board of State Canvassers respectfully indicates to the Court that it is deadlocked with regard to the validity of the candidacy of Plaintiff Heintz and without guidance from this Court, no further action is contemplated.

Respectfully submitted,

FRANK J. KELLEY  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record

  
Gary P. Gordon (P26290)  
Assistant Attorney General  
Attorneys for Defendants  
P.O. Box 30212  
Lansing, MI 48909  
(517) 373-6434

Date: June 7, 1996  
aven/9652083 brief

**A**

**Affidavit of Christopher M. Thomas**

**Christopher M. Thomas**, being first duly sworn, deposes and says as follows:

1. He brings this affidavit in support of Defendants' Answer.
2. He has been employed by the Secretary of State as Director of Elections since June 21, 1981, and in such capacity also serves as Secretary to the Board of State Canvassers.

3. He is personally knowledgeable about the provisions of Michigan election law and the practices of the Bureau of Elections concerning the acceptance of nominating petitions and about the status of ballot printing for the August 6, 1996 Primary Election.

4. On May 14, 1996, Ms. Susan Heintz, candidate for U.S. Representative in Congress, 10th District, filed nominating petitions at 1:38 p.m. with the Secretary of State, Bureau of Elections. (See Exhibit A to this Affidavit: the Affidavit of Identity filed by Ms. Heintz serves as the receipt issued by Ms. Amy Shell, an employee of the Bureau of Elections.) At 3:35 p.m. on May 14, 1996 an individual representing Ms. Heintz filed a supplemental petition containing nine petitions sheets. Ms. Blair has executed an Affidavit concerning the filing of the supplemental petition by Ms. Heintz's campaign (See Exhibit B to the Affidavit).

5. The issuance of receipts is done pursuant to detailed procedures used by the Bureau of Elections for receiving and processing nominating petitions. This procedure is attached to this Affidavit as Exhibit C. Based on the procedures of the Bureau of Elections and the copy of a valid receipt in the filer's possession, it is the conclusion of the filing official that the supplemental petitions were in fact filed on May 14, 1996 prior to the 4 p.m. statutory filing deadline. As such Affiant included the 9 petition sheets containing 89 signatures in the Staff Report to the Board of State Canvassers as petition filed by Ms. Heintz (See Exhibit D to this Affidavit: Staff Report).

6. Since 1981 Affiant asserts that there has been no occasion where petition sheets have been misplaced, lost or have disappeared. During this period the Bureau of Elections has received and processed literally thousands of petition sheets containing well over one million signatures without incident. The supplemental petition of Ms. Heintz was filed, but later disappeared. An exhaustive search of the Bureau and all other petition filings has failed to produce the missing petition sheets.

7. On Monday, June 3, 1996 at the conclusion of the presentation of the Staff Report on the challenge filed against Ms. Heintz's petition, Affiant recommended to the Board of State Canvassers that Ms. Heintz be certified to the August 6, 1996 Primary Ballot.

8. Pursuant to the Federal Uniform and Overseas Citizens Absentee Voting Act each State shall:

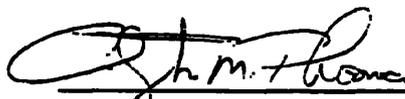
"Permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary and runoff elections for Federal office." (42 USC1973ff-1).

Affiant asserts that the U.S. Department of Defense, as the agency responsible for administering the Federal law, interprets this provision to mean that absent voter ballots must be available to issue between 30 and 45 days before the primary, being between June 22, 1996 and July 7, 1996. Further Affiant believes that the Department of Defense will seek injunctive relief to order the late counting of overseas absent voter ballots for at least ten days after the primary election if ballots are not available for delivery 30 days before the primary election, being July 7, 1996. Given that July 7 is a Sunday the ballots must be available for deliver no later than Friday, July 5, 1996.

9. Affiant has consulted with election officials in Macomb and St. Clair counties concerning the printing schedule for absent voter ballots. Based on those conversations, Affiant asserts that in order to print the names of the candidates in the 10th Congressional District in an orderly manner, the ballot must be set by June 13, 1996. Resolution of this matter at a later date will result in the late delivery of absent voter ballots or the costly and confusing sticker procedure for adding a candidate's name to the ballot.

10. If he is called as a witness, Affiant could competently testify on persona knowledge and on information and belief to the matters set forth herein.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Christopher M. Thomas

Subscribed and sworn to before  
me this 7th day of June 1996.

  
\_\_\_\_\_  
Notary Public  
Ingham County, State of Michigan  
My Commission Expires:

AMY L. ALLEN SHELL  
Notary Public, Eaton County, MI  
My Comm. Expires March 13, 2001  
*Being in Ingham County*

*as SR*

OFFICE USE ONLY

OFFICE CODE <u>06010000</u>	FILING DATE <u>5 11 96</u>
CFR I.D. <u>24094-8</u>	RECEIVED BY <u>as</u>
	NO. OF PETITION SHEETS <u>117</u>

AFFIDAVIT OF IDENTITY

Name Susan J. Heintz  
(Print or Type)

Residence Address 18548 Manorwood East Clinton Twp. 48038  
(Street Address) (Post Office) (Zip Code)

City of or  Township of Clinton  
County of Macomb Precinct No. 46 Ward No. \_\_\_\_\_

Resident of County for 0 years. Resident of Michigan for 24 years.

I am registered and qualified to vote at this address:  Yes  No

Birthdate 10 / 30 / 47 Home Phone ( 810 ) 286-8307  
Business Phone ( 517 ) 487-5413

I  have  have not changed my name within the past 12 years.

If you have, enter former name here: \_\_\_\_\_  
(Does not apply to change of name through marriage. See reverse side.)

OFFICE SOUGHT: Representative in the U.S. Congress District No. (if any) 10

Partisan Office Ticket Republican  Non-Partisan  
(If filing a Qualifying Petition, list "No Party Affiliation" here.)

DATE OF ELECTION: Primary 08 / 06 / 96 General 11 / 05 / 96

TERM:  Regular  To Fill Partial Term Ending \_\_\_\_\_ Other \_\_\_\_\_

JUDICIAL CANDIDATES ONLY:  Incumbent Position  Non-Incumbent Position  New Judgeship  
(See reverse side.)

FILING INCLUDES THE FOLLOWING DOCUMENTS:

- Nominating Petitions Estimated No. of signatures 1,523
- Qualifying Petitions Estimated No. of signatures \_\_\_\_\_
- Filing Fee of \$ \_\_\_\_\_
- Affidavit of Constitutional Qualification (Judicial candidates filing petitions only.)
- Affidavit of Change of Name (See reverse side.)
- Affidavit of Candidacy (Judicial incumbents only.)
- Certification of Nomination by Party Convention and Certificate of Acceptance.

<input type="checkbox"/> Destroy petitions in January.
<input checked="" type="checkbox"/> Return petitions in January.

RECEIVED  
BUREAU OF ELECTIONS  
96 MAY 14 PM 3:38  
DEPARTMENT OF STATE

PRINT NAME BELOW AS YOU WISH IT TO APPEAR ON BALLOT:

Susy Heintz  
(Nicknames/titles not permitted.)

By signing this affidavit, I swear the statements made above are true.

SIGNATURE OF CANDIDATE: *Susan J. Heintz*

Subscribed and sworn before me this \_\_\_\_\_ Name of Notary Joel H. Hondorp

14 day of May 19 96 County Kent

*Joel H. Hondorp* Comm. Expires June 6, 2000  
Signature of Notary Public (Type, Print or Stamp)

**COPY**

**Affidavit of Doretha Blair**

DORETHA BLAIR, being first duly sworn, deposes and says as follows:

1. I have been employed with the Michigan Department of State, Bureau of Elections, since 1983.

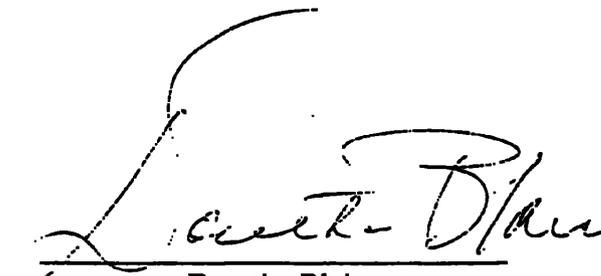
2. On May 14, 1996, I was engaged in accepting nominating petition filings in room 124 of the Mutual Building, 208 North Capitol Avenue, Lansing, Michigan, through the 4:00 p.m. filing deadline.

3. I have reviewed the attached "Supplemental Filing Receipt" issued for nine petition sheets bearing an estimated 90 signatures submitted on behalf of Suzy Heintz, a candidate seeking the office of U. S. Representative in Congress, District 10, and can attest that the receipt contains my signature and is completed in my handwriting.

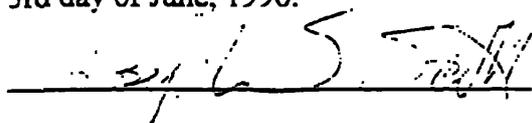
4. I recall completing a receipt which bore a "Clinton Township" post office address. I have memory of this as it is unusual for a mailing address to contain the name of a township post office.

5. I have memory of asking a filing agent the number of signatures being submitted and being advised that he was submitting 90 signatures.

Further, affiant sayeth not.

  
Doretha Blair

Subscribed and sworn to before me this  
3rd day of June, 1996.



Notary Public  
Acting in Ingham County, Michigan  
My commission expires: 12/31/97

JOSEPHINE S. SCOTT  
NOTARY PUBLIC - LIVINGSTON COUNTY, MI  
MY COMMISSION EXPIRES 12/28/97



MICHIGAN DEPARTMENT OF STATE

Candice S. Miller, Secretary of State

Bureau of Elections, P.O. Box 20126 Lansing, Michigan 48901-0726

SUPPLEMENTAL FILING RECEIPT

Date: May 4, 1996

Received of:

Jessy Hertz  
18548 Mansfield East  
Clinton Twp.

Office: U.S. Congress

District: 10

Petition Sheets: 9

Estimated Signatures: 90

Candice Miller  
Bureau of Elections

RECEIVED  
MAY 11 11 21 AM '96  
DEPARTMENT OF STATE

Bureau of Elections  
P.O. Box 20126  
Lansing, Michigan 48901-0726

## STATE OF MICHIGAN



Elections: (517) 373-2540  
Campaign Finance: (517) 373-8558  
Lobby Registration: (517) 373-8558

CANDICE S. MILLER, Secretary of State  
MICHIGAN DEPARTMENT OF STATE

DATE: February 14, 1996  
TO: Staff  
FROM: Bradley S. Wittman   
SUBJECT: Procedures for Accepting Nominating Petitions, Qualifying Petitions and Filing Fees

– PETITION FILINGS –

Arrival of Petition Filings in Office

Petitions that arrive in the mail should be immediately time stamped and forwarded to Josie. Candidates or agents representing candidates who arrive in the office to file petitions in person should be directed to one of the following staff members: Amy, Evelyn, Josie, Sharman and when available, Chuck, Doretha and Sue. Candidates filing for judicial offices should be directed to Evelyn whenever possible.

Meeting With Filers

Staff handling petition filings should follow the steps outlined below:

- 1) Carefully review the petition and the affidavits(s) submitted to verify that the filing is complete. All candidates must submit an Affidavit of Identity in duplicate. All judicial candidates must also submit an Affidavit of Constitutional Qualification. Candidates who indicate on the Affidavit of Identity that they have changed their name within the past 12 years must file a Change of Name Affidavit. All affidavits must be notarized. Make sure there are no discrepancies between the documents being submitted and the items checked off on the Affidavit of Identity under : "FILING INCLUDES THE FOLLOWING DOCUMENTS." Also, do not fail to verify that the candidate is filing with the appropriate official and in the appropriate district. Please note that 2 of the 16 U.S. representative seats and 81 of the 110 state representative seats file on the county level.
- 2) If the filing is complete and has been appropriately submitted to this office, enter in the upper right-hand corner of the Affidavit of Identity the date of the filing, your signature and the number of petition sheets submitted.

- 3) Staple the Affidavit of Constitutional Qualification (if required) and Change of Name Affidavit (if required) to the top two copies of the Affidavit of Identity. (Affidavits of Identity on top; stapled in upper left-hand corner.) Give the third (bottom) copy of the Affidavit of Identity to the filer as a receipt.
  - 4) Forward the affidavits you have retained to Sharman for review and the entry of the candidate's name on the candidate listing. (Sharman will forward any affidavits which are discovered to contain errors or omissions to Josie for resolution.)
  - 5) Place the petition sheets in a manila folder. (Large filings may require two or more folders.) Record on the upper right-hand corner of the envelope the name of the candidate, the office, the district (if any), the party (if appropriate) and the minimum number of signatures needed by the candidate to qualify for the ballot. If the candidate is filing for a judicial office, also indicate which of the following positions the candidate is seeking:
    - Regular Term - Incumbent Position.
    - Regular Term - Non-Incumbent Position.
    - Vacancy - Incumbent Position.
    - Vacancy - Non-Incumbent Position.
    - New Judgeship.
- If the petition is placed in two or more folders, write the candidate's name on each folder. Mark the folders "1 of 3" and "2 of 3" etc.
- 6) Shelve the folder(s) as appropriate. (Shelf space has been reserved in the storage area north of Cindy's workspace.)

**-FILING FEES -**

**Arrival of Filing Fees in Office**

All filing fees that arrive in the mail from candidates seeking state house seats should be immediately time stamped and forwarded to Josie. Candidates or agents representing candidates who arrive in the office to submit a filing fee in person are to be directed to one of the following staff members: Amy, Evelyn, Josie, Sharman and when available Chuck, Doretha and Sue.

**Meeting With Filers**

Staff handling fee filings should follow the steps outlined below:

- 1) Carefully inspect the check or money order and the affidavits submitted to verify that the filing is complete. The check or money order must be made out to the "State of Michigan" in the amount of \$100.00. Cash can be accepted. An Affidavit of Identity

must be submitted in duplicate and must be notarized. Candidates who indicate on the Affidavit of Identity that they have changed their name within the past 12 years must file a Change of Name Affidavit. Make sure there are no discrepancies between the items being submitted and the items checked off on the Affidavit of Identity under "FILING INCLUDES THE FOLLOWING DOCUMENTS." Also, do not fail to verify that the candidate is filing with the appropriate official and in the appropriate district. Please note that 81 of the 110 state representative seats file on the county level.

- 2) If the filing is complete and has been appropriately submitted to this office, enter in the upper right-hand corner of the Affidavit of Identity the date of the filing and your signature.
- 3) Complete a state cash receipt for the \$100.00 fee. (Receipt books are available from Josie.) Indicate on the receipt whether payment was made in cash or by check or money order. Record the cash receipt number in the upper right-hand corner of the Affidavit of Identity.
- 4) Staple the Change of Name Affidavit (if required) to the top two copies of the Affidavit of Identity. (Affidavits of Identity on top; stapled in upper left-hand corner.) Give the third (bottom) copy of the Affidavit of Identity and the original state cash receipt to the filer.
- 5) Forward the affidavits you have retained to Sharman for review and the entry of the candidate's name on the candidate listing. (Sharman will forward any affidavits which are discovered to contain errors or omissions to Josie for resolution.) Forward the cash, check or money order and the yellow copy of the state cash receipt to Josie. The pink copy of the state cash receipt remains in the receipt book.

### Questions?

Please do not hesitate to contact me if you have any questions.

cc: Christopher M. Thomas  
Glorietta B. Flakes  
George H. Herstek  
Timothy Hanson

Bureau of Elections  
P.O. Box 20126  
Lansing, Michigan 48901-0726

## STATE OF MICHIGAN



Elections: (517) 373-2540  
Campaign Finance: (517) 373-8558  
Lobby Registration: (517) 373-8558

CANDICE S. MILLER, Secretary of State  
**MICHIGAN DEPARTMENT OF STATE**

June 3, 1996

**REVIEW OF NOMINATING PETITION**

**Susy Heintz**

**Candidate for U.S. Representative in Congress, District 10**

**NUMBER OF VALID SIGNATURES REQUIRED:** 1,224 signatures.

**TOTAL FILING:** 1,549 signatures (1,460 signatures submitted under original filing; 89 signatures submitted under supplemental filing).

**RESULT OF REVIEW:** 1,522 face valid signatures; 27 invalid signatures.

Total number of signatures filed:	1,549
Signature improperly dated:	-2
Signer out of district:	-3
Improper address:	-7
Duplicate signatures (same person signed twice):	-2
Jurisdiction listed by signer not in county of circulation:	-10
Village in two townships listed by signer:	-3
	<hr/>
	1,522

**TOTAL NUMBER OF SIGNATURES CHALLENGED:** 279 signatures (Mark Brewer); 248 signatures (Gilbert J. DiNello).

Susy Heintz

Page 2

**RESULT OF BREWER CHALLENGE:** 22 challenged signatures discounted under face review; 5 challenges rejected; 29 challenged signatures invalidated (person signed and dated Heintz petition after signing either DiNello or Lobsinger petition); 223 signatures forwarded to city and township clerks for registration verifications.

**RESULT OF DINELLO CHALLENGE:** 19 challenged signatures discounted under face review; 154 challenged signatures challenged by Brewer; 3 challenges rejected; 72 signatures forwarded to city and township clerks for registration verifications.

**RESULT OF REGISTRATION VERIFICATIONS:** 76 valid signatures; 219 invalid signatures.

**SUMMARY:** 1,274 valid signatures; 275 invalid signatures.

Total number of signatures filed:	1,549
Invalid under face review:	-27
Duplicates identified under Brewer challenge:	-29
Invalid signatures under registration verifications:	-219
	<hr/>
	1,274



STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ,

Plaintiff,

Court of Appeals No. 195290

v

MICHIGAN STATE BOARD OF CANVASSERS,  
a constitutional board, and CANDICE MILLER,  
Secretary of State, in her official capacity,

Defendants.

\_\_\_\_\_ /

PROOF OF SERVICE

STATE OF MICHIGAN )

) ss:

COUNTY OF INGHAM )

Gary P. Gordon, being duly sworn, says that on June 7, 1996, he personally served a copy of Defendants' Answer to Complaint for Mandamus and Defendants' Brief in Response to Complaint for Mandamus in the above matter upon the following:

John D. Pirich  
Honigman, Miller, Schwartz & Cohn  
222 N. Washington Square, Ste 400  
Lansing, MI 48933

  
\_\_\_\_\_  
Gary P. Gordon

Subscribed and sworn to before me this  
7th day of June, 1996

  
\_\_\_\_\_  
Cynthia A. Aven, Notary Public  
Ingham County, Michigan  
My commission expires: 4/26/00



STATE OF MICHIGAN  
IN THE COURT OF APPEALS

**SUSY HEINTZ,**

Plaintiff,

vs.

Court of Appeals Docket  
No. 195290

**MICHIGAN STATE BOARD OF  
CANVASSERS**, a constitutional  
board, and **CANDICE MILLER**,  
Secretary of State, in her  
official capacity,

Defendants.

---

**JOHN D. PIRICH (P23204)**  
**TIMOTHY S. KNOWLTON (P30000)**  
**JOHN S. KANE (P46132)**  
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**MARY ELLEN GUREWITZ (P25724)**  
Sachs, Waldman, O'Hare, Helveston,  
Bogas & McIntosh, P.C.  
Attorneys for Intervening-Defendant,  
Mark Brewer  
1000 Farmer Street  
Detroit, Michigan 48226  
(313) 965-3464

---

**BRIEF OF INTERVENING DEFENDANT MARK BREWER**

**ORAL ARGUMENT REQUESTED**

**MARY ELLEN GUREWITZ (P25724)**  
Sachs, Waldman, O'Hare, Helveston,  
Bogas & McIntosh, P.C.  
Attorneys for Intervening-Defendant,  
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MCL 237.315

MCL 257.307(1)(a)

MCL 257.310(2)

MCL 257.324(1)(a)

MCL 257.324(1)(e)

MCL 257.324(2)

MCL 257.324(3)

MCL 600.2108

BRIEF OF INTERVENING DEFENDANT MARK BREWER

INTRODUCTION

This petition for mandamus arises out of a decision made by the Board of State Canvassers not to certify Susy Heintz for the August 6 Republican primary ballot. A motion was made to certify her candidacy but it did not pass, the members of the Board splitting, two in favor and two opposed to certification.

It is the position of Intervening Defendant Mark Brewer, Chair of the Michigan Democratic Party, that the action of the Board of Canvassers was correct and that no order of mandamus should issue. The Board did not fail to perform any clear legal duty. It met and conducted an evidentiary hearing. Its members drew factual conclusions based upon the evidence presented to them and drew the legal conclusions which those factual conclusions warranted. It is not the province of the courts to substitute their judgement for that of those who have appropriately exercised their statutory responsibility.

Susy Heintz did not deserve a position on the August 6 primary ballot because she did not file a sufficient number of signatures in support of her nomination. That is the determination made by the Board of State Canvassers. This court should not interfere.

STATEMENT OF FACTS AND PROCEEDINGS

**1. Susy Heintz' nominating petitions**

On May 14, 1996, at approximately 1:30 p.m., Susy Heintz filed 117 nominating petitions in support of her candidacy for the Republican nomination for Congress in the Tenth Congressional District. While her accompanying Affidavit of Identity estimated that there were 1,523 signatures filed, in fact there were only 1,460 after the number of signatures crossed out prior to filing were deleted. Under the statutory formula, set forth in MCL 168.133, Heintz needed to file a minimum of 1,224 valid signatures in order to qualify for the Republican primary ballot.

**2. Mark Brewer's challenge to the Heintz nominating petition signatures**

On May 21, 1996, Mark Brewer, Chair of the Michigan Democratic Party (hereinafter the MDP), timely filed a four part challenge to the petition signatures filed by Heintz:<sup>1/</sup> (1) that 279 petition signatures were invalid for assorted reasons, primarily because the signers were unregistered; (2) that Gregory Brock, who certified that he had circulated 48 of the 117 petitions filed, containing 574 signatures, was not a qualified petition circulator because he was not a registered elector, his voting registration in Shelby Township having become invalid when he changed his residence over two years ago to Clinton Township; (3) that Gregory Brock did not

---

<sup>1/</sup> A challenge was also filed by Gilbert DiNello, another candidate for the Tenth District Republican nomination. The challenges did not differ materially from those filed by Mr. Brewer.

actually circulate all of the petitions which he signed as circulator; and (4) that Susy Heintz misrepresented her voting registration address.<sup>2/</sup>

### **3. The alleged supplemental filing**

After these challenges were filed, Heintz claimed, for the first time, that she had filed an additional 9 petitions, containing an estimated 90 signatures. She claimed that these were filed late in the afternoon of May 14, shortly before the 4:00 p.m. filing deadline. She eventually produced what was purported to be a receipt for these petitions, together with photocopies which were represented to be copies of the 9 petitions in the supplemental filing. These photocopies contained not 90 but 89 petition signatures. A diligent and exhaustive search by the Bureau of Elections failed to locate these 9 petitions.

### **4. The Board of State Canvassers hearing**

On June 3 and 4, 1996, the Board of State Canvassers conducted a hearing on the challenges filed to Heintz' nominating petition signatures.

### **5. The challenges to individual petition signatures**

The Bureau of Elections, acting as staff for the Board of Canvassers, investigated the challenges filed by both Brewer and DiNello to individual signatures and determined that 275 petition signatures were invalid, including 16 of the petition signatures in

---

<sup>2/</sup> While the Clinton Township clerk certified on May 20 that Heintz was not a registered voter there, later evidence disclosed that she had actually changed her registration to Clinton Township on May 2. Therefore, this latter challenge was not pursued.

the alleged supplemental filing. The Bureau, thus, concluded, and reported to the Board of Canvassers, that the total number of valid petition signatures in the initial filing was 1,201 (1,460 less 259), 23 less than a sufficient number of signatures to be certified for the ballot. The Bureau also reported that if the missing petitions were counted the total number of valid petition signatures would be 1,274 (1,549 less 275), 50 more than the number necessary to certify Heintz for the ballot.

#### **6. The missing petitions**

At the hearing, Christopher Thomas, Director of the Bureau of Elections, reported to the Board that an exhaustive search had been made for the missing petitions but that they had not been located. He stated that he had worked for the Bureau since 1981 and that he could recall no instance when any petition had ever been lost or misplaced. He reported that Heintz had supplied what she claimed were photocopies of the allegedly missing petitions to the Bureau and he recommended to the Board that these additional signatures (which actually totalled 89 rather than 90) be counted.

The Bureau employee, Doretha Blair, who signed the receipt, was called to testify before the Board. She identified her signature on the receipt and said she vaguely recalled completing a receipt with a Clinton Township address. She could not identify the petitions.

Blair testified that she did not count the petition signatures but rather asked the filer how many there were. She could not identify the photocopied petitions submitted by Heintz as

being copies of petitions she received at 3:35 p.m. on May 14, the time stamped date on the receipt.

Blair testified that there were many filings that afternoon, and that she did not have a detailed recollection of the transaction. She testified that it is the Bureau's practice to attach a copy of the receipt to the petitions. She said that a courier regularly picks up the petitions from the first floor room where they are filed and takes them "upstairs" to the Bureau area where they are kept and processed. She believed that this regular procedure was followed with regard to the alleged supplemental filing of Heintz petitions.

#### **7. Gregory Brock's residency**

At the hearing on June 3, Heintz' attorney offered an affidavit from Gregory Brock. The next day he offered a supplemental affidavit from Gregory Brock. Mr. Brock then entered the hearing room and was made available for questioning by the Board and he was examined by the Board's attorney regarding his residency. He testified that he is registered to vote in Shelby Township, has been registered to vote there since he first became old enough to vote (he is now 26), and that he has regularly voted in Shelby Township. The address on his voter registration is 5054 Woodberry in Shelby Township, which is the home of his parents. According to his affidavit, he lived there most of his life. He testified that he keeps some personal effects there, such as his trophies, his computer and his stamp collection, and that he sometimes sleeps there during his "off duty" time, although he said

he has little "off duty" time.

Gregory Brock's driver's license lists his residence address as 44809 Bayview Avenue, Clinton Township. The address on his car registration is the Clinton Township address. That is the address on his proof of insurance form. He is an employee of the State of Michigan. The Clinton Township address is the address to which he has his paychecks mailed. That is the address on his personal checks and the address to which his checking account statements are mailed. That is the address he uses on his income tax returns. That is the address to which his bills are mailed. It is at that location that he keeps his clothes, at least his work clothes. Mr. Brock explained that he used the Clinton Township address for car insurance purposes because that is the address where he goes to and from work.

Mr. Brock shares the 44809 Bayview Avenue apartment with James Biernat who is the lessor, and the utilities are also in Mr. Biernat's name. In his testimony, Mr. Brock referred to Mr. Biernat as "the leaseholder of my apartment."

In a number of newspaper articles, dating from both 1994 and 1996, which are part of the record, Mr. Brock was identified as a Clinton Township resident. He explained that this probably happened because "the leaseholder of my apartment," Mr. Biernat, told reporters that Brock could be reached at that location.

Mr. Brock is a precinct delegate in Shelby Township and is on the Selective Service Board there. Mr. Brock testified that it is his intent to be a resident of 5054 Woodberry in Shelby Township.

On the certificate of circulation of each of the petitions, Mr. Brock used the Shelby Township address.

**8. Gregory Brock's circulation of Heintz petitions**

The initial Heintz petition filing consisted of 117 petitions, containing 1460 signatures.<sup>3/</sup> Gregory Brock signed as the circulator on 48 of these petitions. The alleged supplemental filing consisted of 9 petitions. Gregory Brock signed as the circulator on 5 of these petitions.

The earliest petition signatures on the petitions assertedly circulated by Brock are dated May 5. The petitions contain 15 signature lines. The 13 petitions signed by Brock as circulator prior to May 13 are listed below, together with the number of lines filled out, the dates the signers signed, and the dates Brock signed as circulator:

Pet #	# of Signature Lines Filled In	Dates of Signatures	Date of Brock's Signature
75	15	5/5	5/5
76	15	5/5	5/5
77	15	5/5	5/5
78	15	5/5	5/5
79	15	5/5	5/5
80	15	5/5	5/5
81	15	5/5	5/5
72	15	5/5 & 6	5/6
73	15	5/5 & 6	5/6
74	15	5/6	5/6
85	15	5/7	5/7
86	15	5/7	5/7
43	15	5/11	5/11

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<sup>3/</sup> Heintz' Affidavit of Identity estimated the number of signatures at 1523, but when the number of crossed out signatures was subtracted from the total number of signatures the actual count was 1460.

The remaining 35 petitions in the initial filing were all signed by Brock as circulator on May 13. A small number, only six, of these demonstrated a similar pattern as above--complete petitions with the petition signatures and circulator signature having the same date, as shown:

Pet #	# of Signature Lines Filled In	Dates of Signatures	Date of Brock's Signature
27	15	5/13	5/13
28	15	5/13	5/13
29	15	5/13	5/13
36	15	5/13	5/13
37	15	5/13	5/13
97	15	5/13	5/13

For the remainder of the petitions signed by Brock as circulator on May 13, the pattern, both as to the number of signature lines filled in, and/or the relation of the dates of the signatures to the date of the circulator signature differs, as is shown below:

Pet #	# of Signature Lines Filled In	Dates of Signatures	Date of Brock's Signature
2	15	5/11	5/13
3	15	5/7 & 11	5/13
4	15	5/12	5/13
5	14	5/12	5/13
6	15	5/11	5/13
7	15	5/7 & 11	5/13
26	15	5/12 & 13	5/13
32	15	5/12	5/13
35	8	5/6 & 11	5/13
39	15	5/11 & 12	5/13
40	15	5/12	5/13
41	15	5/11 & 12	5/13
48	15	5/11	5/13
49	15	5/11	5/13
50	15	5/11	5/13
56	9	5/11, 12 & 13	5/13
63	11	5/13	5/13
64	5	5/13	5/13
65	1	5/13	5/13
66	1	5/13	5/13
69	15	5/11	5/13

70	15	5/6 & 7	5/13
71	15	5/7	5/13
90	1	5/11	5/13
91	1	5/7	5/13
92	1	5/5	5/13
93	1	5/5	5/13
98	15	5/7	5/13
112	8	5/11 & 12	5/13

**9. The Board of Canvassers decision**

In order to be placed on the ballot, a candidate must be certified by a majority of the Board of State Canvassers. Susy Heintz was not certified by the Board. A motion made to certify her failed to pass. As noted, the Board heard evidence at the hearing on June 3 and 4, and then voted on June 4. Two members of the Board voted not to certify her, explaining that they would not count the missing petitions and that they found that Gregory Brock was not a resident of Shelby Township, and so was not a valid registered elector and, hence, not a qualified petition circulator. The other two members of the Board voted to certify Heintz, explaining that they found Gregory Brock to be a resident of Shelby Township and so a valid registered elector and qualified petition circulator, and deciding as well that they would count the missing petitions. As noted, the motion failed to carry, and Heintz was not certified.

## ARGUMENT

### I. THIS COURT SHOULD DEFER TO THE LEGAL CONCLUSIONS AND FACTUAL FINDINGS OF THE BOARD OF STATE CANVASSERS.

Mandamus is a remedy which can be ordered by a court only when a public official or entity has failed to perform a clear legal duty. As Plaintiff Heintz correctly states, it is a discretionary writ and one which is to be used sparingly and only when absolutely necessary.

In this case, a number of very serious challenges were raised to the petition signatures submitted by Susy Heintz in support of her candidacy. The challenges raised to the validity of individual petition signatures were investigated by the Bureau of Elections. The overwhelming number of them were sustained.

Two other issues were contested before the Board of Canvassers--the question of whether to count signatures on petitions represented to be photocopies of allegedly missing petitions and the question of whether to count petitions collected by circulator Gregory Brock, who, it was argued was not a validly registered voter because he had moved his residence from the jurisdiction of his registration. The issue of his residency was thoroughly explored by the Board, with extensive testimonial and documentary evidence presented.

Factual issues regarding the alleged disappearance of petitions were also thoroughly explored.

The Board members had the opportunity to view the witnesses and assess their credibility. Two of them concluded that Mr. Brock was not a resident of Shelby Township, and that he was, therefore,

no longer a validly registered elector there, contrary to the assertions in his certificates of circulation. Two of the Board members also concluded that all of the circumstances did not warrant counting the missing petitions.

The Board of State Canvassers had a clear legal duty to hear this evidence and to decide these questions. It did not have a clear legal duty to decide these questions in favor of Heintz. It did not have a clear legal duty to certify her if it concluded based upon these facts, that her petition signatures were insufficient. Two of the Board members concluded that she did not deserve certification. They voted to deny certification and their decision should not be disturbed.

**II. GREGORY BLOCK WAS NOT A QUALIFIED PETITION CIRCULATOR BECAUSE HE IS NOT A RESIDENT OF THE TOWNSHIP WHERE HE IS REGISTERED TO VOTE, AND HIS VOTER REGISTRATION WAS INVALIDATED BY HIS CHANGE OF RESIDENCE.**

- A. The State Constitution and election law require a person to be a resident of the jurisdiction in which he or she is registered to vote; a person who ceases to be a resident of a jurisdiction is not qualified to be a registered voter there.**

MCL 168.544c(3) defines the qualifications of a petition circulator as follows:

At the time of circulation, the circulator of a petition shall be a registered elector of this state. At the time of executing the certificate of circulator, the circulator shall be registered in the city or township indicated in the certificate of circulator on the petition.

Since one's qualification to be a circulator is dependent on one being a registered elector, it is necessary to look to the

provisions of the Constitution and the election law to determine the requirements for being a registered elector in the State and for the requirements of registration in a specific city or township. Article 2, §1 of the Constitution of 1963 provides:

**Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes. (emphasis added)**

The Legislature has undertaken to define residence for voting purposes as required by Art. 2, §1. MCL 168.492 provides that:

**Every person who has the following qualifications of an elector, or who will have those qualifications at the next election or primary election, shall be entitled to be registered as an elector in the township, city, or village in which he or she resides. The person shall be a citizen of the United States; not less than 18 years of age; a resident of the state for not less than 30 days; and a resident of the township, city, or village on or before the thirtieth day before the next regular or special election or primary election. (emphasis added)**

Because this provision requires residency in order to be qualified and entitled to be registered as an elector, it is necessary to determine what is meant by residency. MCL 168.11 provides:

**"Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. . .**

Thus, in order to be qualified and entitled to be registered as an elector, one must be a resident of the jurisdiction where one seeks to register and to vote, and to be a resident one must habitually sleep, keep one's effects at, and have a regular place

of lodging in that jurisdiction.

When registering to vote, a person must fill out a registration affidavit, which, according to MCL 168.495, shall contain, inter alia, . . . " (b) The residence address of the elector. . ." and "(d) The driver's license or state personal identification card number of the elector, if available."

**B. A change in residence, as indicated on a driver's license, is supposed to trigger a change in voter registration.**

Because qualification for registration is dependent, inter alia, upon residency, registration **must change** when residency changes, and the election law so recognizes in numerous provisions. In fact, changes in the federal election law effected in 1993, known as the Motor Voter Law, and in state law in 1994 and 1995, implementing the Motor Voter Law, have been designed to make registration easier, to facilitate the revision and updating of registration information, and to insure the integrity of that information so that voters will be registered in only one jurisdiction in a state, that jurisdiction being the one where they are currently resident.

The federal law, which is applicable to elections for federal office such the office sought by Susy Heintz, provides at 42 USC § 1973gg-3(d) as follows:

**(d) Change of address**

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant

states on the form that the change of address is not for voter registration purposes.

Similarly, MCL 168.509z requires the Secretary of State to notify each clerk of driver's license residency changes affecting the clerk's city or township.<sup>4/</sup> A similar requirement was set forth earlier in MCL 168.500h. The election law, thus, essentially presumes that the driver's license accurately reflects a person's residence, and, as discussed below, the motor vehicle code mandates this. MCL 168.513, referred to in 168.500h, above, has been repealed and essentially replaced by MCL 168.509aa, which provides for updating of voter registrations. It provides that when a clerk receives reliable information<sup>5/</sup> that a voter has moved from the city or township where he is registered, the clerk is to send a notice to the voter advising him that the clerk has received that information; that this information can be verified or corrected by the voter; and that if the new address information is incorrect and the voter is still a resident of the place where registered the voter should complete an enclosed card to be returned to the clerk. If the voter does not return the card he may thereafter be challenged if he attempts to vote in that jurisdiction and may be required to affirm his current residence. If he does not

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<sup>4/</sup> It appears that either the Secretary of State or the Shelby Township Clerk is not complying with this requirement, as is evident from the fact that Mr. Brock's driver's license residence address was changed to his Clinton Township address in December, 1994, yet he illegally remains on the rolls of registered voters in Shelby Township.

<sup>5/</sup> Reliable information would be, in most instances, the notice from the Secretary of State of a driver's license residence address change.

thereafter vote for some period his registration will be canceled.

Other provisions in the election law, MCL 168.507a and 168.507b, contain provisions for registration and voting in circumstances where changes of residence occur too close in time to an election to allow for a timely change of registration.

It is clear, therefore, from this examination of the Constitution and the election law that a person is not qualified to vote in a jurisdiction, or entitled to maintain voter registration in a jurisdiction, from which the person has moved. Registration must be at the person's current residence address.

- C. An amendment to MCL 168.544c, on which Heintz relies, made the requirements for petition circulators more stringent, rather than less stringent, as Heintz misleadingly contends.

Heintz contends in her brief that an amendment to MCL 168.544c, quoted above, eliminated the requirement that a petition circulator be qualified to be a registered elector, and that it is now necessary only that the person be registered somewhere in the state. Plaintiff Heintz either misunderstands or misrepresents both the motivation for and the effect of this statutory change.

The Senate Fiscal Agency analysis of S.B. 1060 does not state that the requirement that petition circulators be qualified is being eliminated. That analysis notes a Court of Appeals case in which the court reversed the Board of Canvassers and ordered that petitions be counted on the ground that there was no dispute that the circulators were at all times qualified and registered electors of the state, although not necessarily of the city certified on the petition as the city where registered. The change in the law

proposed and enacted as a result of that case was to add the requirement that the petition circulator be registered in the city or township where he or she claimed to be registered. The change in the law was, thus, not designed to loosen the requirements for petition circulators, or to eliminate a requirement that they be qualified. To the contrary, the amendment made more stringent the requirements on petition circulators, adding the requirement that their statement as to the location of their voter registration be accurate. This illustrates the importance which the legislature places on the qualifications and honesty of petition circulators, as well as on their voter registration location.

Furthermore, the Plaintiff's reliance on the case of Robert F. Messerilli v Michigan Board of State Canvassers, Docket No. 129867, which was apparently the impetus for the imposition of the additional restriction on petition circulators noted above and which is the case discussed in the Fiscal Agency analysis, is mistaken for a number of reasons. First, the case is unpublished and so cannot be relied upon. Second, it is not even an opinion but only an order. And third, and most importantly, it would not be followed even if it were a published opinion instead of an unpublished order because the statutory change enacted by S.B. 1060 was designed to prevent the Messerilli result from reoccurring. The legislature did not agree with the result in Messerilli and it is a stunning misrepresentation for Heintz to so state.

Plaintiff Heintz asserts that the legislature amended the statute to prevent any issues over a circulator's residence so long

as the circulator is a registered voter in the State of Michigan. To the contrary, the amendment added a second sentence to the provision--the requirement that the circulator be registered in the city or township indicated on the certificate of circulation.

And finally, even if Messerilli were relevant, the instant case is certainly not one where there is no dispute that the circulators were at all times qualified and registered electors in the state. Challenger Brewer vigorously disputes that Gregory Brock was a qualified and registered elector and it is that dispute which is at the heart of this challenge.

**D. Gregory Brock signed the circulator certifications giving an address in Shelby Township as the place where he is registered to vote, but he is a resident of Clinton Township.**

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Gregory Brock signed each of the petitions he allegedly circulated<sup>6/</sup> with the address where he claims he is registered to vote. This address, 5054 Woodberry, is the Shelby Township address of his parents. However, he does not live at that address and is not a resident of Shelby Township. As he himself acknowledges, Mr. Brock's driver's license shows that he lives at 44809 Bayview Avenue, Apt. 1207, in Clinton Township, and he admitted in testimony before the Board of Canvassers that he changed his driver's license to that address nearly two years ago in August, 1994.

By law, a driver's license must contain the residence address

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<sup>6/</sup> Whether he actually circulated all of these petitions is doubtful and will be discussed below.

of the licensee. MCL 257.310(2) states that:

The license shall contain the distinguishing number permanently assigned to the licensee and the name, date of birth, **address of residence**, height, an imprinted photograph, and the signature of the licensee. . . (Emphasis added)

Indeed, an applicant for a driver's license must sign and thereby **certify** that all of the information in the application, including his or her residence address, is true. See MCL 257.307(1)(a) (content of applications), and (3) (signature and certification). Failure to truthfully certify as to all the information required in an application or use of a false residence address voids the license and leads to the suspension of licensing privileges. See MCL 257.324(1)(a), (e), (2), and (3).

When a person changes his or her address there is a requirement to **immediately** change the driver's license. MCL 237.315 provides:

(a) Any operator or chauffeur, who shall change his residence previous to the expiration of a license granted under this chapter shall immediately return such license to the local examining board or the department, whose duty it shall be to write the new address on the reverse side of the license and the date of change.

(b) Failure to have such change of address recorded as herein provided may be cause for revocation or suspension of same immediately if there is no response to a notice mailed to his last known address.

Summarizing the above provisions, this court stated that:

Under the Michigan Vehicle Code, the defendant has a duty to show a correct address on his operator's license. Hamilton v Gordon, 135 Mich App 289, 194 (1984).

Thus, when Brock had his driver's license changed from the Woodberry address in Shelby Township to the address at 44809 Bayview Avenue, Apt. 1207, in Clinton Township **he himself certified**

that that was his residence address. Brock has, thus, already admitted that he is not a resident of Shelby Township and that he has not been resident in Shelby Township for over two years.

While the driver's license alone would be sufficient proof, in accordance with the above statutes, that Brock is a Clinton Township resident, that conclusion is also dictated by Brock's testimony regarding other indicia of residency. His car is registered at the Clinton Township address, and that is the address shown on his statutorily required proof of insurance. That is the address shown on his employment records and that is the address to which he has directed that his paycheck from the State of Michigan be sent. That is the address which he uses on his income tax returns. That is the address on his personal checks and the address to which his checking account statements are mailed. That is the address where his bills are sent. That is the place where he keeps his clothes and other personal effects. He used that address for car insurance purposes because that was the place from which he left for work and to which he returned after work.

At the first day of hearing, June 3, counsel for Heintz introduced an affidavit from Mr. Brock. At the second day of hearing, June 4, he introduced a supplemental affidavit. It is on these affidavits that Heintz' brief relies, either ignoring or mischaracterizing the testimony of Mr. Brock, who was questioned by counsel for the Board of Canvassers and who testified at length regarding his residency. Heintz chooses to ignore that testimony because, as is readily apparent, it shows so compellingly that

Brock is a Clinton Township resident.

It is laughable to characterize the evidence regarding Mr. Brock's use of the Clinton Township apartment as indicating that he "sometimes stays there" when by his own admission virtually all of the indicia of residency show that that is where he resides.

All of these ties to the Clinton Township address are indicia of residency or domicile as all cases on the issue of residency make clear. Masters v City of Highland Park, 79 Mich App 77 (1977); Choike v City of Detroit, 94 Mich App 703 (1980).

**E. Brock's declared intention to be a resident of Shelby Township is inconsistent with all of the facts which demonstrate the fact that he resides in Clinton Township and his intention to reside in Clinton Township.**

Susy Heintz and Gregory Brock contend that he is a resident of Shelby Township. What evidence is offered of such residency? That his trophies and stamp collection are still at his parents' home<sup>7/</sup> and that sometimes he sleeps there--when he is "off duty," whatever that means. He also acknowledged that he is seldom "off duty," and that he works a great deal. So his occasional "off duty" sleepovers at the family home occur, by his own testimony, perhaps once a weekend. The other evidence they proffer is that he votes in Shelby Township. While the location of one's voter

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<sup>7/</sup> It should be pointed out again that Mr. Brock is 26 years old, and that nearly three years ago he left the parental nest to establish his own residence. The court can probably take judicial notice of the fact that the detritus of childhood and adolescence, such as trophies and stamp collections, are generally left at the parents' home, along with boxes of college books and notes, until the parents can prevail upon their offspring to take their "stuff" with them. The fact that such "personal effects" are at the Woodberry home indicates not that Brock currently resides there but rather that he used to do so.

registration is also an indicia of residency, it is certainly not determinative, nor, contrary to the assertions of Heintz, does it create a presumption of residency. What we are saying here is that he is neither qualified nor entitled to be registered in or vote in Shelby Township. The fact that he does so does not prove that he is entitled to do so.<sup>8/</sup>

In addition, and most importantly, Brock contends that he is a resident of Shelby Township because he *intends* to be a resident of Shelby Township. In other words, it is the thought that counts. Plaintiff Heintz quotes that tired old chestnut, "Home is where the heart is," as though this is relevant, as though residency is a sentimental attachment or perhaps an intellectual construct. In fact, one's residence is not where one's heart is. One's residence, as defined by the election law, is where a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. For Mr. Brock, that is not his childhood

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<sup>8/</sup> Plaintiff Heintz also offers the self-serving affidavit of a political ally, Karen Schultz, the clerk of Shelby Township, who says she was consulted by Brock and that based upon his representations to her she concluded that he was eligible to vote in Shelby Township. First, this affidavit is not part of the record and cannot be considered. Second, it is so transparently partisan that it is worthless. Third, she says that in making her determination she reviewed Brock's affidavit and supplemental affidavit. Thus, she did not consider the facts which were presented by Brock's testimony to the Board of Canvassers. These facts are summarized above. If this ridiculous affidavit is considered by the court we ask it also to consider the appended affidavit of the Clinton Township clerk, Dennis Tomlinson, appended hereto, who when presented with the facts of Mr. Brock's residency status, as developed at the hearing, concluded that Mr. Brock is a resident of Clinton Township and that he is not a resident of Shelby Township.

home, where he has left his trophies, his computer, his stamp collection, and perhaps his heart, but the apartment where he sleeps and keeps the personal effects of adulthood, such as his work clothes, the apartment which is identified on virtually all relevant documents, except voter registration, as his residence address.

Plaintiff Heintz contends that since the earliest days of Michigan law, " a person's expressed intention in selection of residence is the most important factor in determining an address for voting purposes," relying upon Harbaugh v Cicott, 33 Mich 242 (1876). The case does not so state and subsequent cases have made it clear that intent is not considered apart from fact and certainly does not override it. Thus, in Reaume & Silloway v Tetzlaff, 315 Mich 95 (1946), the court quoted Wright v Genesee Circuit Judge, 117 Mich 244, as follows:

Residence is made up of fact and intention. **There must be the fact of abode, and the intention of remaining.** (Emphasis in original)

An old but particularly pertinent case dealing with the fact and the intention of residency is Beecher v Common Council of Detroit, 114 Mich 228 (1897). There a man challenged the City of Detroit's imposition of a tax on him, saying he was not a resident of Detroit, that he had never intended to leave his residence in Negaunee, that he was only in Detroit temporarily, and that he went back to Negaunee to vote. The court noted that the plaintiff had been in Detroit for several years, that he actually lived there and had built a house there and concluded that he was a Detroit

resident. Intending to reside in Negaunee and voting there did not make him a Negaunee resident when the facts showed he lived in Detroit, just as intending to reside in Shelby Township and voting there does not make Brock a Shelby Township resident when the facts show that he lives in Clinton Township. The Beecher court quoted the famous Justice Cooley to the effect that,

It is a maxim that every man must have a domicile somewhere, and also that he can have but one. Of course, it follows that this existing domicile continues until he acquires another, and, vice versa, by acquiring a new domicile he relinquishes his former one.

Because Gregory Brock is a resident of Clinton Township, he is no longer qualified or entitled to be a registered elector in Shelby Township. He has relinquished his childhood residence and now has a residence of his own--in Clinton Township. His voter registration in Shelby Township is no longer valid--in fact, it is fraudulent.

Since he neither qualified nor entitled to be a registered elector in Shelby Township, and since he is not registered anywhere else, he cannot be a petition circulator. Keys v Secretary of State, 360 Mich 610, 616 (1960). Since he is not a qualified circulator, all of the petitions which he signed as circulator must be invalidated and none of the 574 signatures on those petitions can be counted.

**III. CAREFUL EXAMINATION OF THE PETITIONS AND THE CIRCULATOR SIGNATURES EXECUTED BY GREGORY BROCK DEMONSTRATE THAT HE WAS NOT THE CIRCULATOR OF ALL OF THE PETITIONS HE CERTIFIED.**

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The regular practice of petition circulators is to sign a

petition when it is completed, that is, when all 15 signature lines have been filled out by signers. An examination of the petitions, set forth in tabular form in the Statement of Facts, above, which Gregory Brock signed as circulator, shows that he followed this practice when he first began to circulate petitions for Heintz. Thus, all 12 petitions signed by him as circulator prior to May 13 were fully completed and the certificate of circulator was signed on the day of their completion.

By telling contrast, of the 35 petitions on which he signed the certificate of circulator on May 13, only 6 were both fully completed and signed by Brock on the day the signatures were collected. And of the remaining 29 petitions Brock signed on May 13, 12 were incomplete.<sup>2/</sup> In fact, 6 of these petitions had only 1 signature each!

What this pattern very persuasively suggests is that, contrary to his sworn certification on the petitions, Mr. Brock was not actually the circulator of all of these petitions. Rather, it appears that all of the petitions were brought together on the 13th and signed by Brock, without regard to their incompleteness, and even though the signatures on many of them had been collected days earlier.

Mr. Brock asserted under oath that he had circulated all of the petitions. He was unable to explain why the petitions which he

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<sup>2/</sup> These were countywide petitions. The Tenth District is in both Macomb and St. Clair counties. The same petition cannot be used in both counties, but it is otherwise unnecessary to use different petitions for different political jurisdictions within a county and this was not done by Mr. Brock.

certified before May 13 were fully filled out while many of those certified on May 13 were not. He was unable to explain why the petitions he certified before May 13 were all certified when completed while many of the petitions certified on May 13 had been filled out earlier. He denied that he had altered his pattern although this is readily obvious from the petition data. He explained that he was dashing around from place to place, throwing petitions into the back seat of his car, although this explanation in fact explains nothing. It certainly does not explain why he would get one signature on a petition and then start on a new petition.

The Board of Canvassers, through its staff at the Bureau of Elections, is presently engaged in an investigation of circulator fraud in connection with judicial nominating petitions in Wayne County and the Board has expressed concern both over forged signatures and false circulator certifications. While somewhat more subtle here, there is apparent evidence of circulator misconduct. Only by further investigation, including questioning by Bureau staffers of the petition signers, can this circulator fraud be uncovered.

Therefore, were the court to direct the counting of the missing petition signatures, and were it to conclude that Brock was a resident of Shelby Township and a qualified petition circulator, it would then have to address this issue and would have to conclude that an investigation of this apparent circulator fraud was essential before further action could be taken by the Board on the

Heintz petitions.

**IV. THE MISSING PETITIONS CANNOT BE COUNTED.**

Susy Heintz argues that she filed additional petitions on May 14, two hours after the first filing, and that these should be counted, despite the fact that they have not been located by the Bureau of Elections. These mysterious missing petitions cannot possibly be counted. To count them would be to aid in the commission of a fraud -- a fraud on the people of the State of Michigan, because those petitions were not filed and do not exist.

The record shows that on May 17, 1996, at 5:00 p.m., the Bureau of Elections issued its Unofficial Candidate Listing for the August 6 primary election, setting forth assorted information about each candidate's filing, including the number of signatures filed. This listing, at page 2, shows Susy Heintz as having filed 1,523 signatures, the number claimed in her Affidavit of Identity. (As noted above, this number failed to delete the crossed out names on the petitions filed, so that the number actually filed was 1,460.)

There is no record of any claim being then made by the Heintz Committee that the number shown was incorrect or that it failed to reflect the alleged supplemental filing. In fact, Heintz made no attempt to change the listing of 1,523 signatures to reflect the alleged supplemental filing between May 14 and May 23, 1996. This alleged supplemental filing was never mentioned by Heintz until after the instant Challenge was filed on May 21.

The acquiescence of Heintz for a week in the Bureau's listing of 1,523 signatures undermines the credibility of her belated claim

that an additional 90 signatures had been filed. To permit those signatures to be counted would be to condone sandbagging of the Bureau, of challengers, and of the voters by candidates who would intentionally underestimate signatures or allow known Bureau errors to go uncorrected so they could, as here, use those alleged errors to their advantage if challenged. Heintz had an obligation to correct this alleged error and it would be inequitable to allow her to benefit from her misconduct.

The Bureau of Elections, relying upon Wojcinski v State Board of Canvassers, 347 Mich 573 (1957), recommended that the Board of State Canvassers count the missing petition signatures. Reliance upon that case is clearly misplaced. In Wojcinski the plaintiff contended that he had filed more petition signatures than the Board of Canvassers credited him for. The Michigan Supreme Court directed that an evidentiary hearing be conducted and this hearing revealed that the practices of the Secretary of State with regard to the receipt and handling of petitions were grossly inadequate, permitting the conclusion that petitions could easily be lost or misplaced. In light of this evidence, the court concluded that the plaintiff was entitled to have counted the petition signatures which he claimed to have filed.

It is apparent that the Secretary of State office has dramatically improved its handling of petitions since Wojcinski, and perhaps because of Wojcinski. The factual record made in the instant case shows that the Bureau of Elections is careful and responsible in the receipt and handling of petitions. Doretha

Blair testified about the Bureau's routine procedure and about it being followed with regard to the petitions filed on May 14. She said that the petitions, once filed, are carried by courier to the Bureau's processing office. Christopher Thomas, Director of the Bureau, reported to the Board that a diligent, exhaustive search had not located the 9 petitions which Heintz had allegedly filed. He also said no petition had ever been missing in the fifteen years he has been with the Bureau.

MRE 406, on habit and routine practice, provides that evidence of the routine practice of an organization is relevant to prove that the conduct of the organization on a particular occasion was in conformity with that routine practice. Thus, the testimony of Doretha Blair, and the representations of Mr. Thomas, that petitions were regularly collected by a courier and taken from the filing area to the Bureau's processing area was relevant to prove that this was the practice followed on May 14, 1996.

And the evidence that a diligent search of the Bureau failed to locate the petitions assertedly filed by Heintz is persuasive evidence that the petitions were not actually filed. MRE 803(10) provides that evidence that a diligent search failed to disclose a record is evidence of the nonexistence of that record. Relatedly, MCL 600.2108 permits the secretary of state to prepare for evidentiary purposes a certification as to the diligent search for any paper, document, or record, and its absence, to prove the nonexistence of the paper, document, or record. To put the matter most simply, if the petitions had been filed the Bureau of

Elections would have them. The fact that they do not have them is evidence that they were not filed, or at least not properly filed.

It is true, of course, that Heintz has a receipt for this alleged supplemental filing. It is true, as well, that Blair has identified her signature on that receipt and has said she has a vague recollection of completing the receipt with a Clinton Township post office address late in the day on May 14. However, Blair cannot testify that the photocopies of nine petitions, submitted by Heintz, are actually photocopies of the petitions which she received that day. **No one can so testify!** The affidavit of William Froberg says that he circulated a Heintz nominating petition on May 13. The affidavit of Gregory Brock say that he circulated Heintz nominating petitions on May 14. The affidavit of Natalie Mytnyk says that she circulated a Heintz nominating petition on May 14. The affidavit of Ryan Boeskool says that he delivered nine petitions to the Bureau of Elections and received a receipt. There is no evidence whatsoever that says that the photccopied petitions, which were so belatedly circulated, are actually copies of the petitions filed. Froberg can say that that is a copy of the petition he circulated. He cannot and does not say that that is a copy of the petition Boeskool allegedly filed.

Blair testified that she did not count the number of signatures on the petitions filed. Boeskool's affidavit says nothing about the number of signatures on the petitions filed. Plaintiff Heintz' brief suggests that perhaps the petitions were stolen by a political opponent. Perhaps they were retrieved

(stolen) by a political ally. Perhaps the Heintz campaign knew they were insufficient. Perhaps Heintz is better off with the photocopied petitions than with actual but inadequate petitions containing insufficient or invalid signatures. Perhaps, perhaps, perhaps.

This is, obviously, all pure supposition. But it is important supposition. The original petitions are missing. The Bureau cannot explain how this could happen. Nor can anyone else. But the Board cannot direct the counting of petition signatures on photocopied petitions which cannot be identified as copies of actual petitions timely filed with the Bureau, particularly where there is no evidence to show that the Bureau's handling of the petitions was in any way suspect or deficient.

In sum, the members of the Board of Canvassers who voted not to certify Susy Heintz for the August 6 primary ballot, based in part on their conclusion that it was not proper to count the signatures from petitions purported to be copies of missing petitions, were correct. At the very least, it must be concluded that their decisions were responsible and warranted and that they deserve the deference of this court.

CONCLUSION AND RELIEF SOUGHT

In conclusion, the Board members who concluded that Gregory Brock was not a resident of Shelby Township, and so not a validly registered elector there, were correct. At the very least, it was their decision to make and this court has no basis for overturning their factual and legal conclusion. Furthermore, the Board members who concluded that the circumstances did not warrant acceptance of photocopied petitions which were purported to be copies of missing petitions were correct. And, again, at the very least it was their decision to make. These Board members breached no clear legal duty. The Board has no clear legal duty to certify Susy Heintz for the August primary ballot. There is no basis for issuing an order of mandamus directing them to do so.

Accordingly, Intervening Defendant Mark Brewer respectfully requests that this Complaint for Mandamus be dismissed.

Respectfully submitted,

SACHS, WALDMAN, O'HARE, HELVESTON,  
BOGAS & McINTOSH, P.C.

BY:   
MARY ELLEN GUREWITZ (P25724)  
Attorneys for Intervening Defendant,  
Mark Brewer  
1000 Farmer Street  
Detroit, Michigan 48226  
(313) 965-3464

Dated: June 7, 1996

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ,

Plaintiff,

vs.

Court of Appeals Docket  
No. 195290

MICHIGAN STATE BOARD OF  
CANVASSERS, a constitutional  
board, and CANDICE MILLER,  
Secretary of State, in her  
official capacity,

Defendants.

---

PROOF OF SERVICE

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF WAYNE     )

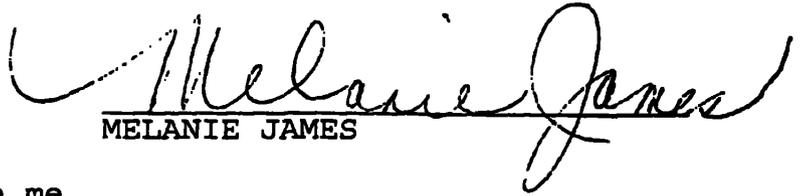
MELANIE JAMES, being first duly sworn, deposes and says that on the 7th day of June, 1996, she served true copies of Stipulated Motion for Intervention; Stipulated Motion for Immediate Consideration; Brief of Intervening Defendant Mark Brewer; Answer to Complaint for Mandamus; Affidavit of Dennis Tomlinson; and this Proof of Service upon:

JOHN D. PIRICH  
TIMOTHY S. KNOWLTON  
JOHN S. KANE  
Honigman, Miller, Schwartz &  
Cohn  
222 N. Washington Square  
Suite 400  
Lansing, Michigan 48933

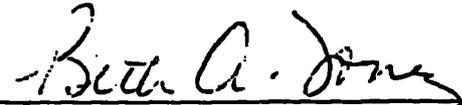
GARY P. GORDON  
Assistant Attorney General  
P. O. Box 30212  
Lansing, MI 48909

by mailing true copies thereof addressed to said individuals with

properly prepaid postage thereon and deposited same in a U.S. mail receptacle, Detroit, Michigan.

  
MELANIE JAMES

Subscribed and sworn to before me  
this 7th day of June, 1996.

  
BETH A. TONEY, Notary Public  
County of Wayne, Michigan  
My Commission Expires: 4/21/98

AFFIDAVIT OF DENNIS TOMLINSON

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF MACOMB     )

Dennis Tomlinson, being first duly sworn, deposes and says as follows:

1. I make this affidavit based on personal knowledge except where indicated to be on information and belief and if called as a witness I can competently testify to the matters herein.

2. I am the elected Township Clerk for Clinton Township, Michigan.

3. I was contacted by representatives of Mark Brewer, regarding proof of residency for voting registration purposes.

4. I was advised that Gregory Brock has a driver's license showing a Clinton Township address, that his car is registered at that address, that his proof of insurance shows that address, that his income tax returns show that address, that his personal checks have that address and that he receives his checking account statements there, that he has his bills sent to that address, that he has his paycheck sent to that address, that he keeps his clothes at that address, and that he sleeps at that address, at least during the week, and goes to work from that address and returns from work to that address.

5. I was advised that Gregory Brock keeps some personal effects at his parents' home; such as his trophies, stamp collection and computer; that he sometimes sleeps over there; that he has maintained his voter registration in Shelby Township; that he has continued to vote there; and that he has stated that he intends the Shelby Township residence of his parents to be his

residence.

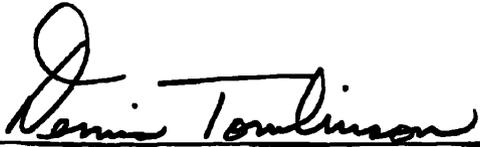
6. It is my opinion, based on this information, that Mr. Brock is a resident of Clinton Township and qualified and entitled to be registered to vote there.

7. It is my opinion, based on this information, that Mr. that Mr. Brock is not a resident of Shelby Township and that he is not qualified or entitled to be registered to vote there.

8. In addition to the information about his driver's license address, which I find persuasive, I am also persuaded by the information provided that he uses the Clinton Township address for purposes of filing state and federal tax returns, since the state income tax return permits the claiming of a homestead tax credit on one's place of residence, which is the address on the return.

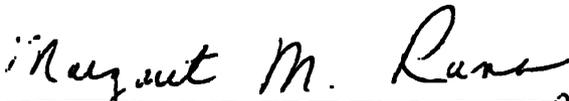
9. It is my opinion that keeping limited personal effects at a second address, such as a cottage or childhood home, and occasionally or even frequently staying at such location, does not qualify or entitle a person to register to vote in some city or township other than the one in which the persons maintains his or her residence.

Further affiant saith not.

  
DENNIS TOMLINSON, Township Clerk  
for Clinton Township, Michigan

Subscribed and sworn to before me

this 7th day of June, 1996.

  
Notary Public Margaret M. Rama  
County of Macomb, Michigan  
My Commission Expires: 9-8-97



STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ.

Plaintiff.

Court of Appeals  
Docket No. 195290

-v-

MICHIGAN STATE BOARD  
OF CANVASSERS.

a constitutional board. and

CANDICE MILLER.

Secretary of State.

in her official capacity.

Defendants.

---

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CLERK OF APPEALS  
MICHIGAN COURT OF APPEALS  
200 N. ZEEB RD.  
LANSING, MI 48906  
1-21-19 11:00 AM

**PLAINTIFF SUSY HEINTZ'S**  
**REPLY BRIEF IN SUPPORT**  
**OF COMPLAINT FOR MANDAMUS**

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## SUPPLEMENTAL STATEMENT OF FACTS

The Clerk of this Court ordered Intervenor Mark Brewer, Chairperson of the State Democratic Party, to file his response to Plaintiff's Complaint for Mandamus by 5:00 p.m. on June 7, 1996. Nonetheless, for whatever reasons, despite their agreement to stipulate to Mr. Brewer's intervention in this case, the Brewer Brief was mailed to both counsel for Plaintiff and Defendants, ensuring that no work could be done on a Reply Brief until Monday, June 10, 1996. Had the brief been delivered or faxed on Friday June 7, 1996, this Reply Brief would have been filed on June 10, 1996.

Plaintiff relies on the Statement of Facts appearing in its original Brief. In addition, Plaintiff submits that rather than falsely accuse Mr. Brock of fraud and wrongdoing, Mr. Brewer should congratulate Mr. Brock on his sense of civic responsibility, which has included voting in every election, except one (due to a death in the family) since he became registered to vote.

### ARGUMENT

#### I. Mandamus is Appropriate in this Case.

At page 1 of his brief, Mr. Brewer asserts that the Michigan State Board of Canvassers (the "Board") performed its clear legal duty by deadlocking two to two on the motion to certify Susy Heintz's nominating petition. Indeed, Mr. Brewer goes so far as to state that the Board's deadlock decision constitutes a determination that Ms. Heintz did not file a sufficient number of signatures to earn a spot on the primary ballot. As discussed herein, the Board does not fulfill its statutory duties by deadlocking on whether to declare the sufficiency or insufficiency of a petition that comes before it.

The Board consists of two Republican and two Democratic members. MCL 168.30c: MSA 6.1030(3). Pursuant to MCL 168.30d: MSA 6.1030(4), while three members of the Board constitute a quorum, "no action shall become effective unless 1 member from each political party represented concurs therein." In short, the Board only takes official action when: (1) a quorum of the Board is present; (2) a majority votes in favor of the particular action, and (3) at least one Board member from each political party votes in favor of the action. Mr. Brewer's contention to the contrary notwithstanding, the Board has not made an official declaration of the sufficiency or the insufficiency of Ms. Heintz's nominating petition.

The Board has a clear legal duty to issue an official declaration of the sufficiency or insufficiency of a nominating petition. In this regard, MCL 168.552(9); MSA 6.1552(9), provides in pertinent part:

An official declaration of the sufficiency or insufficiency of a nomination petition shall be made by the Board of State Canvassers not less than the 9 weeks before the primary election at which candidates are to be nominated.

No such official declaration has been rendered with respect to Plaintiff Heintz's nominating petition because the Board members deadlocked along party lines. While Plaintiff Heintz firmly believes that her nominating petition must be certified as sufficient by the Board, even were this Honorable Court to disagree, it should issue a writ of mandamus requiring the Board to issue an official declaration of the insufficiency of the petition because there is absolutely no question but that the Board has a clear legal duty to declare the sufficiency or insufficiency of the petition, and it has failed to do either.

**II. Under MCL 168.544c; MSA 6.1544(3), the Petition Signatures Gathered by Mr. Brock Must be Considered in Determining the Sufficiency of Plaintiff Heintz's Nominating Petition.**

Mr. Brewer asserts that the amendment to MCL 168.544c; MSA 6.1544(3) that became effective December 21, 1990 was actually intended to make the requirements on petition circulators more stringent, contrary to Plaintiff's argument at pages 13 through 17 in her original brief. In making this argument, Mr. Brewer offers no explanation as to why the term "qualified" was deleted from MCL 168.544c(2); MSA 6.1544(3)(2) with the enactment of 1990 PA 329. The reason for this is clear, namely, contrary to the rule of construction that a change in statutory language is presumed to effect a change in law, Mr. Brewer wants to argue that the deletion of the term "qualified" is of no legal import.

Mr. Brewer's argument that the amendment to MCL 168.544c; MSA 6.1544(3) actually was intended to make the requirements on petition circulators more stringent, by requiring as of December 21, 1990, petition circulators to include in their certificate of circulator the address at which they are registered is simply wrong. Rather than accuse Mr. Brewer of misrepresentation, as he has Plaintiff throughout his brief, Plaintiff will assume that he is simply unfamiliar with circulator requirements as they existed prior to the effective date of 1990 PA 329. In fact, part of subparagraph (1) of MCL 168.544c; MSA 6.1544(3) specified as follows:

**CERTIFICATE OF CIRCULATOR**

The undersigned circulator of the above petition asserts that he or she is qualified to circulate this petition, that each signature on the petition was signed in his or her presence, that to his or her best knowledge and belief each signature is the genuine signature of the person purporting to sign the same and that the person was at the time of signing a qualified registered

elector of the city of township listed in the heading of the petition and that the elector was qualified to sign the petition.

Circulator - Do not sign or date certificate until after Circulating petition.

\_\_\_\_\_  
(Signature of Circulator) (Date)

\_\_\_\_\_  
(City or Township Where Registered)

\_\_\_\_\_  
Complete Address ( Street and Number or Rural Route)

\_\_\_\_\_  
(Post Office)

**Warning - A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.**

See. also, Keyes v Hare, 360 Mich 610, 616; 104 NW2d 781 (1960), involving dispute that circulators were not registered at address set out in circulator's certificates.

In sum, Mr. Brewer contends that the amendment wrought by 1990 PA 329 was intended to add a requirement that already existed! In fact, the underlying dispute in Messerili v Michigan State Board of Canvassers, Court of Appeals Docket No. 129867, which decision motivated the change in Section 544c of the election code, involved the question of whether petition signatures should be counted where the circulator signed the certificate at an address other than that from which he or she was registered to vote. In Defendants' Brief in Support of Application for Leave to Appeal, Motion for Immediate Consideration and Preemptory Reversal, in the Michigan Supreme Court dated June 25, 1990, the Attorney General set forth the facts pertinent to the circulation dispute as follows:

The second individual, Janet Tlapek, obtained 201 signatures. The petition sheets circulated by Ms. Tlapek indicate that 153 of the signatures were on petitions signed by Ms. Tlapek on May 3, 1990 and 48 of the signatures were on petitions signed by Ms. Tlapek on May 15, 1990. The voter registration application of Ms. Tlapek indicated that she did not register at the address listed in the certificate of circulator on the petitions she submitted until May 10, 1990. The facts obtained by the Secretary of State, as detailed in the attached Affidavit of Michael Coyer and the documentary evidence indicated that Ms. Tlapek did indeed not register until May 10, 1990 and accordingly, it was recommended that the 153 signatures obtained prior to May 10, 1990 be invalidated. Ms. Tlapek testified under oath and through an affidavit that to the best of her knowledge she registered on May 3, 1990. This is in dispute and is contrary to documentary evidence obtained by the Secretary of State. If the 153 signatures obtained prior to May 10, 1990 are found invalid, this, standing alone, would reduce the number of signatures filed by Plaintiff to less than the minimum required to place his name on the ballot as a candidate for the Democratic nomination for Representative in Congress.

A third individual, Carl Ranno, obtained 517 signatures. 270 of the signatures were on petitions signed by Mr. Ranno prior to May 3, 1990 and 247 of the signatures were on petitions signed by Mr. Ranno after May 3, 1990. (Board Minutes, p 3). These facts are not in dispute. It is also not in dispute that Mr. Ranno did not register in the City of Owosso, the registration address sited on all petitions that Mr. Ranno submitted as the circulator, until May 3, 1990. Therefore, the staff recommended that the 270 signatures obtained on petitions signed by Mr. Ranno prior to May 3, 1990 be rejected. If these signatures are found to be properly rejected, this, standing alone, reduces the number of valid signatures filed by Plaintiff to below the minimum necessary to place his name on the ballot as a candidate for the Democratic nomination for Representative in Congress.

The Michigan Board of State Canvassers, after hearing extremely lengthy arguments by Plaintiff's counsel and after hearing testimony of Ms. Tlapek, by a unanimous vote of the two Republican and two Democratic members accepted the recommendation of the staff. The Board thus found that Plaintiff had filed an inadequate number of valid signatures to

allow this name to be placed on the August 7, 1990 primary ballot as a candidate for the Democratic nomination for Representative in Congress.

In short, unlike this case, in Messerli, the Board had unanimously determined that some of the signatures collected by Janet Tlapak and Carl Ranno should not be counted. Nevertheless, the Messerli panel determined that there had been substantial compliance with the election code and ordered the consideration of the signatures despite the fact that the two circulators, although registered voters in Michigan, were not registered voters at the locations specified in the circulator certificates. Of course, if there was no requirement for a petition circulator to sign the circulation certificate from his or her place of registration, this would not have been an issue in Messerli. So much for the "stunning misrepresentation" allegedly made by Plaintiff Heintz in discussing the legislative intention underlying the enactment of 1990 PA 329. The purpose of 1990 PA 329 was clearly to require petition signatures to be counted so long as the circulator's voter registration was at the address contained in the circulator's certificate. This rule only makes sense because a person who desires to sign a petition can do nothing to ensure that a circulator is properly registered from his or her stated place of residence.

**III. Given the Legal Standard for Determining Residency for Electoral Purposes, Petition Circulator Gregory Brock is Clearly Properly Registered in Shelby Township.**

In the apparent belief that his assertions about the law actually make them the law, Mr. Brewer has made a number of misstatements concerning the applicable standard for determining residency for electoral purposes. Contrary to Mr. Brewer's unsupported assertion at pages 20 - 21 of his brief, a person's place of registration does create a presumption of

residency. As the Michigan Supreme Court stated in Harbaugh v Cicott, 35 Mich 241, 251-252 (1876):

**It appeared that Robert McClathey voted in the third ward, and that his name appeared upon the register and pole list. He was therefore *prima facie*, a legally qualified voter and entitled to vote in the precinct and ward where he was registered. This presumption covers and includes everything necessary to make him a qualified voter. (Emphasis added.)**

In short, a person's place of registration has created a presumption of residency in Michigan for the last 120 years. Mr. Brewer has failed to cite one decision involving residency for electoral purposes that stands to the contrary.

In an effort to denigrate the importance of the presumption of residency and the voter's intent, Mr. Brewer also selectively quotes from MCL 168.11; MSA 6.1011, asserting that for voting purposes, to be a resident of a particular locale, one must habitually sleep there, keep his or her personal effects there, and have a regular place of lodging there. In fact, Mr. Brock does habitually sleep at his Shelby Township home, keeps the bulk of his personal effects there, and has a regular place of lodging there. Thus, even based upon the selectively excerpted quotation from MCL 168.11; MSA 6.1011, Mr. Brock qualified to register in Shelby Township.

Mr. Brewer fails to reveal to this Court that the definition of "residence" appearing in MCL 168.11(1); MSA 6.1011(1), expressly provides:

**This section shall not be construed to affect existing judicial interpretation of the term residence.**

Existing judicial precedents addressing one's place of "residence" for voting purposes hold that intention is a prime factor in determining residency. The Supreme Court decisions

in Harbaugh, supra. Warren v. Board of Registration, 72 Mich 398; 40 NW 553 (1888) and their progeny, remain the law in Michigan, and have been consistently adhered to by every Michigan Attorney General to consider the issue of voting residency up to, and including, Attorney General Frank Kelley. See, e.g., 1975-76 OAG. No. 4931 at 332 (March 22, 1976).

Mr. Brewer also asserts that under both state and federal law, when one changes his or her driver's license address, that person must also change his or her address for voting purposes. In fact, both federal and state law actually provide precisely the opposite, namely, that a person may register to vote from an address different than the address on his or her drivers license. Plaintiff will not rehash the circumstances under which Mr. Brock changed his drivers license address. These are set out in the Supplemental Affidavit of Gregory Brock, *Exhibit H*, to Brief in Support of Complaint of Mandamus. These facts are already before the Court, and clearly show that there was no voluntarily relinquishment by Mr. Brock of his Shelby Township home for purposes of voting. See, Warren v Board of Registration, supra, at 402.

While the bulk of Mr. Brewer's residency argument is premised on the vehicle code, Mr. Brewer fails to inform this Court that the definition of "resident" appearing in that code has no applicability except to that code. In this regard, MCL 257.51a; MSA 9.1851(1) defining "resident" in the vehicle code, specifically provides:

This definition shall apply to the provisions of this act only.

While Plaintiff Heintz concedes that often persons who change their driver's license address also intend to change their place of permanent residence, this is not always so. Moreover, applicable state and federal law at the time Mr. Brock changed his driver's license

address further establish that a person may have different addresses for driving and voting purposes. The only conclusion that can be reached from Mr. Brock's failure to change his place of voter registration when he changed his driver's license address is that Mr. Brock did not intend to renounce his Shelby Township residence but, rather, intended to maintain it.

In this regard, 42 USC § 1973gg-3(d), the so called motor voter law, specifically permits a person changing his or her driver's license to keep the prior address for voter registration purposes:

Any change of address form submitted in accordance with State Law for purposes of a State Motor Vehicle Driver's License shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved **unless the registrant states on the form that the change of address is not for voter registration purposes.** (Emphasis applied).

Although Michigan had not fully implemented the motor voter law at the time Mr. Brock changed his address for driver's license purposes, Christopher Thomas, Director of the Bureau of Elections, stated during proceedings before the Board on June 3 or 4, 1996, that this portion of the motor voter law was in effect when Mr. Brock changed his driver's license address. This being the case, the only possible conclusion that can be reached from Mr. Brock's failure to change his voter registration address is that he considered himself a permanent resident of Shelby Township and desired to continue exercising his electoral franchise from the Shelby Township address.

The same conclusion must be drawn under comparable provisions of the Michigan election law. As Mr. Brewer notes, under MCL 168.509z; MSA 6.1509(26), the Secretary of State is to notify the clerk of the jurisdiction of registration of a person who changes his or

her driver's license address. Upon receipt of information concerning a change of address, the township clerk is obligated to investigate. **Significantly, however, if the registrant continues to indicate that he or she resides at the voter registration address, that person is entitled to cast a regular ballot at his or her regular polling place.** See MCL 168.509aa(4); MSA 6.1509(27)(4). In short, the provisions of election law cited by Mr. Brewer in support of his position that voter registration necessarily follows driver's license address actually recognize the propriety of a person using a driver's license with one address, while voting from another address.

Finally, in a desperate attempt to convince this Court to ignore 120 years of Michigan legal precedent, Mr. Brewer asserts that Plaintiff has either ignored or mischaracterized the testimony of Mr. Brock concerning his residency. See Brewer Brief at 19-20. Conspicuous by its absence is any recitation of any testimony given by Mr. Brock that was allegedly ignored or mischaracterized. On the other hand, Mr. Brewer incorrectly presents Mr. Brock's testimony with respect to the amount of time Mr. Brock spends at his Shelby Township home. Contrary to Mr. Brewer's assertion, Mr. Brock did not testify that he sleeps over at his Shelby Township home "perhaps once a week". In fact, Mr. Brock's testimony was that on weekends he usually slept at his Shelby Township home, and he occasionally stayed at his Shelby Township home during the week. Mr. Brock testified that since he sometimes started using the Clinton Township apartment in December, 1993, depending on the particular period, he spent 40% to 60% of his off duty hours at his Shelby Township residence and, indeed, since early 1996, has spent more time in Shelby Township because of his work on the Heintz campaign.

In response to the Supreme Court decisions and several Attorney General opinions, all standing for the proposition that a person's express intention is the single most important factor in determining residence for electoral purposes so long as there is some presence at the selected address. Mr. Brewer cites a number of cases -- none of which involve an analysis of residency for voting purposes. In Beecher v Common Council of Detroit, 114 Mich 228; 72 NW 206 (1897), the issue was whether the City of Detroit had the authority to tax Plaintiff's personal property, given Plaintiff's contention that he was only temporarily staying in Detroit. One of the factors that Plaintiff advanced in support of his position was that he had consistently voted elsewhere, namely, Negaunee. Plaintiff filed a Complaint for Mandamus after the Detroit Board of Assessors and Common Council determined that he was a resident of Detroit. In this regard, the Supreme Court specifically held that were it given an opportunity to review the question *de novo*, it would have concluded that Plaintiff was a resident of Negaunee, who was only temporarily residing in Detroit. Noting that *de novo* review was not applicable in that case, however, the Supreme Court upheld Detroit's decision that Plaintiff's personal property was subject to taxation there.

Apart from the fact that Beecher did not involve a challenge to Plaintiff's voting residence, unlike Beecher, where an official determination was made by the body required to make such determination in the first instance, here, the Board has not made the required finding with respect to the sufficiency of Plaintiff Heintz's petition, deadlocking two to two. Thus, this Court must, in light of applicable precedent governing the issue of residency for voting purposes, reach its own factual conclusion and, under the existing precedents, the only conclusion that can be reached is that Mr. Brock was properly registered in Shelby Township.

Such a decision does not require this Court to interfere with an official act of the Board because the Board failed to take an official act with respect to the sufficiency of Plaintiff's petition.

The decision in Wright v Genesee Circuit Judge, 117 Mich 244; 73 NW 230 (1898), is even more off the point. That case involved whether a divorce action had been properly filed in Genesee County. The petitioner, a former resident of Tuscola County, left Tuscola County for Genesee County, and the next day filed for divorce. When the circuit court refused to consider Petitioner's application for alimony on the grounds that she did not have the required residence in Genesee County, Petitioner filed a writ of mandamus. Although a mandamus action, the Supreme Court concluded that the Genesee County Circuit Court did have jurisdiction over the matter and that Petitioner was a resident of Genesee County, noting:

Residence is made up of fact and intention. There must be the fact of abode and the intention of remaining.

Although Mr. Brewer has questioned the amount of time Mr. Brock spends in his Shelby Township home, even Mr. Brewer has acknowledged that Mr. Brock maintains a presence in Shelby Township and, as such, Wright actually supports his stated residency and the sufficiency of Plaintiff's petition. Mr. Brock clearly has an abode in Shelby Township and an intent to remain there.

The issue in Reaume & Silloway, Inc. v Tetzlaff, 315 Mich 95; 23 NW2d 219 (1946) was whether Defendants were residents of Wayne County, where they were served with process, or residents of Oakland County. Interestingly, although Defendants had their automobile licenses from Oakland County addresses -- the factor that Mr. Brewer contends is

dispositive in this case -- the Supreme Court unanimously concluded that the lower court had appropriately determined that Defendants were residents of Wayne County.

Finally, as of the date the Board considered Mr. Brock's residency, he continued to be a registered voter in Shelby Township. The Shelby Township Clerk had, thus, implicitly determined that Mr. Brock was eligible to vote in Shelby Township. Moreover, *Exhibit 1* to the original Brief in Support of Complaint for Mandamus is the Affidavit of Karen Schultz, Township Clerk for the Charter Township of Shelby, who has reaffirmed the validity of Mr. Brock's registration in Shelby Township. It is, of course, the township clerk who is obligated to determine who is and who is not qualified to vote in the township. MCL 168.500c; MSA 6.1500(3) and MCL 168.500d, MSA 6.1500(4). Contrary to Mr. Brewer's contention at page 21, fn 8, Ms. Schultz did have before her all material information that had been imparted to the Board when she concluded that Mr. Brock's registration in Shelby Township was valid. See, specifically, ¶ 4 of the Schultz Affidavit. The Affidavit provided by Clinton Township Clerk Dennis Tomlinson with Plaintiff's Brief, opining that Mr. Brock should be registered in Clinton Township, is of no import because Mr. Brock has not sought to be registered in Clinton Township and, consequently, Mr. Tomlinson's opinion with regard to where Mr. Brock should be registered is of no import or consequence.

The simple fact is that Mr. Brock has a real presence in Shelby Township, including a bedroom in his parents' home, most of his personal effects, activity in the local community, and he has spent 40% to 60% of his off-duty time there since December, 1993. This presence, in conjunction with Mr. Brock's intention to have his permanent residence in Shelby Township as manifested by, among others, his refusal to change his voter registration to Clinton

Township, leads to the inexorable conclusion that Mr. Brock is properly registered to vote in Shelby Township, and the petition signatures he gathered on Plaintiff's nomination petition must be considered.

**IV. The Missing Petition Signatures Must Be Counted.**

Plaintiff stands by her original argument at pages 11 to 13 as to why the petition sheets lost by the Bureau of Elections must be counted. The sole purpose of this response is to address the claim of Mr. Brewer that this Court should conclude that the petition sheets were not, in fact, filed -- despite the overwhelming evidence to the contrary -- because the Heintz campaign made no attempt to have the Bureau of Elections' count of signatures corrected until May 23, 1996. As shown by the Affidavit of Mark Pischea, *Exhibit A*, an employee of MRG, Inc., which serves as a consultant to Plaintiff Heintz, he checked with the Bureau of Elections on May 21 to ascertain if any challenges had been filed to the Heintz petition. It was only at this time that he learned that the Bureau did not possess the nine petition sheets reflected in the Supplemental Filing Receipt. Although not sure on which date, on May 21 or May 22, Mr. Pischea brought the issue of the missing petition sheets to the attention of Christopher Thomas, Director of the Bureau of Elections. In short, as soon as Plaintiff's representatives learned of the petition sheet problem, it brought the problem to the attention of the Bureau.

**V. There is Only Vague Speculation that Mr. Brock Did Not Circulate all of the Petition Sheets he Signed as Circulator.**

As noted in this argument in Plaintiff's principal brief, it is black letter law (which has not been challenged by Mr. Brewer) that the person contesting the validity of petition signatures bears the burden of proof. Mr. Brewer falls far short of sustaining his burden through his "analysis" of the alleged pattern that Mr. Brock had established in circulating the

petitions that allegedly subsequently changed. Indeed, even if there were such an established pattern, the mere fact that the pattern changed is clearly insufficient to justify the conclusion that Mr. Brock lied under oath when he stated that each and every petition he signed as circulator was, in fact, circulated personally by him.

### CONCLUSION

For the reasons set forth in Plaintiff's original Brief in Support of Motion for Mandamus and this Reply Brief, it is patently evident that Plaintiff Heintz's nominating petition should be certified, and two members of the Board of Canvassers should not be permitted to deprive supporters of the Republican Party from selecting the candidate of its choice to run for United States Congress from the 10th Congressional District. Plaintiff Heintz submitted sufficient numbers of valid signatures, and neither the malfeasance of the Bureau of Elections or the *ad hoc* conclusion of two Board members that Mr. Brock should really be registered to vote in Clinton Township comes close to being a basis upon which to deprive Plaintiff Heintz of her rightful place on the primary ballot. It is for the electorate of the 10th Congressional District to decide if it wants Plaintiff Heintz to be its representative in Congress.

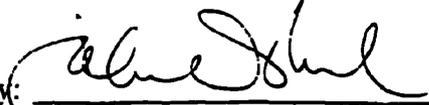
JOHN H. HILTS, SECRETARY AND COUNSEL

Respectfully submitted.

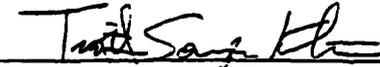
HONIGMAN MILLER SCHWARTZ AND COHN

Attorneys for Plaintiff Susy Heintz

Date: June 11, 1996

By:   
\_\_\_\_\_  
John D. Pirich (P23204)

Date: June 11, 1996

By:   
\_\_\_\_\_  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
222 North Washington Square  
Lansing, Michigan 48933-1800  
(517) 377-0711

HONIGMAN MILLER SCHWARTZ AND COHN

LNS01/36805.1  
TSK 6/10/96 12.50pm

## AFFIDAVIT OF MARK PISCHEA

Mark Pischea, being first duly sworn, deposes and says as follows:

1. I am an employee of MRG, which is serving as a consultant to Susy Heintz in her attempt to be elected to Congress from Michigan's 10th Congressional District.
2. After the Heintz campaign filed its nominating petition on May 14, 1996, it was my responsibility to keep track of the petition while it went through the Bureau of Elections.
3. I did not contact the Bureau of Elections until May 21, 1996, the date on which I knew challenges to the petition would have to be filed. At this time, I learned that Mark Brewer, Chairperson of the State Democrat Party and Gilbert DiNello, one of Susy Heintz's Primary Election opponents, had filed challenges to Ms. Heintz's nominating petition. At this time, I also learned that the Bureau of Elections could not locate nine petition sheets which the Heintz campaign had filed and for which the campaign had received an official Supplemental Filing Receipt.
4. After learning about the missing petition sheets on either May 21 or May 22, I discussed the situation with Christopher Thomas, Director of the Bureau of Elections.
5. I made no claim that an incorrect number of petition sheets and signatures had been recorded by the Bureau of Elections until May 21 or May 22 because I never checked with the Bureau of Elections until May 21, and then learned that there was a problem with the nine supplemental petition sheets.

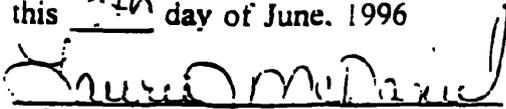
**EXHIBIT A**

Further affiant saith not.

Dated June 10, 1996

  
\_\_\_\_\_  
Mark Pischea

Subscribed and sworn to before me  
this 10<sup>th</sup> day of June, 1996

  
\_\_\_\_\_  
Laurie J. McDaniel

Notary Public, County, MI  
My Commission Expires: \_\_\_\_\_

**LAURIE J. McDANIEL**  
Notary Public, Clinton County, Michigan  
My Commission Expires April 3, 1998

LNS01/36815.1

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SUSY HEINTZ.

Plaintiff.

Court of Appeals  
Docket No. 195290

-v-

MICHIGAN STATE BOARD  
OF CANVASSERS.  
a constitutional board. and  
CANDICE MILLER,  
Secretary of State.  
in her official capacity,

**PROOF OF SERVICE**

Defendants.

John D. Pirich (P23204)  
Timothy Sawyer Knowlton (P30000)  
John S. Kane (P46132)  
Honigman Miller Schwartz & Cohn  
Attorney for Plaintiff Susy Heintz  
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(517) 484-8282

1996 JUN 11 11:19 AM  
COURT OF APPEALS  
LANSING OFFICE  
ELVA WILLIAMS CLERK

TO BE FILED WITH THE CLERK OF THE COURT OF APPEALS

STATE OF MICHIGAN )  
 ) ss:  
COUNTY OF INGHAM )

John D. Pirich, being first duly sworn, deposes and says that on the 11th day of June, 1996, he served a copy of Plaintiff Susy Heintz's Reply Brief in Support of Complaint for Mandamus and a Proof of Service upon:

Honorable Candice Miller  
Secretary of State's Office  
Treasury Bldg., 1st Floor  
430 W. Allegan  
Lansing, MI 48918-9900

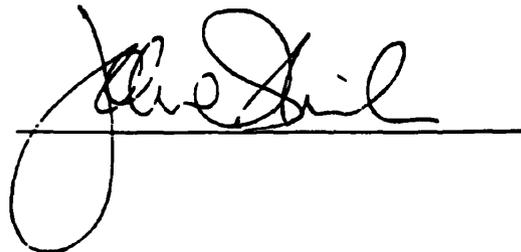
Christopher Thomas, Secretary, Michigan State Board of Canvassers  
Bureau of Elections  
Mutual Bldg., 4th Floor  
208 N. Capitol Ave.  
Lansing, MI 48918-1700

Gary Gordon  
Attorney General's Office  
Law Bldg., 7th Floor  
525 West Ottawa  
P.O. Box 30212  
Lansing, MI 48909

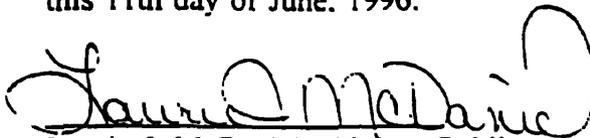
by hand delivering said documents to their business addresses listed above and upon:

Mary Ellen Gurewitz  
1000 Farmer  
Detroit, MI 48226-2834

via Facsimile & U.S. Mail.



Subscribed and sworn to before me  
this 11th day of June, 1996.



Laurie J. McDaniel - Notary Public  
Clinton a/i Ingham County, MI  
My commission expires: 4/3/98

LNS01/36542.



Court of Appeals, State of Michigan

ORDER



Susy Heintz v Board of Canvassers

David H. Sawyer  
Presiding Judge

Docket # 195290

Gary R. McDonald  
Janet T. Neff

L.C. #

Judges

The Court orders that the motion for immediate consideration is **GRANTED**.

Pursuant to MCR 7.206(D)(3) and 7.216(A)(7), this case is **REMANDED** for certification by the State Board of Canvassers and for placement of plaintiff's name on the ballot. The Board abused its discretion to the extent that it refused certification by not counting the valid signatures on the nine petitions which plaintiff alleges were filed separately but which cannot be found by the Bureau of Elections. There was affirmative proof that such petitions were filed, such as a supplemental filing receipt issued by the Bureau of Elections for nine petition sheets containing approximately the same number of signatures as are on plaintiff's photocopies. The evidence and arguments against the existence of such a filing are insufficient in light of the fact that the right to seek public office is basic to the proper operation of our democratic form of government. *Wojcinski v State Board of Canvassers*, 347 Mich 573, 577-578; 81 NW2d 390 (1957). In addition, because Gregory Brock was registered in the township indicated in the certificate of circulator, it is irrelevant whether he was properly registered in that township or should instead have been registered in another. MCL 168.544c(3); MSA 6.1544(3)(3). Finally, the claim that Mr. Brock did not actually circulate all of the petitions that he signed as circulator does not appear to have been adopted by any of the Board members.

The motion to show cause is **DENIED** because moot.

The motion by Mark Brewer to intervene as a defendant is **GRANTED**.

This Court retains no further jurisdiction.



A true copy entered and certified by Ella Williams, Chief Clerk, on

JUNE 11, 1996

Date

*Ella Williams*  
Chief Clerk