

State of Michigan
In the Supreme Court
Application for Leave to Appeal
from the Court of Appeals
Stephen L. Borrello, Presiding Judge

SOCIALIST PARTY OF MICHIGAN
and **Dwain C. Reynolds III,**
Plaintiffs-Appellants,

Ingham County Circuit Court Case #: **10-867-CZ**

Court of Appeals Docket #: **299951**

v

Supreme Court Docket #: **142163**

Michigan **SECRETARY OF STATE**
Ruth Johnson, in her official capacity,
Defendant-Appellee.

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other state governmental action is invalid.

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Motion to Strike Brief in Opposition to Application for Leave to Appeal

Plaintiffs-Appellants Socialist Party of Michigan (SPMI) and Dwain C. Reynolds III – through their attorney John Anthony La Pietra – respectfully move this Court to exercise its authority pursuant to MCR 7.302(F), and strike Defendant-Appellee Secretary of State’s brief in opposition to Plaintiffs-Appellants’ application for leave to appeal as nonconforming with the deadline provided by MCR 7.302(D)(1).

In support of this motion, Plaintiffs-Appellants state as follows:

(1) Plaintiffs-Appellants filed an application for leave to appeal to this Court in this matter on November 29, 2010 in accordance with MCR 7.302 – and served it on the attorneys of record for Defendant-Appellee on the same date.

(2) Together with that application for leave to appeal, Plaintiffs-Appellants filed and served a notice of hearing which set a notice date of Tuesday, December 21, 2010 – “on a Tuesday at least 21 days after the filing of the application”, in accordance with MCR 7.302(A)(2).

(3) On January 12, 2011, attorney for Plaintiffs-Appellants received a copy in the mail of Defendant-Appellee’s brief in opposition to Plaintiffs-Appellants’ application for leave to appeal. This brief was dated, signed, and (according to the case docket) filed on January 11, 2011.

(4) Defendant-Appellee’s brief in opposition to Plaintiffs-Appellants’ application for leave to appeal fails to conform to MCR 7.302(D)(1), which requires that an opposing brief must be filed “*before* the day the application is noticed for hearing” (emphasis added). January 11, 2011 is three weeks *after* the December 21, 2010 notice date in this matter.

(5) MCR 7.302(F) gives this Court the authority to strike a nonconforming brief – one which “does not substantially comply with the requirements of this rule”. (MCR 7.302(F) also gives this Court the authority to “order that party who filed the brief to file a supplemental brief within a specified time correcting the deficiencies”. However, the deficiency here is a late filing, which cannot be cured by a still-later filing.)

Accordingly, Plaintiffs-Appellants respectfully ask this Court to exercise its appropriate authority under MCR 7.302(F), and strike Defendant-Appellee’s January 11, 2011 brief in opposition to Plaintiffs-Appellants’ application for leave to appeal – for failure to conform to MCR 7.302(D)(1).

Respectfully submitted,

By: 
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Dated: January 18, 2011

Proof of Service

I certify that on **January 18, 2011**, I served a copy of the **Plaintiffs-Appellants' Motion to Strike Brief in Opposition to Application for Leave to Appeal**; the **Notice of Hearing** of same; and this **Proof of Service** of these documents on the attorney(s) of record for Defendant-Appellee in this case by enclosing and sealing these documents in an envelope with first-class postage fully prepaid, addressed to the attorney(s) of record for Defendant-Appellee, and depositing the envelope and its contents in the United States mail.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: January 18, 2011


John Anthony La Pietra (P72121)

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Notice of Hearing on Motion to Strike Brief in Opposition to
Application for Leave to Appeal

To: B. Eric Restuccia, Ann M. Sherman, and Denise C. Barton

Please take notice that **Plaintiffs-Appellants' Motion to Strike Brief in Opposition to Application for Leave to Appeal** is scheduled to be brought on for hearing at 9:00am on Tuesday, January 25, 2011 (or as soon thereafter as the matter may be heard) at the Michigan Supreme Court; Hall of Justice; 925 West Ottawa Street; Lansing, MI 48913.

Date: January 18, 2011



John Anthony La Pietra (P72121)