

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212  
LANSING, MICHIGAN 48909

BILL SCHUETTE  
ATTORNEY GENERAL

September 14, 2012

William K. Suter  
Clerk of the Court  
Supreme Court of the United States  
1 First Street N. E.  
Washington, DC 20543-0001

RE: *Libertarian Party of Michigan v. Ruth Johnson*  
U.S. Supreme Court No. 12A260

Dear Mr. Suter:

Enclosed please find an original and two copies of the Defendant's Response to Petitioners' Application for Emergency Relief Submitted to Justice Kagan, along with the Proof of Service, for filing in the above matter.

Thank you for your assistance.

Best Regards,

John J. Bursch  
Michigan Solicitor General  
Counsel of Record for Respondent  
(517) 373-1124

JJB:hlg

Enclosures

cc: Mark R. Brown  
Eric D. Doster

No. 12A260

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**In the Supreme Court of the United States**

LIBERTARIAN PARTY OF MICHIGAN; GARY JOHNSON; DENEEN ROCKMAN-MOON,  
PETITIONERS

V.

RUTH JOHNSON, RESPONDENT

REPUBLICAN PARTY OF MICHIGAN, THIRD PARTY-INTERVENOR

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**PROOF OF SERVICE**

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The undersigned certifies that on September 14, 2012, she served the Defendant's Response to Petitioners' Application for Emergency Relief Submitted to Justice Kagan by email and by mailing same in an envelope bearing postage fully prepaid, plainly addressed as follows:

Mark R. Brown  
Lead Counsel for Libertarian Party of  
Michigan, Gary Johnson and Deneen  
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Party  
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\_\_\_\_\_  
Holly L. Gustafson

No. 12A260

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In the Supreme Court of the United States

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LIBERTARIAN PARTY OF MICHIGAN; GARY JOHNSON; DENEEN ROCKMAN-MOON,  
PETITIONERS

v.

RUTH JOHNSON, RESPONDENT

REPUBLICAN PARTY OF MICHIGAN, THIRD PARTY-INTERVENOR

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DEFENDANT'S RESPONSE TO PETITIONERS' APPLICATION FOR EMERGENCY RELIEF  
SUBMITTED TO JUSTICE KAGAN

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of  
the United States and Circuit Justice for the Sixth Circuit

INTRODUCTION

"[T]he time element is now short and the ponderous [state] election machinery is already under way, printing the ballots. Absentee ballots have indeed already been sent out and some have been returned. The costs of reprinting all the ballots will be substantial and it may well be that no decision on the merits can be reached by the Court of Appeals in time to reprint the ballots excluding petitioners, should they lose on the merits. . . . I must deny the injunction, not because the cause lacks merit but because orderly election processes would likely be disrupted by so late an action. The time element has plagued many of these election cases; but *one in my position cannot give relief in a responsible way when the application is a[s] tardy as this one.*"

*Westermann v. Nelson*, 409 U.S. 1236, 1236 (1972) (Douglas, J., denying request for injunction) (emphasis added).

When Justice Douglas penned these words in 1972, he was apparently channeling the facts of this 2012 dispute. Petitioners Libertarian Party of Michigan, Gary Johnson, and Deneen Rockman-Moon (collectively, Petitioners) move for a stay and an order enjoining Michigan Secretary of State Ruth Johnson from

(1) printing any November 2012 general election ballots without Gary Johnson's name on them, or (2) printing any ballots whatsoever until the merits of Petitioners' claim have been decided by the Court of Appeals for the Sixth Circuit. (Petitioners' Application for Emergency Relief, 9/13/2012.) The problem, as in *Westermann*, is that ballots have already been printed and sent to absentee voters overseas, and that is because Petitioners failed to act in a timely fashion.

The Secretary of State respectfully requests that this Court deny Petitioners' application for emergency relief for four fundamental reasons:

1. *First*, Petitioners have failed to comply with this Court's rule requiring them to request a stay in the appropriate lower courts before preceding to seek one here.
2. *Second*, pursuant to the district court's order, the domestic ballot printing process has begun and ballots have already been emailed overseas without Gary Johnson's name on them. Accordingly, Petitioners' claim is now moot.
3. *Third*, as both the district and appellate court recognized, Petitioners have unreasonably delayed in pressing their time-sensitive claim, triggering the equitable defense of laches.
4. And *fourth*, under *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), *Clingman v. Beaver*, 544 U.S. 581 (2005), and *Storer v. Brown*, 415 U.S. 724 (1974), Petitioners' claim lacks merit.

### JURISDICTION

A panel of the Sixth Circuit denied Petitioners' request for a stay in an order entered on Thursday, September 12, 2012 (Ex. 1.) This Court has jurisdiction to consider Petitioners' application for a stay under Supreme Court Rule 23.2 and 28 U.S.C. § 2101(f).

## STANDARDS FOR GRANTING RELIEF

“Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof.” Sup. Ct. R. 23.3. In deciding whether an application for a stay pending appeal is appropriate, appellate courts consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” Fed. R. App. P. 8(A); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

### THIS COURT SHOULD DENY PETITIONERS’ MOTION FOR STAY AND INJUNCTIVE RELIEF

I. Petitioners have persistently failed to follow the rules for seeking a stay pending appeal.

The Sixth Circuit denied Petitioners’ request for a stay because Petitioners failed to first seek a stay in the United States District Court for the Eastern District of Michigan:

A party seeking an injunction while an appeal is pending must ordinarily first move for such relief in the district court. Fed. R. App. P. 8(a)(1)(C). The plaintiffs have not done so, nor do they argue that doing so would be impracticable. Fed. R. App. P. 8(a)(2)(A). This failure weighs against our granting the relief sought.

(Sixth Circuit Order Denying Emergency Injunctive Relief, No. 12–2153, Sept. 12, 2012, at 2.) The rule is the same in this Court. Sup. Ct. R. 23.3 (“Except in the most extraordinary circumstances, an application for a stay will not be entertained

unless the relief requested was first sought in the appropriate court or courts below . . . .”). Because Petitioners have not “first sought [the relief requested] in the appropriate court or courts below,” extraordinary circumstances must exist to justify this Court’s grant of Petitioners’ request for emergency relief. Sup. Ct. R. 23.3; *Conforte v. Comm’r of Int. Rev.*, 459 U.S. 1309, 1312 n.2 (1983). Petitioners offer no excuse for their failure to follow this simple procedural requirement, nor do they proffer extraordinary circumstances justifying their default. For this reason alone, Petitioners’ request should be denied.

**II. Petitioners do not satisfy the factors necessary for this Court to issue a preliminary injunction.**

In addition, Petitioners are not entitled to a stay or injunction under the familiar, four-factor test. Fed. R. App. P. 8(A); *Hilton*, 481 U.S. at 776.

**A. Petitioners will not succeed on the merits because their claim is moot, barred by laches, and undermined by this Court’s prior decisions.**

**1. Petitioners’ claim is mooted by the fact that ballots have already been approved, printed, and sent overseas.**

Following the district court’s order in this case, the Secretary of State certified the contents of the Michigan ballots on September 9, 2012, *without* Gary Johnson’s name on it. (Thomas Aff., Ex. 2, ¶ 4.) The Secretary of State then embarked on the massive, coordinated effort with 83 counties, 1,035 local jurisdictions, and 4,900 precincts to have ballots approved, printed, and distributed to overseas voters by September 22, 2012, which is the deadline for ballots to be made available to absentee overseas voters under the federal MOVE Act, 42 U.S.C. §§ 1973ff-1(a)(8). (See Ex. 2.) Hundreds of printed ballots have already been

issued and transmitted to military and overseas voters. (*Id.* ¶ 12.) It is impossible and cost-prohibitive to make further changes to the ballot. (*Id.* ¶ 9.)<sup>1</sup>

As in *Westermann*, Michigan's election machinery is at the point of no return. It cannot be that overseas voters choose from one set of candidates, while domestic voters choose from another. Nor can it be that the general election does not take place on time because, as detailed below, Petitioners did not pursue their claim with diligence and at an earlier date. Because Petitioners' claim is moot, this Court should deny Petitioners' application for stay.

## 2. Petitioners' claim is barred by laches.

Both the district court and the Sixth Circuit recognized that the timing problem flows directly from the fact that Petitioners failed to pursue their claim with anything close to reasonable diligence. This lack of diligence triggers the application of laches—the equitable defense which reflects the principle that “equity aids the vigilant, not those who slumber on their rights.” *Lucking v. Schram*, 117 F.2d 160 (6th Cir. 1941). Laches bars a plaintiff's action if: (1) the plaintiff delayed unreasonably in asserting his rights; and (2) the defendant is prejudiced by this delay. *Brown-Graves Co. v. Central States, Southeast and Southwest Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000).

In the context of time-sensitive-election claims, the Sixth Circuit has held that plaintiffs bear the burden to expeditiously press their case in a way that both

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<sup>1</sup> Petitioners' assertion that only blank ballots are sent overseas, and it therefore does not matter whether Gary Johnson's name has been included on them, is factually incorrect. Exhibit 3 to this response is a sample ballot showing that these ballots are not blank. (Ex. 3.)

underscores the seriousness of their purported injury and prevents prejudice to the defendant. *Kay v. Austin*, 621 F.2d 813 (1980). Here, both of the lower courts recognized that Petitioners' dilatory conduct throughout this case has been unreasonable and prejudicial. The district court admonished that Petitioners' "failure to act with any sense of urgency in this matter . . . is reprehensible." (R. 28, Amended Opinion and Order, 9/10/2012, at 2 n.2.) As the district court explained in caustic terms:

Plaintiffs were well aware, as early as May 3, 2012, that Johnson would be denied general election ballot access in Michigan, but waited until June 25, 2012 to file their Complaint, further waited until July 18, 2012 to serve the Defendant, further waited until August 2, 2012 to file their non-emergency motion for summary judgment, and *vexatiously* waited until August 19, 2012 to apprise the Court that their motion was of an urgent nature. *Any effort on Plaintiffs' part to stay this Court's decision pending appeal should be met with great skepticism.*

(R. 28, Amended Opinion and Order, 9/10/2012, at 2 n.2 (internal citations omitted; emphasis added.))

The Sixth Circuit agreed emphatically: "the entry of injunctive relief at this late date, when the Secretary's intentions have long been clear, would cause substantial harm to the orderly processing of the election and would not serve the public interest." (Sixth Circuit Order Denying Emergency Injunctive Relief, No. 12-2153, Sept. 12, 2012, at 2.)

In other words, Petitioners' emergency is one entirely of their own creation. There is no ground warranting entry of such extraordinary requested relief.



based on this Court's conclusion that the law did not severely burden the plaintiff's associational rights. *Clingman*, 544 U.S. at 593.

The district court here properly concluded that Michigan's "sore loser law" imposes the same type of modest burdens as the laws this Court considered in *Timmons* and *Clingman*. (R. 28, Amended Opinion and Order, 9/10/2012, at 12–13.) Like the statute in *Clingman*, Michigan's statute is neither facially nondiscriminatory nor restrictive solely on the Libertarian Party. *Clingman*, 544 U.S. at 590. And, like the statute in *Timmons*, Michigan's law does not severely limit the political choices of the Libertarian Party of Michigan, which remains free to support and vote for anyone it chooses, save the negligible number of individuals who ran as the nominee for a different political party in Michigan's February 2012 primary contest. *Timmons*, 520 U.S. at 363–64; Mich. Comp. Laws § 168.695. Neither does the law severely burden Gary Johnson's ability to appear on the ballot. Although precluded from running as a Libertarian, Gary Johnson was free to run as an independent.

*b. Michigan's interest in its sore loser law is "not only permissible, but compelling."*

As a reasonable, nondiscriminatory restriction imposing only modest burden on Petitioners' constitutional rights, Michigan's sore loser statute can be justified by the State's important interests. To reiterate, this Court has held that states' interests in sore loser laws are "not only permissible, but compelling." *Storer*, 415 U.S. at 736.

In *Storer* this Court upheld the constitutionality of a California sore loser law requiring presidential candidates to be disaffiliated from all political parties for at least one year before the primary election immediately preceding the election in which they sought to run as an independent candidate. *Id.* at 726, 736. Upholding the statute, this Court reasoned that promoting party unity and reducing factionalism, among other things, were compelling state interests that outweighed “the interests of the candidate and his supporters in making a late rather than an early decision to seek independent ballot status.” *Id.* at 736.

In *Clingman*, this Court reiterated the compelling nature of similar state interests, holding that states have legitimate dual-interests in aiding “parties’ electioneering and party-building efforts,” on the one hand, and preventing “party raiding,” i.e., “the organized switching of blocs of voters from one party to another in order to manipulate the outcome of the other party’s primary election,” on the other. *Clingman*, 544 U.S. at 594–96. Upholding Oklahoma’s semi-closed primary system, this Court specifically recognized that the law could prevent “a Democratic primary contender who senses defeat might launch a “sore loser” candidacy by defecting to the [Libertarian Party of Oklahoma] primary, taking with him loyal Democratic voters, and thus undermining the Democratic Party in the general election.” *Id.* at 596 (citing *Storer*, 415 U.S. at 735). This Court specifically held that “Oklahoma has an interest in “temper[ing] the destabilizing effects” of precisely this sort of “party splintering and excessive factionalism.” *Id.* at 596–97 (citing *Timmons*, 520 U.S. at 367).

*These precedents apply with equal force here. Wholly aside from their dilatory prosecution of this litigation, Petitioners will not prevail on the merits.*

**B. Petitioners will not be irreparably harmed absent a stay because they have no legal right to have Gary Johnson on the ballot.**

Because Michigan's interests are more than sufficient to justify the modest burdens its sore loser statute imposes, the district court's sanctioning of the law's enforcement has caused Petitioners no cognizable legal harm. Moreover, to the extent Petitioners seek a stay or an injunction halting the printing of ballots until the Sixth Circuit decides Petitioners' constitutional claim, the Sixth Circuit has already signaled that it is unlikely to grant Petitioners' requested relief:

The plaintiffs' likelihood of success on the merits does not appear strong in light of *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). Further, the entry of injunctive relief at this late date, when the Secretary's intentions have long been clear, would cause substantial harm to the orderly processing of the election and would not serve the public interest.

(Sixth Circuit Order Denying Emergency Injunctive Relief, No. 12-2153, Sept. 12, 2012, at 2.) In short, no harm has yet come to Petitioners, and no harm will befall them if this Court declines to issue a stay of the district court's order.

**C. The issuance of a stay will substantially injure the Secretary of State, the State of Michigan, and Michigan voters.**

Conversely, a stay at this late date would substantially injure the Secretary of State, the State of Michigan, and Michigan voters. Ballots have already been printed, and further changes to the ballot contents would be impracticable and cost prohibitive. Most important, hundreds of ballots have already been printed and transmitted to overseas voters, as federal law requires. The prejudice to the

Secretary of State, and indeed the entire elections process and all of its participants, is both inherent and impossible to understate.

**D. The public interest lies in an orderly and on-time election in which only properly qualified candidates appear as nominees and absentee votes count.**

In the ordinary case involving a request for injunctive relief, the parties discuss the first three factors and then give lip service to the public interest as being substantially aligned with the interest of one of the parties. But in an election case, the public interest is of paramount importance. The public has a compelling interest in the Secretary ensuring an orderly and timely election. Voters have an interest in choosing from nominees qualified according to valid state law. Most crucially here, the Michigan service members living overseas deserve to cast their ballots and have them count. That is why federal law requires states to transmit such ballots overseas nearly two months before the election. To protect all of these interests, this Court should deny Petitioners' application.

**CONCLUSION**

Petitioners are not entitled to a stay or an injunction. Petitioners violated Sixth Circuit and Supreme Court rules by failing to request a stay in the district court; have persistently failed to prosecute this litigation in a reasonably timely fashion; and do not present the Court with a viable claim. Moreover, grant of Petitioners' request would substantially harm the State of Michigan and its citizens, particularly those serving our country overseas, to whom ballots have already been sent. In sum, this Court "cannot give relief in a responsible way when

the application is a[s] tardy as this one.” *Westermann*, 409 U.S. at 1236 (Douglas, J., denying request for injunction).

Respectfully submitted,

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Attorney General

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Counsel of Record  
P.O. Box 30212, Lansing, MI 48909  
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(517) 373-1124



B. Eric Restuccia  
Deputy Solicitor General

Nicole A. Grimm  
Denise C. Barton  
Assistant Attorneys General  
Attorneys for Respondent

Dated: SEPTEMBER 14, 2012

# Exhibit 1

No. 12-2153

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

LIBERTARIAN PARTY OF MICHIGAN; GARY )  
JOHNSON; DENEEN ROCKMAN-MOON, )  
) )  
Plaintiffs - Appellants, )  
) )  
v. ) )  
) )  
RUTH JOHNSON, )  
) )  
Defendant - Appellee, )  
) )  
REPUBLICAN PARTY OF MICHIGAN, )  
) )  
Third Party - Intervenor. )

ORDER

Before: KEITH, MARTIN, and ROGERS, Circuit Judges.

The Libertarian Party of Michigan, Gary Johnson, and Deneen Rockman-Moon brought this action to compel the Michigan Secretary of State to place Johnson on Michigan ballots as the Libertarian Party’s candidate for President of the United States. The Secretary had excluded Johnson’s name as a presidential candidate based upon MCL § 168.695, a “sore loser” statute that prohibits a candidate appearing on the primary ballot for one political party from appearing as a candidate for any other political party at the election following the primary. The plaintiffs appeal the district court’s order that grants motions to dismiss filed by the Secretary and an intervenor, the Republican Party of Michigan. An expedited briefing schedule has been entered.

The plaintiffs seek an emergency injunction to enjoin the Secretary of State from issuing any ballot for the November 6, 2012 election that does not name Gary Johnson and James P. Gray as the Libertarian Party candidates for President and Vice President of the United States. The Secretary of State and the Republican Party of Michigan have responded in opposition.

No. 12-2153

- 2 -

A party seeking an injunction while an appeal is pending must ordinarily first move for such relief in the district court. Fed. R. App. P. 8(a)(1)(C). The plaintiffs have not done so, nor do they argue that doing so would be impracticable. Fed. R. App. P. 8(a)(2)(A). This failure weighs against our granting the relief sought.

We may issue an injunction pending appeal in the exercise of discretion. *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 572 (6th Cir. 2002). “In granting such an injunction, the Court is to engage in the same analysis that it does in reviewing the grant or denial of a motion for a preliminary injunction.” *Id.* The relevant factors are: “(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm if the injunction is not issued; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuing the injunction.” *Id.* at 573; *see also Baker v. Adams Cnty./Ohio Valley Sch. Bd.*, 310 F.3d 927, 928 (6th Cir. 2002). These factors do not support the entry of an injunction.

The plaintiffs’ likelihood of success on the merits does not appear strong in light of *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). Further, the entry of injunctive relief at this late date, when the Secretary’s intentions have long been clear, would cause substantial harm to the orderly processing of the election and would not serve the public interest.

The emergency motion for an injunction pending appeal is DENIED. The expedited briefing schedule previously entered by the clerk remains in effect.

ENTERED BY ORDER OF THE COURT

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Clerk



## Exhibit 2

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

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**In the Supreme Court of the United States**

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LIBERTARIAN PARTY OF MICHIGAN; GARY JOHNSON; DENEEN ROCKMAN-MOON,  
PETITIONER

v.

RUTH JOHNSON, RESPONDENT

REPUBLICAN PARTY OF MICHIGAN, THIRD PARTY-INTERVENOR

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Affidavit of Christopher M. Thomas

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

1. I bring this Affidavit in support of Defendant's Response to Plaintiffs' Motion for Summary Judgment.
2. I have been employed by the Secretary of State as Director of Elections since June 21, 1981 and in such capacity serve as Director of the Bureau of Elections and Secretary to the Board of State Canvassers.
3. I am personally knowledgeable about provisions of Michigan Election Law and procedures of the Bureau of Elections that guide the nomination of candidates for United States President and Vice President for placement on the general election ballot. Further, I am knowledgeable about federal and state laws governing ballot printing and distribution deadlines relevant to military and overseas civilian absent voter ballots.
4. I am responsible for preparing the official documentation necessary for the Secretary of State to certify the November 6, 2012 general election ballot

to the 83 County Clerks. MCL 168.648. The Secretary of State's certification includes the names of candidates for the office of President of the United States who have qualified to appear on the general election ballot. The contents of the ballot were certified by the Secretary of State for the November 6, 2012 general election on September 9, 2012. The Secretary of State's certification did not include the names of any candidates nominated by the Libertarian Party of Michigan for the offices of President and Vice President of the United States.

5. The 83 Boards of County Election Commissioners are responsible for preparing and printing ballots for the November general election. MCL 168.559. The number of ballots required to be printed for a general election by each County Election Commission equals the total number of registered voters at the close of registration. R 168.774(6)(a). As of July 16, 2012, there are over 7.3 million registered voters in Michigan.<sup>1</sup>

6. Each of the 83 Boards of County Election Commissioners must prepare the format of the ballot in accordance with the Ballot Production Standards<sup>2</sup> regarding ballot design, the heading of the ballot, ballot instructions, arrangement and titles of offices, order of candidates' names, rotation of candidates' names on the nonpartisan section of the general election ballot, presentation of ballot proposals, paper and ink specifications, and so on, to ensure uniformity in ballot appearance. The Ballot Production Standards manual reflects the technical requirements of the Michigan Election Law and corresponding administrative rules. MCL 168.697 *et seq.*

7. Prior to printing, the 83 Boards of County Election Commissioners are required to submit proof copies of each style of ballot used in their respective counties to the Secretary of State and to each candidate whose name appears

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<sup>1</sup> See "2012 Voter Registration Totals" at [http://www.michigan.gov/documents/sos/2012\\_voter\\_reg\\_totals\\_376923\\_7.pdf](http://www.michigan.gov/documents/sos/2012_voter_reg_totals_376923_7.pdf).

<sup>2</sup> See "Michigan Ballot Production Standards" at [http://www.michigan.gov/documents/sos/Ballot\\_Product\\_Standards\\_8-21-08\\_246427\\_7.pdf](http://www.michigan.gov/documents/sos/Ballot_Product_Standards_8-21-08_246427_7.pdf)

on the ballot. MCL 168.711. The candidates are allotted two business days in which to review the ballot proofs and notify the Board of County Election Commissioners of any corrections. *Id.* In addition, the Secretary of State reviews the ballot proofs for errors and if necessary, may require the Board of County Election Commissioners to make corrections. *Id.* Corrected ballot proofs must be submitted to the Secretary of State. *Id.*

8. With respect to the November 6, 2012 general election, my office began to receive ballot proofs from the Boards of County Election Commissioners on Monday, September 10, 2012. Every county produces multiple ballot styles – often numbering in the dozens or even hundreds per county – for the general election, based on the geographic boundaries of the various elective offices that will appear on the ballot. For example, a precinct may be split into two different school districts or county commissioner districts, necessitating the printing of two different styles of ballot for that single precinct.<sup>3</sup> Every unique ballot style must be reviewed for compliance with the Ballot Production Standards prior to printing.

9. After the expiration of the period for review of the ballots and after any necessary corrections are made, the Board of County Election Commissioners may proceed with ballot printing. *Id.* The Secretary of State has already approved ballot proofs for the 26 counties listed in Exhibit 1, covering approximately 5.2 million registered voters. Ballot printing began on September 13, 2012. Once printing has started, it is impossible and cost-prohibitive to make further changes to the ballots at this late date.

10. Absent voter ballots must be delivered by the Board of County Election Commissioners to the County Clerk by the 47<sup>th</sup> day prior to Election Day, or by September 20, 2012. MCL 168.712. Absent voter ballots must be available for distribution to all voters, and especially military and overseas voters, no later than the 45<sup>th</sup> day before the November General Election, or by September 22, 2012. The deadline for distribution of absent voter ballots is governed by both the Federal Military and Overseas Voters Empowerment

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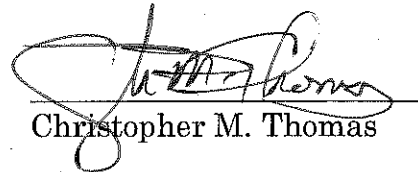
<sup>3</sup> There are approximately 4,900 precincts in Michigan.

Act (MOVE Act), 42 USC 1973ff-1(a)(8), and Michigan Election Law, MCL 168.714 and 759a.

11. The Bureau of Elections and county clerks utilize "e-wizard" software to generate ballots for military and overseas voters. The Bureau of Elections enters the state-level offices, candidates, and ballot proposals, while the counties populate local portion of the ballot. The Bureau of Elections completed its e-wizard data entry on September 11, 2012, and the 83 counties completed their e-wizard data entry on September 12, 2012.

12. On September 12, 2012, the Bureau of Elections authorized local clerks to generate official ballots for military and overseas voters using e-wizard software. On that date, clerks were able to download and e-mail a ballot for those military and overseas voters who had already submitted a request for a ballot. As of this writing, ballots have already been issued and are in transit to approximately 459 military and overseas voters. By September 22, 2012, clerks must issue ballots to all military and overseas voters who previously requested a ballot. In order to facilitate compliance with the 45-day ballot issuance deadline, the Bureau of Elections strongly encourages clerks to issue ballots generated from the e-wizard software.

13. This affidavit is based on personal knowledge. If called as a witness, I can testify competently to the facts stated in this affidavit.

  
Christopher M. Thomas

Subscribed and sworn to before me  
September 14, 2012.

Anna L. Vaeller

My Commission Expires 07/31/2013

# **EXHIBIT 1**

**Ballot Printing Approval  
For the November 6, 2012 General Election  
As of September 14, 2012**

<b>COUNTY</b>	<b>NUMBER OF REGISTERED VOTERS</b>	<b>DATE OF BALLOT APPROVAL</b>
Barry	43,417	9/14/2012
Branch	31,653	9/14/2012
Clare	23,389	9/14/2012
Clinton	54,419	9/14/2012
Eaton	79,540	9/14/2012
Emmet	26,612	9/14/2012
Genesee	331,608	9/14/2012
Hillsdale	33,419	9/14/2012
Huron	25,240	9/14/2012
Ionia	41,652	9/14/2012
Iosco	22,071	9/14/2012
Jackson	112,738	9/14/2012
Kalamazoo	189,917	9/14/2012
Kent	428,043	9/12/2012
Livingston	135,123	9/14/2012
Macomb	608,592	9/14/2012
Mecosta	27,249	9/14/2012
Menominee	18,866	9/14/2012
Missaukee	10,724	9/14/2012
Montcalm	41,671	9/13/2012
Muskegon	128,420	9/13/2012
Oakland	922,242	9/13/2012
Ottawa	181,597	9/13/2012
Shiawassee	52,186	9/12/2012
Washtenaw	266,115	9/12/2012
Wayne	1,356,190	9/13/2012
<b>TOTAL</b>	<b>5,192,693</b>	

# Exhibit 3



# OFFICIAL BALLOT

General Election  
Tuesday, November 6, 2012  
Kent County, Michigan  
City of Grand Rapids, Ward 1, Precinct 23 B

PARTISAN SECTION	STATE BOARDS	COUNTY
<b>STRAIGHT PARTY TICKET</b> Vote for not more than 1	<b>MEMBER OF THE STATE BOARD OF EDUCATION</b> Vote for not more than 2	<b>CLERK/REGISTER OF DEEDS</b> Vote for not more than 1
Republican Party <input type="radio"/>	Todd A. Courser <input type="radio"/> <small>Republican</small>	Mary Hollnake <input type="radio"/> <small>Republican</small>
Democratic Party <input type="radio"/>	Melanie A. Kurdys <input type="radio"/> <small>Republican</small>	Richard Carrillo <input type="radio"/> <small>Democratic</small>
Libertarian Party <input type="radio"/>	Michelle Fackeau <input type="radio"/> <small>Democratic</small>	Jamie Lewis <input type="radio"/> <small>Libertarian</small>
U.S. Taxpayers Party <input type="radio"/>	Lupe Ramos-Montigny <input type="radio"/> <small>Democratic</small>	<b>TREASURER</b> Vote for not more than 1
Green Party <input type="radio"/>	Andy LeCureaux <input type="radio"/> <small>Libertarian</small>	Kenneth D. Parrish <input type="radio"/> <small>Republican</small>
Natural Law Party <input type="radio"/>	Karen Adams <input type="radio"/> <small>U.S. Taxpayers</small>	Teresa Branham Walker <input type="radio"/> <small>Democratic</small>
	Gail M. Graeser <input type="radio"/> <small>U.S. Taxpayers</small>	
	Candace R. Caveny <input type="radio"/> <small>Green</small>	<b>DRAIN COMMISSIONER</b> Vote for not more than 1
	Dwain Reynolds III <input type="radio"/> <small>Green</small>	William R. Byl <input type="radio"/> <small>Republican</small>
<b>PRESIDENTIAL</b>	<b>REGENT OF THE UNIVERSITY OF MICHIGAN</b> Vote for not more than 2	Christopher M. Preville <input type="radio"/> <small>Democratic</small>
<b>ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES</b> Vote for not more than 1	Den Hornig <input type="radio"/> <small>Republican</small>	<b>COUNTY COMMISSIONER 6th DISTRICT</b> Vote for not more than 1
Mitt Romney <input type="radio"/>	Robert Steele <input type="radio"/> <small>Republican</small>	Michael Wawee, Jr. <input type="radio"/> <small>Republican</small>
Paul Ryan <input type="radio"/>	Mark Bernstein <input type="radio"/> <small>Democratic</small>	
Barack Obama <input type="radio"/>	Shauna Ryder Diggs <input type="radio"/> <small>Democratic</small>	<b>NONPARTISAN SECTION</b>
Joe Biden <input type="radio"/>	James Lewis Hudler <input type="radio"/> <small>Libertarian</small>	<b>JUDICIAL</b>
Virgil H. Goode, Jr. <input type="radio"/>	Gregory Scott Stempfle <input type="radio"/> <small>Libertarian</small>	<b>JUSTICE OF SUPREME COURT</b> Vote for not more than 2
James N. Clymer <input type="radio"/>	Joe Sanger <input type="radio"/> <small>U.S. Taxpayers</small>	Stephen Markman <input type="radio"/> <small>Justice of Supreme Court</small>
Jill Stein <input type="radio"/>	Gerald T. Van Sickle <input type="radio"/> <small>U.S. Taxpayers</small>	Bridget Mary McCormack <input type="radio"/>
Cheri Honkala <input type="radio"/>	Eric Borregard <input type="radio"/> <small>Green</small>	Kerry L. Morgan <input type="radio"/>
Ross C. Anderson <input type="radio"/>	Nikki Mattson <input type="radio"/> <small>Natural Law</small>	Colleen O'Brien <input type="radio"/>
Luis Rodriguez <input type="radio"/>		Bob Roddis <input type="radio"/>
	<b>TRUSTEE OF MICHIGAN STATE UNIVERSITY</b> Vote for not more than 2	Doug Derm <input type="radio"/>
<b>CONGRESSIONAL</b>	Melanie Foster <input type="radio"/> <small>Republican</small>	Connie Marie Kelley <input type="radio"/>
<b>UNITED STATES SENATOR</b> Vote for not more than 1	Jeff Sakwa <input type="radio"/> <small>Republican</small>	
Pete Hoekstra <input type="radio"/>	Joel Ferguson <input type="radio"/> <small>Democratic</small>	<b>JUSTICE OF SUPREME COURT INCUMBENT POSITION</b> Partial Term Ending 01/01/2015 Vote for not more than 1
Dobbie Stabenow <input type="radio"/>	Brian Mosallam <input type="radio"/> <small>Democratic</small>	Brian Zahra <input type="radio"/> <small>Justice of Supreme Court</small>
Scotty Boman <input type="radio"/>	Michael H. Miller <input type="radio"/> <small>Libertarian</small>	Windy Barry <input type="radio"/>
Richard A. Matkin <input type="radio"/>	Bill Mohr II <input type="radio"/> <small>U.S. Taxpayers</small>	Shella Johnson <input type="radio"/>
Harley Mikkelsen <input type="radio"/>	Stephen J. Young <input type="radio"/> <small>U.S. Taxpayers</small>	
John D. Litte <input type="radio"/>	Lloyd Clarke <input type="radio"/> <small>Green</small>	<b>JUDGE OF COURT OF APPEALS 3rd DISTRICT INCUMBENT POSITION</b> Vote for not more than 3
		Jane M. Beckering <input type="radio"/> <small>Judge of Court of Appeals</small>
<b>REPRESENTATIVE IN CONGRESS 3rd DISTRICT</b> Vote for not more than 1	<b>GOVERNOR OF WAYNE STATE UNIVERSITY</b> Vote for not more than 2	Bill Murphy <input type="radio"/> <small>Judge of Court of Appeals</small>
Justin Amash <input type="radio"/>	Michael J. Busulto <input type="radio"/> <small>Republican</small>	Douglas B. Shapiro <input type="radio"/> <small>Judge of Court of Appeals</small>
Steve Pestka <input type="radio"/>	Satish B. Jasti <input type="radio"/> <small>Republican</small>	
Bill Gelineau <input type="radio"/>	Sandra Hughes O'Brien <input type="radio"/> <small>Democratic</small>	<b>JUDGE OF COURT OF APPEALS 3rd DISTRICT INCUMBENT POSITION</b> Partial Term Ending 01/01/2015 Vote for not more than 1
	Kim Trent <input type="radio"/> <small>Democratic</small>	Mark T. Boonstra <input type="radio"/> <small>Judge of Court of Appeals</small>
<b>LEGISLATIVE</b>	Robert Gale <input type="radio"/> <small>U.S. Taxpayers</small>	
<b>REPRESENTATIVE IN STATE LEGISLATURE 78th DISTRICT</b> Vote for not more than 1	Marc J. Sosnowski <input type="radio"/> <small>U.S. Taxpayers</small>	
Roy Schmidt <input type="radio"/>	Margaret Cutshall <input type="radio"/> <small>Green</small>	
Winnie Brinks <input type="radio"/>	Latham Redding <input type="radio"/> <small>Green</small>	
Patricia M. Steinhilber <input type="radio"/>		
William Mohr <input type="radio"/>	<b>COUNTY</b>	
Keith Altard <input type="radio"/>	<b>PROSECUTING ATTORNEY</b> Vote for not more than 1	
No Party Affiliation <input type="radio"/>	William A. Forsyth <input type="radio"/> <small>Republican</small>	
	<b>SHERIFF</b> Vote for not more than 1	
	Lawrence A. Stelma <input type="radio"/> <small>Republican</small>	
	James L. Farris <input type="radio"/> <small>Democratic</small>	
	John Glen Stegman <input type="radio"/> <small>No Party Affiliation</small>	

VOTE BOTH FRONT AND BACK OF BALLOT

JUDICIAL	STATE	STATE
<b>JUDGE OF CIRCUIT COURT 17th CIRCUIT INCUMBENT POSITION</b> Vote for not more than 4	<b>PROPOSAL 12-2 A PROPOSAL TO AMEND THE STATE CONSTITUTION REGARDING COLLECTIVE BARGAINING</b>  This proposal would: - Grant public and private employees the constitutional right to organize and bargain collectively through labor unions. - Invalidate existing or future state or local laws that limit the ability to join unions and bargain collectively, and to negotiate and enforce collective bargaining agreements, including employees' financial support of their labor unions. Laws may be enacted to prohibit public employees from striking. - Override state laws that regulate hours and conditions of employment to the extent that those laws conflict with collective bargaining agreements. - Define "employer" as a person or entity employing one or more employees.	<b>PROPOSAL 12-6 A PROPOSAL TO AMEND THE STATE CONSTITUTION REGARDING CONSTRUCTION OF INTERNATIONAL BRIDGES AND TUNNELS</b>  This proposal would: - Require the approval of a majority of voters at a statewide election and in each municipality where "new international bridges or tunnels for motor vehicles" are to be located before the State of Michigan may expend state funds or resources for acquiring land, designing, soliciting bids for, constructing, financing, or promoting new international bridges or tunnels. - Create a definition of "new international bridges or tunnels for motor vehicles" that means, "any bridge or tunnel which is not open to the public and serving traffic as of January 1, 2012."
Donald A. Johnston Judge of Circuit Court <input type="radio"/> Dennis B. Leiber Judge of Circuit Court <input type="radio"/> Mark A. Trusock Judge of Circuit Court <input type="radio"/> Christopher P. Yates Judge of Circuit Court <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>	Should this proposal be approved? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>	Should this proposal be approved? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>
<b>JUDGE OF PROBATE COURT INCUMBENT POSITION</b> Vote for not more than 2	<b>PROPOSAL 12-3 A PROPOSAL TO AMEND THE STATE CONSTITUTION TO ESTABLISH A STANDARD FOR RENEWABLE ENERGY</b>  This proposal would: - Require electric utilities to provide at least 25% of their annual retail sales of electricity from renewable energy sources, which are wind, solar, biomass, and hydropower, by 2025. - Limit to not more than 1% per year electric utility rate increases charged to consumers only to achieve compliance with the renewable energy standard. - Allow annual extensions of the deadline to meet the 25% standard in order to prevent rate increases over the 1% limit. - Require the legislature to enact additional laws to encourage the use of Michigan made equipment and employment of Michigan residents.	<b>CITY</b>  <b>PROPOSAL 1</b>  <b>PROPOSED AMENDMENT TO TITLE II (CITY OFFICERS AND DEPARTMENTS) AND TITLE VI (APPOINTIVE OFFICERS AND EMPLOYEES) OF THE CHARTER OF THE CITY OF GRAND RAPIDS.</b>  The purpose of this amendment is to alter the process by which the City Comptroller is selected. The City Comptroller would no longer be elected by the qualified electors of the City, but would be appointed by the City Manager subject to the approval of the City Commission. There would be no change to the City Charter's description of the powers, duties, or responsibilities of the City Comptroller.
Patricia D. Gardner Judge of Probate Court <input type="radio"/> G. Patrick Hilary Judge of Probate Court <input type="radio"/> Charles B. Covello <input type="radio"/> <input type="radio"/> <input type="radio"/> Brian Downs <input type="radio"/>	Should this proposal be approved? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>	Shall this amendment be adopted? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>
<b>JUDGE OF PROBATE COURT INCUMBENT POSITION</b> Partial Term Ending 01/01/2017 Vote for not more than 1	<b>PROPOSAL 12-4 A PROPOSAL TO AMEND THE STATE CONSTITUTION TO ESTABLISH THE MICHIGAN QUALITY HOME CARE COUNCIL AND PROVIDE COLLECTIVE BARGAINING FOR IN-HOME CARE WORKERS</b>  This proposal would: - Allow in-home care workers to bargain collectively with the Michigan Quality Home Care Council (MQHCC). Continue the current exclusive representative of in-home care workers until modified in accordance with labor laws. - Require MQHCC to provide training for in-home care workers, create a registry of workers who pass background checks, and provide financial services to patients to manage the cost of in-home care. - Preserve patients' rights to hire in-home care workers who are not referred from the MQHCC registry who are bargaining unit members. - Authorize the MQHCC to set minimum compensation standards and terms and conditions of employment.	<b>PROPOSAL 2</b>  <b>PROPOSED AMENDMENT TO TITLE XVIII (MISCELLANEOUS PROVISIONS) OF THE CHARTER OF THE CITY OF GRAND RAPIDS, CONCERNING THE DECRIMINALIZATION OF MARIJUANA.</b>  A proposal to decriminalize possession, control, use, or gift of marijuana, through a Charter amendment prohibiting police from reporting same to law enforcement authorities other than the City Attorney; prohibiting the City Attorney from referring same to other law enforcement authorities for prosecution; prohibiting City prosecution except as civil infractions enforced by appearance tickets with a maximum fine of \$100.00 and no incarceration; waiving fines if a physician, practitioner or other qualified health professional recommends the defendant use marijuana; and providing an affirmative defense to prosecution for defendants intending to use marijuana to relieve pain, disability, or discomfort.
George J. Quist Judge of Probate Court <input type="radio"/>	Should this proposal be approved? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>	Shall this amendment be adopted? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>
<b>JUDGE OF DISTRICT COURT 61st DISTRICT INCUMBENT POSITION</b> Vote for not more than 2	<b>LOCAL SCHOOL DISTRICT</b>  <b>BOARD MEMBER KENOWA HILLS PUBLIC SCHOOLS</b> Vote for not more than 2	
Jeanine M. LaVie Judge of District Court <input type="radio"/> Ben H. Logan Judge of District Court <input type="radio"/>	Jonathan DeWys <input type="radio"/> Kristi Menzel <input type="radio"/> Duane Ambrase <input type="radio"/> Dorian C. Chalom <input type="radio"/>	
<b>PROPOSAL SECTION</b>  <b>STATE</b>  <b>PROPOSAL 12-1 A REFERENDUM ON PUBLIC ACT 4 OF 2011 -THE EMERGENCY MANAGER LAW</b>  Public Act 4 of 2011 would: - Establish criteria to assess the financial condition of local government units, including school districts. - Authorize Governor to appoint an emergency manager (EM) upon state finding of a financial emergency, and allow the EM to act in place of local government officials. - Require EM to develop financial and operating plans, which may include modification or termination of contracts, reorganization of government, and determination of expenditures, services, and use of assets until the emergency is resolved. - Alternatively, authorize state-appointed review team to enter into a local government approved consent decree.	Should this law be approved?  <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>	
	Should this proposal be approved? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>	
	<b>PROPOSAL 12-5 A PROPOSAL TO AMEND THE STATE CONSTITUTION TO LIMIT THE ENACTMENT OF NEW TAXES BY STATE GOVERNMENT</b>  This proposal would: Require a 2/3 majority vote of the State House and the State Senate, or a statewide vote of the people at a November election, in order for the State of Michigan to impose new or additional taxes on taxpayers or expand the base of taxation or increasing the rate of taxation. This section shall in no way be construed to limit or modify tax limitations otherwise created in this Constitution.	
	Should this proposal be approved? <b>YES</b> <input type="radio"/> <b>NO</b> <input type="radio"/>	

VOTE BOTH FRONT AND BACK OF BALLOT